IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Family and Children's Services of Lunenburg County v. T.C, 2006 NSFC 12

Date: 20060330
Docket: FAMCFSA-031011
Registry: Bridgewater

Between:

Family and Children's Services of Lunenburg County

Applicant

v.

T. M. C., D. M. G., and C. L. G.

Respondents

Editorial Notice

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

Restriction on Publication:

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 23, 2006,in Bridgewater, Nova Scotia
January 24, 2006, in Lunenburg, Nova Scotia
January 25, 2006, in Bridgewater, Nova Scotia
February 6, 2006, in Bridgewater, Nova Scotia
February 7, 2006, in Bridgewater, Nova Scotia
February 8, 2006, in Bridgewater, Nova Scotia
February 9, 2006, in Lunenburg, Nova Scotia
February 20, 2006, in Bridgewater, Nova Scotia

Counsel: Wayne K. Allen, Q.C., solicitor for the Applicant
Tammy Wohler, solicitor for the Respondent, T. M. C.
Timothy Reid, solicitor for the Respondent, C. L. G.
D. M. G., on his own behalf

By the Court:

Issue

[1] Upon a review of disposition under section 46 of the **Children and Family Services Act (CFSA)**, it must be decided if two young children who are in an agency's temporary care and custody should be placed permanently with the agency or whether the matter should be dismissed.

[2] By operation of law, these are the only two options at this time. The court has previously ruled that the total permissible duration of disposition orders has been exceeded thereby eliminating from consideration alternate dispositions such as return to a parent under agency supervision [section 42 (1) (b)], third party placement with consent, under agency supervision [section 42 (1) (c)], further temporary agency care and custody [section 42 (1) (d)], and temporary care and custody, followed by return and supervision [section 42 (1) (e)]. It had been determined that the court maintains jurisdiction in the best interests of the children pending this decision.

[3] As will appear, the paternal grandmother was granted standing in the **CFSA** case. However, because of the delays in bringing this matter to final hearing, there is no longer a remedy available to her under section 42 of the **Act**. There is no authority for the court, for example, to place the children in her care and custody under agency supervision because of the exhausted time limits.

[4] Lost in the ebb and flow of the case was the fact that the paternal grandmother commenced a parallel application for care and custody of the children under section 18 (2) of the **Maintenance and Custody Act (MCA)**. (Her leave application was not opposed.) Neither parent directly replied or counter-

applied. Although none of the parties clearly addressed the court's options should the **CFSA** case be dismissed (and when, by operation of law, the grandmother's outstanding application would be revived), I am satisfied that the respective positions of the parties and the evidence are sufficiently clear to permit the court to make an order under the **MCA**, if need be. Such an order could certainly be made on an interim basis, at the very least, in the children's best interests.

Introduction

[5] I have substituted initials, as follows; and made minor editorial changes to documents when substituting, if required by the context:

> Family and Children's Services of Lunenburg County is the "agency".
>
> The children are D. M. Z. G., born April [...], 1998, "D"; and B. D. G., born December [...], 2000, "B".
>
> The biological parents of the children are T. M. C., "TC", and D. M. N. G., "DG".
>
> The paternal grandmother is C. (incorrectly spelled K. by some witnesses, and others) L. G., "CG".
>
> Unless otherwise noted, underlining is my emphasis.

History of the Proceedings

[6] As will appear, this has been a lengthy and complex case, spanning the better part of two years. A summary of the legal history predating the current hearing follows. As this is one continuous case, the early evidence and outcomes are still relevant.

1. Interim Hearing

[7] The agency commenced proceedings by way of an application for a Supervision Order. An interim hearing was concluded March 22, 2004 when the only evidence before the court was that of child protection worker, Brenda Bryenton ("Bryenton")[Exhibit 1, Tab 1]. On the available, uncontradicted evidence, and by consent, the court determined there were reasonable and probable grounds to believe the children were in need of protective services under **CFSA** subsections 22(2)(b) [risk of physical harm caused by inadequate supervision and protection] and (g) [substantial risk of emotional harm]. A comprehensive order confirmed care and custody to the parents, subject to agency supervision, and authorized Parental Capacity and Psychological Assessments (PCA's) of the parents, therapy for the children, therapy for the mother, a family support worker for the parents, domestic violence counselling for the father, optional day-care provision, and agency underwriting of related transportation costs. The parents were represented by legal counsel.

[8] The evidence at the time will be found in Bryenton's affidavit which disclosed agency interest in the family dating back to January, 2003. The agency had received referrals concerning domestic violence between TC and DG, and neglect of the children. The RCMP substantiated the family violence referrals. A police officer who was interviewed expressed concern that DG also had a substance abuse problem. A protection file was opened on January 6, 2003.

[9] When interviewed, TC disclosed that she and DG had been together ten years and that physical and emotional abuse had begun two months into the relationship. She disclosed that she and DG had been mutually violent. She said that he was not involved with the care or management of the children. TC described herself as stressed and complained of trouble eating and sleeping. When contacted later, DG indicated that incidents of family violence were usually after a few drinks, but denied that any domestic violence had taken place in front of the children. He claimed that he had not had a drink for six months and indicated that he was unhappy in the relationship. The couple was referred to the agency family therapist.

[10] When asked about referrals related to neglect of the children, TC and DG both claimed that the referrals had resulted from DG's mother trying to make trouble for them. They were loosely characterized as "nuisance referrals" by the parents.

[11] In March 2003, TC said that she and DG had seen the agency family therapist on one occasion but had not found it useful because D (then 3 years old) was present, that D was to be assessed for Attention Deficit Hyperactivity Disorder, that TC had seen her physician regarding depression, and that TC was involved with the agency Family Support Centre regarding the challenging behaviours of the couple's two children D and B (then age 2).

[12] In April 2003 the agency support plan for the family included referral to agency family support services, referral to Mary Haylock for therapy for TC and possible couple counselling, and ongoing home visits.

[13] D and B attended day care in May, 2003 for respite for TC who complained of difficulty managing D's behaviour. In July, TC began working with a family support worker on parenting issues and was seeing Ms. Haylock weekly. DG had been referred to the

Alternatives Program for abusive men, but he was characterized as resistant. He cited work schedule problems. His claimed his work also interfered with family support worker sessions.

[14] The agency received a referral concerning lack of supervision of the children and, on July 10, 2003, TC disclosed to Ms. Haylock that D had killed the family's puppy. Ms. Haylock reported this to the agency and recommended that D see Carol McCready for his aggression. DG felt the puppy's death was an accident but TC maintained that D's actions were deliberate because he was angry with her.

[15] In August, 2003 concerns about D being unsupervised were addressed with TC who did not deny that D had been out of the house without her knowledge. At the time, she disclosed that her family physician suspected that D might have Tourette's Syndrome, and that she was being treated for "borderline cancer of the cervix" that had resulted from a sexually transmitted disease. She complained of being constantly tired and needing to increase her medication for epilepsy (a condition diagnosed in her late teens).

[16] By September, 2003 TC was taking antidepressants. It was noted that DG would be referred to Richard Nichols for therapy and that D would be referred to play therapist Carol McCready. Also, a suggestion was made that the family support worker should be involved with the paternal grandmother because the children were spending a lot of time with her. TC and DG did not support that idea. DG expressed skepticism about the services helping the family and denied that he "beat" TC.

[17] November records indicate that the services were in place but that TC continued to complain of fatigue and struggles with D's behaviour. Concerns were again noted about proper supervision of the children and TC's inability to get up in the morning. A report from the day care centre indicated that D

might have hearing and vision problems, although his conduct was generally age-appropriate and co-operative. B was described as more aggressive and possibly having some gross motor difficulties.

[18] In early December, 2003 TC told the family skills worker that D had been up in the morning, while she was in bed, and making microwave pizza and hot chocolate.

[19] Ms. McCready reported that D did not appear to be destructive and that although TC understood parenting tips, she had difficulty implementing them.

2. Protection Hearing

[20] Another child protection social worker, Linda Jensen ("Jensen"), temporarily assumed responsibility for the case. She filed an affidavit [Exhibit 1, Tab 4] preparatory to a protection hearing under **CFSA** section 40. Jensen identified more concerns about inadequate supervision of the children, within and without the home, and assaultive behaviours by D upon his sister, his mother and the family support worker (paragraph 6). D's conduct was still reportedly less problematic at the day care centre. By then, TC and the children were engaging in services, but DG was not. The agency was concerned about some discipline techniques being used by the parents (paragraph 10), as well as ongoing safety and supervision issues (paragraphs 11 and 12). The following passage appears in paragraph 12:

> ...while the Family Support Worker was present, D went behind the house next door and was out of sight; the worker and TC went after him and the worker observed D crossing over a brook by means of a fallen tree; that the Family Support Worker called to TC to intervene and the latter replied, "Okay" but did not come to assist [Jensen's emphasis]; the Family Support Worker had to intervene personally and noted that within the twenty minutes she had been at the residence D

> had been out of the yard unsupervised on at least four different occasions - two of which were personally witnessed by the worker; no discipline or other consequences were invoked in an effort to modify this behaviour; the Family Support Worker expressed grave concerns that the children are at risk of harm ...

[21] The foregoing was reported on April 21, 2004.

[22] Just one day later, there was this report:

> ... Family Support Worker, Dee McLean, advised your deponent that when she had been at the home of the Respondents on Thursday, April 22nd an incident occurred wherein D was discovered standing in the middle of the road with a car approaching; TC called to him to move but the child did not respond and she went to bring him to safety; TC complained that she asks D to stay in the yard when he goes outside but that he does not do so ...

[23] In May, 2004 the agency was receiving reports from therapist Carol McCready expressing concern about TC's ability to implement appropriate parenting strategies on any consistent basis.

[24] Around the same time, the family was evicted from their residence after their rent fell several months in arrears. There were allegations that DG may have been gambling away his earnings when at home and not at work at sea. TC's response was characterized as "passive". Refuge was temporarily sought by the couple at the residence of DG's mother, CG.

[25] Further investigation of the April 21st and 22nd incidents, prompted the parents to characterize the agency's concerns as exaggerated (paragraph 17). Jensen stated that DG disclosed considerable financial stress because of limited income. She said

he admitted to past expenditures of $200 monthly in gambling machines.

[26] The protection hearing was started May 25, 2004; and adjourned to, and completed, on June 7. Both parents were present. However, they were not represented because their legal counsel had withdrawn. (The solicitor/client relationship had broken down over fees.) TC and DG consented to the matter going ahead on the terms and conditions proposed by the agency (which mirrored those already in place). The court found the children to be in need of protective services and imposed an order [Exhibit 1, Tab 5] pending a disposition hearing.

[27] At an August 9, 2004 court appearance it was learned that the parents had separated and that TC was at a transition house with the children. The PCA's were delayed because of the change in circumstances. By then, TC had retained new legal counsel; DG was expected to do so.

3. Disposition Hearing

[28] A pre-hearing conference on September 7, 2004 was coupled with a disposition hearing. DG was still unrepresented. TC had secured new legal counsel.

[29] A revised Plan of care was before the court [Exhibit 15] and was the basis of a three-month supervision order [Exhibit 1, Tab 7]. The previous order had been refined to confirm a joint custody regime, with day-to-day care vested solely in TC.

[30] The regime was reinforced with several clauses to ensure cooperation and disclosure between the parents (paragraph 2). It was disclosed on this occasion that DG would be off work for four to five months during which he would be undergoing surgery to [...] and would need time for recovery.

4. Variation Hearing

[31] The agency brought the matter back before the court under section 46(4) of the **CFSA** when the children were taken into care.

[32] At a September 29, 2004 court appearance, it was determined that the disposition order (September 7, 2004) should be varied in the children's best interests. They were placed in the agency's temporary care and custody, subject to access by the parents, with terms and conditions otherwise identical to the previous order.

[33] The matter was adjourned, but not before it was learned that the paternal grandmother (CG) would seek involvement. With that involvement, it was determined that TC's solicitor would be in a conflict of interest and would have to withdraw.

[34] Bryenton's September 28, 2004 affidavit [Exhibit 1, Tab 8] explains the basis for the agency's actions at the time.

[35] The children's therapist had raised concerns about alleged inappropriate sexual touching of B by a third party. (As noted elsewhere, the agency did not substantiate this.) The family support worker had raised other concerns [Exhibit 1, Tab 9], later discussed. On September 22, 2004, Bryenton had made an unscheduled visit to DG's residence. She wrote (paragraph 9):

> ... Mr. DG was not at home but your deponent spoke with his mother, CG, who related to your deponent that on the previous Friday (September 17, 2004) she was contacted by TC respecting a medical emergency regarding her son, D; Ms. CG advised that she transported D and TC to hospital because D had punctured one of his tonsils with a hollow rod; Ms. CG advised that after D received treatment at the hospital and returned home, she received a second call from TC advising that D was in great pain and had to return to the hospital; Ms. CG advised that she and DG attended at the TC residence to convey

> them to hospital; however, TC declined to go with them saying that she "had plans"; Ms. CG further advised your deponent that after D was seen at Out-Patients, DG stopped into a bar on the way home and emerged a short time later saying that TC was inside with her boyfriend; your deponent asked Ms. CG who was residing in her home apart from herself and D and your deponent was advised that one D. H. had been residing there but had recently moved elsewhere ...

[36] The same day it was learned that DG had baulked at counselling services (paragraph 10). DG was questioned about D's emergency medical treatment. Bryenton wrote:

> ... your deponent inquired about the injury D had sustained and he advised that Ms. TC had telephoned him at about 4:30 p.m., saying that D had poked a hollow rod into his throat and was injured; he, his mother and Ms. TC took the children to hospital and afterwards D went home with his mother while he, B and CG returned to the CG residence; he stated that around 9:00 p.m. they got another call from TC saying that D needed to return to hospital because she was afraid he had dislodged the tubes in his ears; he stated that when he and his mother arrived to pick them up for the trip, TC's boyfriend was present in the home; he stated that the boyfriend told her to go to the hospital with her son but TC refused; Mr. DG stated that he asked to see what D had hurt himself with but Ms. TC told him it was a hollow, plastic rod and she had thrown it away because B was playing with it; Mr. DG said that as near as he could gather it was something like a long, hollow tent peg; he advised that the rod had narrowly missed a tonsil and that Ms. TC had told him that the accident had occurred inside the house while she had turned away briefly to tend to food cooking on the stove.

[37] DG added that on his way home from the hospital at around 11:00 p.m., he entered the bar and found TC and her boyfriend were there.

[38] Lastly, Bryenton recounted the basis for concerns that the father, DG, might harm himself in the wake of recent events (paragraph 13).

[39] The agency's child protection team convened a meeting, the outcome of which Bryenton summarized as follows (paragraph 18):

> **THAT** the protection team agreed that the pattern of the parents of these two young children failing to take appropriate steps to ensure their physical safety through adequate supervision had re-emerged in spite of approximately one and one-half years of family support involvement and repeated admonitions to the parents regarding the need to provide constant supervision and providing specifics on how this could be achieved; it was agreed that in spite of the fact that TC had been involved in individual counselling for over a year that she had not made significant changes to more effectively parent and supervise her children; it was agreed that social workers and the Family Support Worker have had many discussion with Ms. TC about the need for her to rise in the morning to supervise the children, to provide ongoing supervision while they are outside, and not to place D in the position of responsibility for supervising his sister; the team also agreed that the level of supervision required for these two children is accentuated by the history of their behaviours and their very young ages; it was agreed that the protection proceedings to date which culminated in a supervision order have not adequately reduced the risks to the children and that their physical and emotional safety can only be met in the short term if they are in the care of the Agency; the team decided that the Agency would not consider CG as a possible restricted placement at this time pending the outcome of an investigation that B may have been sexually touched by someone in that home...

[40] At the September 29, 2004 court appearance, the agency motioned to add a new ground to its protection application, namely section 22(2)(ja) [substantial risk of physical harm caused by chronic and serious neglect]. This was reflected in the ensuing order which was to continue "pending further order of the Court".

[41] During an October 5, 2004 teleconference, TC's counsel confirmed the conflict of interest and withdrew. Her new counsel (Thomas Feindel) confirmed his retainer. Timothy Reid, counsel for CG, was directed to perfect his client's application as soon as possible.

[42] By October 8, 2004, DG was still unrepresented but disclosed he would be advancing his own Plan of care and opposing the others' plans. TC was represented by Mr. Feindel. Mr. Reid's client was granted party status, by consent.

[43] At an October 25, 2004 court appearance, it was learned that CG's application for approval as a restricted foster parent had been complicated by allegations which surfaced during the agency's routine investigations. TC was pressing for return of her children and a hearing date.

[44] By the time of a November 4, 2004 appearance, it was known the PCA would be further delayed because of the assessor's illness. There was brief discussion regarding the timeliness and completeness of agency disclosure. Still in a pre-hearing mode, there was a consensual adjournment on November 18, 2004. By then, TC had filed her first affidavit [Exhibit 1, Tab 13]. CG filed her first affidavit [Exhibit 1, Tab17]. In mid-December, 2004, the review process was adjourned yet again, with the consent of the parties.

[45] The slow progress of the case and confusion surrounding the position of the respective parties was such that on December 20, 2004 the court directed the parties to "regroup" and clarify their positions. The plans of DG and his mother were both unclear; as was the status of legal representation for DG. CG's application for a restricted foster placement was unresolved. And, the agency had not reduced its final plan of care to writing.

[46] Unexpectedly, in mid-January 2005 it was learned that Mr. Feindel would be withdrawing from TC's representation. A local, junior lawyer tentatively appeared to replace Mr. Feindel; but another conflict of interest arose. By then, TC had filed her second affidavit [Exhibit 1, Tab 21].

[47] DG was involved with an appeal with Legal Aid over possible representation. Less than two weeks later, it was learned that TC was also engaged in an appeal with Legal Aid. The restrictive foster placement assessment by the agency was still outstanding.

[48] By mid-February, 2005 it was known that TC had retained yet another lawyer, June Rudderham. There was further consensual delay pending agency disclosure to Ms. Rudderham and consensus on court scheduling.

[49] The next pre-hearing conference was March 7, 2005. DG was still involved in his Legal Aid appeal. The restrictive home study regarding the grandmother was reportedly "negative". There was confusion about the parenting plans of DG and his mother (i.e. co-parenting or independent). Ms. Rudderham advocated for advancing the case to hearing, but it was noted her client had not perfected her case with affidavits, an expert's report, etc. and that parties had yet to exchange witness lists or do any serious trial preparation.

[50] It was learned on April 4, 2005 that DG would be representing himself (following unsuccessful appeal of Legal Aid disqualification). There were pre-hearing discussions regarding process. Hearing dates for April, May and June were vetted.

[51] In mid-April, 2005 DG sought re-testing under the psychology component of the PCA. And, for the first time, CG sought to be fully assessed.

[52] On May 2, 2005, the court was informed that each Respondent was putting forward an "independent" plan of care. It was agreed, in principle, that CG should be assessed, and that the parents should be re-assessed. Consensual arrangements were confirmed in mid-May. A short time later (May 24, 2005), counsel disclosed changes in DG's residence and a possible new partner. Unexpected, further delay in preparation and submission of the PCA's were also noted whereupon TC's counsel objected and asked that dates for disposition review be set. However, counsel were admittedly still not ready or prepared.

[53] The court was informed on May 31, 2005 that TC's counsel had withdrawn her objections to new and updated PCA's. In the children's best interest, the matter was adjourned pending the assessments. The PCA's were not received until early October. On the heels of the assessments, and after several months involvement, Ms. Rudderham sought to withdraw as TC's lawyer. This precipitated further delay until another lawyer, Tammy Wohler, was retained, secured the voluminous file and disclosure, and was able to obtain instructions. (DG remained self-represented.)

[54] By November, 2005 there had been enough delay that the court, on its own motion, invited submissions on the validity of the last substantive order. For reasons placed on the record, the court determined that it should continue and complete the review of disposition hearing. In so doing, it noted that the last order was in effect "until further order of the Court", that all adjournments had been in the children's best interests and by consent, and that it was in the children's best interests that the case be concluded on the merits at the earliest opportunity.

[55] The agency's final plan of care (dated November 21, 2005) for permanent care and custody appears in Exhibit 1 at Tab 37. This 14-page document provides, from the agency's perspective, an overview of the case's development and the rationale for the

proposed final disposition. It meets the requirements of **CFSA** sections 21(3) and 46(4)(b); and was considered by the court in reaching its decision.

Review of Disposition (Current Hearing)

The Agency's Case

[56] **Art Fisher** ("Fisher") is associated with a local service known as Alternatives. He provides domestic abuse counselling, training and research. By consent, his brief report to the agency (November 1, 2004) was entered into evidence [Exhibit 1, Tab 14].

[57] DG attended four appointments with Fisher between late May, 2004 and late September, 2004 when Fisher determined that "Alternatives will not be helpful" to DG. Fisher stated he would support DG's referral to a psychologist "if DG is willing to participate". He suggested there may be issues DG "may be able to explore in a mental health setting which may lead him closer to the family relationships he wants".

[58] **P. George Wawin** ("Wawin") is employed as a clinical psychiatric social worker (adult team) with the Hants Community Hospital at Windsor, Nova Scotia. Currently, he is on assignment to a Halifax hospital where he is working with patients and their families on a Palliative Care and Medical Oncology unit. Wawin's full curriculum vitae appears in Exhibit 2, Tab 47. He submitted a brief written report to the agency dated April 15, 2005 [Exhibit 1, Tab 31].

[59] Wawin was engaged by the agency to counsel DG on issues of depression, anxiety, and emotional and anger management.

Also to be addressed were "co-dependency boundaries and family violence". Although characterized as "complex, difficult issues", sessions were scheduled for about one hour, once weekly; and were held on eight occasions between February 14 and April 11, 2005. In testimony, Wawin said there was a subsequent, final session on April 25th.

[60] According to Wawin, there was difficulty in establishing a "good therapeutic alliance" because DG was suspicious and cautious, and reportedly "felt he was misunderstood". Eventually, Wawin formed an opinion that DG was mildly depressed. By mid-April, 2005, Wawin was reporting that DG and he were starting to have a better therapeutic alliance and making slow progress on some issues. He sought to establish longer working sessions.

[61] While noting some progress, Wawin advised the agency that DG would need ongoing support, direction and assistance. He noted that DG professed an intention to "do what he must" in order to achieve care of his children. Wawin opined "he is trying the best that he is able, at present, to deal with his complex situation". Financial stresses and inability to secure legal counsel were noted as having "a significant psycho-social impact on his present ability to fully engage and address his own therapeutic needs".

[62] In testimony, there was some elaboration by Wawin of his work with DG utilizing what he characterized as a "coaching style" of counselling.

[63] Wawin testified that DG stopped attending his sessions. He could not recall the precise reasons given but vaguely recalled that DG may have left a message about renewed conflict with his mother and the need to relocate. Wawin had no recollection of DG asking that counselling resume.

[64] Wawin generally acknowledged DG's potential and desire for change but was disappointed that DG "did not follow through" when there was every need for ongoing therapy.

[65] In testimony, Wawin said he was aware of DG's highly conflicted relationship with TC and episodic conflicts with his mother. The latter was not pursued in any depth during counselling. The implication was that other identified issues were assigned priority and, in any event, no sessions were scheduled or requested after late April, 2005. Wawin confirmed that for therapeutic purposes, he relied on self-disclosures by DG and that he did not (nor was he expected to) contact TC or CG for input or verification of DG's assertions.

[66] Wawin was contacted by Elaine Boyd in connection with Parental Capacity Assessment Update (October 12, 2005), Exhibit 1, Tab 36. Wawin affirmed that the following passages from her report (page 13) were accurate to the best of his knowledge:

> In May 2005 Mr. DG did not show up for two consecutive appointments with Mr. Wawin (May 2 and 9). File notes indicate that in May, June, July, and August Ms. Bryenton prompted Mr. DG to make an appointment with Mr. Wawin but he did not follow through. Mr. DG contacted Ms. Bryenton following the final interview for this assessment requesting that the therapy sessions be re-instated.
>
> In a telephone interview for this assessment Mr. Wawin indicated that Mr. DG was easily distracted by circumstances around him and would be able to be more attentive to therapy if his situation was more stable. Mr. Wawin felt that Mrs. CG was putting a lot of pressure on Mr. DG and described the relationship between them as problematic (co-dependent). Mr. Wawin commented that Mr. DG does not understand good interdependent relationships. He felt that Mr. DG did not want to reside with his mother and that there was a lot of tension between them.
>
> Mr. Wawin also commented that in his opinion Mr. DG had been traumatized in his relationship with Ms. TC (e.g. she stabbed him). He described Mr. DG as disempowered in the relationship and felt that Mr. DG's concerns had been minimized in past

> treatment. Mr. Wawin described Mr. DG as exhibiting acute stress when reflecting back on the relationship and felt that Mr. DG had never fully processed past events. He described Mr. DG as difficult to keep on track in the therapy sessions but slowly making progress through being allowed to express his feelings and feeling heard. He indicated that Mr. DG consistently expressed love for his children and the desire to do what would be best for their care.

[67] **Sheila Benjamin** ("Benjamin") is a clinical therapist with Addiction Services, Bridgewater office. Her March 23, 2005 report [Exhibit 1, Tab 26] was entered into evidence, by consent.

[68] TC referred herself to Addiction Services in January, 2005, apparently in response to suggestions she may have an "addictive personality". Relying on disclosures by TC, Benjamin determined that her past use of computers had been "excessive" although TC was ambivalent about the impact of such use on her life. According to Benjamin, TC said she has not owned a computer since she and DG separated in June, 2004 and that abrupt cessation of use was accomplished without great difficulty.

[69] Benjamin wrote that "the information obtained was insufficient to meet the criteria for a computer addiction and seems to pertain more to client's general ability to cope with stress". She discussed with TC a wide-ranging five-day agency sponsored women's group treatment program that might be of interest and benefit.

[70] **Rosalee Carmichael** ("Carmichael") has been a family support worker for the agency since May, 2003. A "rough copy" of her curriculum vitae appears as Exhibit 11. She provided services to DG from early November, 2004 until mid-July, 2005. She adopted the contents of the Case Summary which is marked as Exhibit 12.

[71] The Respondents did not cross-examine Carmichael on her report with the result that the contents were unchallenged. The report discloses that 23 sessions were scheduled for DG during this time span. Six were missed.

[72] The following excerpt gives an overview:

> ...Mr. DG did not appear to be committed to meeting with FSW from November 23 until Feb. 4/05 and during this time Mr. DG missed three appointments. Numerous messages were left for Mr. DG however he did not return FSW's calls. Mr. DG began to meet regularly again in February. During the period from February until June Mr. DG remained committed to meeting with FSW. FSW provided and discussed a great deal of parenting information and videos. Mr. DG was engaged in this process. Mr. DG was observed practising many of the parenting techniques we had discussed in our sessions when he was visiting with his children ie: redirecting, nurturing communication, validating feelings, and offering choices. Mr. DG was very open in discussing any life or parenting challenges he may be experiencing and was open to discussing possible solutions. A case plan was developed in June, however it was not signed by Mr. DG as he did not attend his scheduled appointments. Mr. DG was experiencing some personal difficulties at this time and when FSW contacted Mr. DG to reschedule appointments he would state that he was interested in Family Support work but then not attend the appointment. FSW informed social worker Brenda Bryenton that FSW was having difficulty in getting Mr. DG to commit to continuing his Family Support work. Social worker Brenda Bryenton asked Mr. DG to contact FSW, however he did not follow through with this request. Due to these reasons, social worker Brenda Bryenton notified FSW that family support work had been closed...

[73] Carmichael provided DG with extensive resource materials and noted he was able to demonstrate a variety of "positive parenting techniques" during his access visits. However, she noted that DG, at times, had difficulty in following through with consequences when attempting to set boundaries and limits for

his children. He cited infrequent access (once per week) as making discipline difficult, at times.

[74] Carmichael noted that DG did not complete his work in all the areas which had been targeted for improvement.

[75] Nonetheless, she wrote:

> ...FSW provided Mr. DG with feedback from the access reports. Mr. DG was always very open in discussing his visits with the children. He was able to come up with different ways to handle situations that he may have struggled with during a visit. Mr. DG provided the children with a meal when needed. At times, weather permitting he planned outside activities for the children ie; going for walks, going to the playground or mall. Mr. DG interacted positively with the children through play and reading books.

[76] And:

> ...FSW did observe Mr. DG periodically with his children during their access visits. All observations were positive. The access visits can continue to take place on a weekly basis, these visits are supervised by a an (sic) access facilitator. FSW will have no further involvement with these visits.

[77] Elsewhere, Carmichael stated:

> During FSW involvement with Mr. DG he continued to have access visits with his children once per week at the access room. These visits are supervised by an access facilitator. FSW reviews the access reports and has also observed Mr. DG occasionally at these visits. It has been observed that Mr. DG is able to provide positive parenting, direction and support during these visits. At times Mr. DG has expressed that he finds the three hour visit too long as it is difficult to entertain the children. He has at times found it challenging to give B positive attention and deal with D's behaviours at the same time. Mr. DG has been consistent in attending his visits and the children are always happy to see him.

[78] **Dee McLean** ("McLean") has been a family support worker for the agency since 2000. She briefly elaborated on a curriculum vitae marked as Exhibit 8 and adopted her affidavit in Exhibit 1, Tab 9. (The latter speaks as of September 28, 2004.) Her involvement as a service provider for TC spanned 14 months, starting in October, 2003.

[79] In early September, 2004 McLean had received reports from the local shelter where TC and the children had temporarily resided which had identified issues surrounding TC's parenting (paragraph 4). At mid-month, McLean met with TC to review and reinforce the agency's concerns - particularly about supervision of her children. Self-disclosures by TC and her defensive stance, only served to heighten McLean's concerns as the assigned family support worker. Shortly thereafter, renewed concerns about TC were raised by DG. McLean had an intense session with TC, as a result.

[80] She wrote:

> 8. **THAT** subjects discussed during this session included the roles of a parent, including being a teacher, guide, nurturer and protector and discussed Ms. TC's functioning in these contexts; Ms. TC related to your deponent some of her current challenges which included B leaving the property with another child from the neighbourhood recently and lying to that child about having permission to leave the property without checking in with TC before leaving; Ms. TC stated that B had taken to attempting to sneak off to play in the brook at the edge of the property; your deponent noted that during this conversation the children were playing outside the house; and while the livingroom window was open, it was not possible to see the children through it; your deponent raised the subject of ensuring that the children were supervised while outside and suggested conducting the session outside at the picnic table so that they could be watched; TC stated to your deponent that she felt it was sufficient that she could hear the children whom she described as being intent on climbing a tree in the yard;

your deponent expressed that in view of their ages and the fact that they were climbing trees that she should be outside supervising them to ensure that they play safely, i.e. to be there to catch them if they fell; Ms. TC replied that the children wouldn't have far to fall; your deponent explained that they could still suffer an injury and pointed out that she had just disclosed B's tendency to try to sneak off to play in the brook and that she was inclined to wander off with others who invited her to play; Ms. TC reasoned that she does not allow B outside to play without D and that D would come and tell her if B were doing anything that put her at risk; your deponent pointed out that it was not D's responsibility to ensure B's safety; rather, it was a mother's responsibility; Ms. TC insisted that she felt she was doing this by not allowing B out by herself to play and by having the window open so she could hear the children; she also stated that she would check on them every two or three minutes; during this time, Ms. TC was intent on unpacking which she said she could not do if she was outside with the children; your deponent stated that this was a matter of priorities and suggested a number of things to ensure the children's safety and still get the unpacking accomplished; Ms TC insisted that she did not feel the children's safety was being compromised by being outside playing while she was inside unpacking and further insisted that your deponent's suggestion that she provide constant supervision of the children was unreasonable.

[81] Just a few days later, there was another incident:

9. **THAT** on September 22, 2004, your deponent met with TC for a family support session; Ms. TC shared with your deponent that D had injured himself on the past weekend by puncturing the back of his throat with a sharp object; she stated that she had called CG to provide transportation to hospital; Ms. TC became somewhat agitated in relating this incident and stated to your deponent that the injury was close to being more serious and she could have "lost him"; she related that the injury occurred as she was making dinner and had asked the children to come inside so that she could supervise them; she stated that she was aware that allowing D to play with the pointed object had not been a good decision; your deponent used this opportunity to address with the Respondent this worker's concern at her apparent inability to anticipate risk of harm to the children and the

> ongoing concern regarding lack of supervision; it was stressed that these risks were of long-standing and are ongoing.....

[82] Lastly, regarding the circumstances prevailing just before the children were taken into care, McLean stated:

> 10. **THAT** during this session, Ms. TC also shared that she had set her alarm clock to wake her that morning but that it had failed to go off with the result that the children were up for ten minutes unsupervised this morning; she stated that she would remedy this by purchasing a new alarm clock that evening; your deponent provided the Respondent with several handouts on child safety and discussed with her that two of the most common threats to young children were from falls and drowning; your deponent emphasized several times that inasmuch as there was a brook running through the property and that the children were climbing trees there was a greater than usual need to supervise them when they were outside playing; Ms. TC allowed that the brook was a fast-running waterway and quite deep in places; she also observed that the rocks were slippery and that if B fell in the water could carry her along; your deponent took the opportunity to point out that in these circumstances it was plain that D was too young to be ensuring B's safety because his young age limited his physical capabilities and his ability to accurately assess the level of risk involved in any activity; Ms. TC said that her boyfriend would build a fence around the property to keep the children safe; your deponent noted during this session that TC was more closed to your deponent than in previous sessions;...

[83] McLean was one of the "collaterals" contacted by Elaine Boyd for the purposes of her November 16, 2004 Assessment of Parenting Capacity [Exhibit 1, Tab 18]. She accepted the accuracy of Boyd's overview of the presenting concerns which she (McLean) had reported to the agency to that stage:

- That D's acting out behaviour appeared to be limited to the home setting. She suggested that the parents did not manage

their own behavior effectively which had a negative impact on the children.

- That Ms. TC had difficulty focusing on the parenting material presented because of unresolved issues in her personal life.
- That Ms. TC was defensive when given feedback about her parenting (i.e. that she tended to be reactive, punitive, and to supervise the children inadequately).
- That Ms. TC was resistive to trying suggestions made by Ms. McLean and claimed that she had tried strategies suggested by Ms. McLean in the past and that they had been ineffective.
- That there had been no significant sustained change in Ms. TC's manner of dealing with the children.

[84] She reported to Boyd:

> ...the work with Ms. TC had largely been related to crisis management. She commented that Ms. TC had worked hard to secure housing after her separation from Mr. DG but that through the summer she had not seemed interested in parenting the children. After securing housing Ms. TC continued to have unreasonable expectations of the children and did not supervise them adequately. She felt that Ms. TC did not respond to the needs of the children. She noted that Ms. TC did not seem emotionally drained like she was when she was living with Mr. DG but she still did not supervise the children appropriately or put their needs before their own.

[85] **S. D.** ("D.")is a veteran elementary school teacher. D is a student in her grade one class of 19 students at [...] Elementary School. Exhibit 6 is an eight-page comprehensive report authored by her which summarizes D's academic status and behaviourial issues within the school setting. The report was admitted into evidence by consent, with only cursory testimony.

[86] Positive comments about D's abilities and potential are qualified with expressions such as "when calm" and "when he is settled". Improvement has been noted in his reading, writing and mathematics performance. Fine motor skills are reportedly a source of frustration.

[87] The bulk of the report deals with significant behaviourial issues. He has been placed on a temporary "Behaviourial Plan", developed and monitored by a team of professionals (principal, program support teacher, D., school psychologist, a student development coordinator, an agency representative, a counsellor, and the foster parents) who meet at least monthly for about two hours. The team's goals are for D to remain in his classroom, to participate in class activities, and to help reduce aggression directed by D against himself and others.

[88] D was initially assigned a Program Support Assistant (PSA) for more than 50% of each school day. However, the degree of exhibited aggressive conduct was such that PSA support was expected to increase to 100%. (Specifics of the PSA's responsibilities are found in the report.)

[89] School officials have also found it necessary to implement a communication system or protocol between the classroom and the office to deal with crises, if and when they occur. Officials have also gone as far as identifying, for their purposes, three levels or tiers of aggression to which they have tethered elaborate action plans and strategies to assist with avoidance, deterrence and/or de-escalation.

[90] D. exemplified a variety of situations in which D has experienced "mood swings" which have presented "in many, often unexpected ways". And she noted the demands and challenges D poses for her, the rest of the class, and school officials particularly when there is a "major incident". She included a summary of recent incidents recorded by the PSA.

[91] **Mary Haylock** was stipulated by the parties to be an expert witness qualified to give opinion evidence regarding women's psycho-therapy and counselling in the areas of anger/aggression, domestic violence, trauma recovery (childhood and adult), grief management, parental support following apprehension of children, and personal and interpersonal boundary issues and addictions. Her curriculum vitae appears in Exhibit 2, Tab 44. She briefly elaborated in court. She submitted a series of written reports to the agency which she adopted in her testimony.

[92] A summary of Haylock's involvement under her "first contract" with the agency appears at Exhibit 1, Tab 11. She received a referral for TC from the agency in early June, 2003 when the agency was investigating allegations of domestic violence and risk of harm to the children. TC had disclosed a "dysfunctional family of origin", past "sexual/physical trauma", ongoing ambivalence with her own mother, and abuse by DG. Complicating matters at the time was TC's medical condition, including reports of grand mal seizures. Diagnosis of the latter had occurred when TC was about 19 years old but she had not been reassessed since then. A medical referral was difficult and delayed as TC grappled with other identified issues.

[93] Haylock and TC identified a long list of issues to be addressed in TC's therapy, including traumatic history, domestic violence, family of origin, boundaries, personal health, appropriate supervision/parenting of her children, and day-to-day stability. Weekly sessions were scheduled. TC attended regularly and appeared committed.

[94] Under the caption "Therapeutic Progress", Haylock wrote:

> However, Ms. TC's ability to stay focused in therapy was often compromised by the spin and confusion of violence embracing her daily existence. Ms. TC's life was driven by crisis and events that

> clearly rendered her unable to make healthy choices for herself and for her children.
>
> In the quiet times, Ms. TC did acknowledge the dynamic of violence existing in her relationship with Mr. DG. Additionally, she did acknowledge the effect this violence was having on all of them including the children.

[95] And later:

> Ms. TC does realize the negative effect of an experience of ongoing violent/abusive behaviors. Sadly, this reality is blocked from her consciousness when she is challenged to address the trauma she experienced in her younger years. Ms. TC explains that these experiences "are locked deep inside" and no longer interfere with her current ability to function.

[96] In the early stages of therapy, Haylock and TC agreed to put the "traumatic history on the back shelf".

[97] Haylock was aware the children had been referred to Carol McCready for therapy; and that TC decided to separate from DG and had moved to [...] with the children. Success with McCready was reportedly compromised because of TC's relocation away from the shelter and on-going conflicts with DG. There followed a financial crisis surrounding her accommodations and renewed health concerns. Haylock concluded as follows:

> Ms. TC has made attempts to resolve personal therapeutic issues throughout the contract period.
>
> However, crises continually formed and informed her daily existence. Clearly, Ms. TC says she wants to live her life well and be a positive parent/influence in her children's lives. Equally clear, is that after fifteen months of intensive intervention, Ms. TC is not able to maintain consistency and stability in her daily lived existence.

[98] In testimony, Haylock added that TC was provided with a variety of oral instruction and written educational materials by other service providers. Although outwardly engaged, Haylock stated that TC often responded defensively and with confusion. She conceded this may have been in part because of the "tough issues" to be addressed, but also questioned TC's ability to consistently focus on issues and for long-term retention.

[99] Haylock's March 24, 2005 report [Exhibit 1, Tab 27] covers the period of her "second contract" with the agency. (There were intervening handwritten reports [Tabs 15, 19, 20, 22 and 24] which I do not propose to summarize although they have been considered.)

[100] The revamped therapy goals were described as follows:

a) Sustained awareness of how her history negatively impacts her ability to...

- Parent effectively;
- Choose positive relationships of intimacy;
- Enjoy stability day-to-day;

b) Process/acknowledge recommendations of parental capacity assessment.

c) Acknowledge presence and rationale behind self-sabotaging behaviours.

[101] She prefaced TC's progress over the previous 21 months with this observation:

> Throughout this period of time, the majority of work with Ms. TC was crisis driven, i.e.,

- Ongoing incidents of domestic violence;
- Personal health issues;
- Safety concerns re the children;
- An inability to stabilize patterns of consistency re personal life and parenting because of ambivalence on Ms. TC's part in acknowledging personal responsibility for her family's current situation of crisis.

[102] Haylock characterized the task of TC's therapy as "enormous". She noted that TC attended most appointments and appeared ready to access better strategies. However, she observed:

> Ambivalence, inconsistency and reluctance or an inability to acknowledge the seriousness of her situation have severely compromised Ms. TC's ability to experience positive change. Additionally, Ms. TC's first response to criticism or questioning of her ability to adequately parent her children is drawn through her filter of knowing and believing she is bad, always in trouble and this belief did extend to her children.

[103] Haylock noted the lack of any meaningful progress before the parties separated and self-sabotaging behaviours at times of crisis. Allowing that such behaviours are not uncommon for survivors of abuse or violence, Haylock said her choices compromised progress. Haylock also noted an intervening change in TC's medication following investigation of possible Adult Attention Deficit Disorder and self-disclosed improvements. Haylock exemplified some of the self-sabotaging conduct which presented before the separation in early July, 2004.

[104] There was optimism that the separation and establishment of an independent residence by TC would accelerate progress. However, TC did not meet expectations and, for reasons discussed elsewhere, the children were taken into care by the agency.

[105] Haylock said the second Parental Capacity Assessment added another layer of confusion and conflict for TC.

[106] In the final phase of Haylock's retainer, she concentrated on:

- Encouraging TC's clear understanding of the results of the parental assessment;
- Encouraging TC to demonstrate positive parenting strategies during access with her children;
- Encouraging TC to access therapy to experience a sense of closure re historical issues that would de-escalate future negative impact in her life.
- Encouraging TC to move toward a place in her life where it is readily evident that she does prioritize the emotional, physical and psychological needs of her children.

[107] Sessions were increased to a bi-weekly schedule. TC consistently attended. Before concluding, Haylock wrote:

> Ms. TC has participated in a therapeutic process to access any remaining emotional issues re sexual trauma in her early life. Ms. TC is convinced these issues no longer influence her current existence and I believe she now knows, at least on an intellectual level, the inherent harm to herself caused by this incident.
>
> Ms. TC acknowledges experiences of abandonment and alienation while living at home and in relationship with her then peer group.

> Ms. TC reports that she is using appropriate parenting strategies during access and throughout this period of apprehension of her children is...
>
> - Coming to terms with her inability to consistently and safely parent her children;
>
> - Reflecting on how she now needs to move ahead in her life and seek guarantees that her children will be returned to her day-to-day care.

[108] Haylock said TC had demonstrated an effort in therapy and tried to move toward change. She opined that TC "must always remain open/conscious to the changing developmental needs of her children"; and "must always challenge herself to remain alert - to be able to anticipate possible harm when parenting her children". Finally, she stated TC "must always take responsibility for guaranteeing her personal health issues are adequately and promptly addressed" and "when in crisis ... must be able to separate her needs from the needs of her children".

[109] Haylock testified that her contract was not renewed because TC had decided therapy was no longer meeting her needs. Following Haylock's March, 2005 report, no sessions were scheduled for April. A "closure" session occurred on May 5, 2005; none occurred thereafter. Haylock necessarily had to respect TC's decision, even though (from her perspective) there was much more work to be done. She agreed TC was free to seek assistance from whomever she wished. By the end of the retainer, TC had attended over 70 therapy sessions, in total.

[110] In testimony, Haylock devoted considerable attention to theories surrounding "emotional attachment". At one stage she submitted that TC had unresolved attachment issues with her family of origin which were affecting her attachment to her own

children and a variety of parenting issues. In a similar vein, she questioned TC's "emotional availability" to her children.

[111] When asked about the basis for this aspect of her opinion, Haylock conceded she had not reviewed the many reports and notes filed by the agency's front-line, access facilitators. Neither had she observed TC in any of the many access visits which occurred after the children were taken into care. She relied on self-disclosure attributed to TC and other collateral sources whom she did not specify.

[112] Haylock did review the original Parental Capacity Assessment prepared by Elaine Boyd; but she was not provided with any reports from any of the medical or mental health professionals to whom TC had been referred.

[113] In assessing this aspect of the case, I note there was no evidence that it is customary, or even desirable, to verify client disclosures and assertions made during therapy. Equally important is the fact that no experts testified to contradict this witness or to otherwise establish that her methods were inappropriate or unsound.

[114] Regarding CG, Haylock was aware of the dynamics of her involvement in the family. Although some therapy was directed to issues surrounding the paternal grandmother, Haylock testified that such "was not a huge issue" at the outset, and that discussions only occurred on those occasions when TC wanted them. Haylock recalled that TC was periodically provided by the grandmother with respite care for the children; and could not recall TC raising any child protection issues. However, she said TC's relationship was "in and out" of conflict with complaints about TC's parenting and other complaints reportedly being advanced by the grandmother.

[115] Asked about community-based resources that TC might utilize after her engagement ended, Haylock's understanding was

that TC intended to engage in a variety of services such as community mental health and the agency's Family Resource Centre.

[116] **Dr. Laurie K. McNeill** is a pediatrician associated with the South Shore Regional Hospital. A brief consultation report (June 29, 2005) regarding D which the agency received was entered into evidence, by consent [Exhibit 1, Tab 33]. The first page is a recapitulation of the family circumstances which Dr. McNeill cobbled together from limited available information.

[117] D's physical examination was "absolutely normal" and "unremarkable". He then wrote:

> This kid obviously has ADHD and may or may not be an early bipolar or some other conduct disorder. He has been on Clonidine in the past by Dr. Ardila, but the biological Mom took him off.
>
> I would seriously consider medicating this child for the next school year with Concerta or regular Ritalin, but I do want to talk to the social worker and we are also going to link him up with Mental Health.
>
> This is a bit of an abbreviated summary of a long session here today, but I need more data. I will arrange for a followup.

[118] No follow-up reports were entered into evidence. As appears elsewhere (for example, in the PCA's), Dr. McNeill has had extensive involvement throughout. It is not clear why only the above report was entered, or why none of the parties sought his testimony.

[119] **Carol McCready**'s ("McCready") curriculum vitae appears at Exhibit 2, Tab 45 and was supplemented in her testimony. Variously self-described as a clinical social worker, child psychotherapist and play therapist, the parties agreed McCready should be qualified as an expert who could give opinion

evidence on a wide spectrum of subjects including non-psychological child assessments and children's therapy/counselling, identification of the psycho-social needs of children, play therapy, anger management in children, parenting skills, trauma recovery in children, child attachment, the impact of family violence on children, separation and loss in children, and child development.

[120] As set forth in an April 20, 2005 report to the agency [Exhibit 1, Tab 32], McCready provided therapeutic services to the children from mid-November, 2004 until mid-April, 2005. (Her original engagement, upon referral from the agency, dates back to 2003.) As appears from her report and testimony, McCready had sessions with the parents, with the children, with DG and D, with DG and B, and with DG and both children. The late 2004 referral was prompted by the foster mother who was disclosing inappropriate conduct by D, in particular, but also B to some extent. Specific concerns still presenting as of February, 2005 appear at page 2. At pages 2 and 3, McCready summarizes her observations during the various sessions and her therapeutic strategies.

[121] McCready concluded her report with the following clinical impressions (to that point) as follows:

> D is developing a trusting relationship with his father, DG. DG is taking part in any activities to the fullest and you can see the relationship becoming more free with more hugging, kissing, and tickling freely offered and received in fun.
>
> D is still struggling with the separation of his parents and wants them back together. Having access with each parent back to back was emotionally difficult for D and this showed up in school. D is insecurely attached to his mother and is developing a healthy attachment to his father.
>
> I question D's past attachment to his father while at home. DG was away a lot and when he was at home from sea he was tired

> and there was a lot of conflict between DG and TC to which the children were exposed.
>
> I question B's attachment to anyone in her family. She verbalizes "I love you daddy", gives hugs and kisses but we still need to work on her freely hugging and kissing and enjoying it to the fullest. She holds back more than D at this point. The foster parents report that B is attaching to them, cries when they leave and looks for comfort.
>
> It is my impression to date that DG does love his children. He has attended every appointment and says he wants his children with him. I can only comment that DG does do well for the hour and a half I see him with his children. I do not know and cannot comment on his capacity to parent full time at this time.
>
> I would like to continue seeing D both alone and with his father. D presents with issues and anger around violence and he might do better dealing with them in play alone. The first time he initiated this free play was April 14, 2005 and I am hoping he will continue with props. I would also like to see D with his father to continue with interactive games to promote attachment.

[122] McCready's next report (September 27, 2005) appears at Exhibit 1, Tab 35. This report is largely confined to D with whom she had eight sessions between mid-May, 2005 and late September, 2005. (Two sessions included DG.) B was only seen once, because of reported progress by her. Lately, however, reports of defiance and "temper tantrums" had resurfaced. Regarding D, McCready's focus was "attachment", helping him identify his feelings and express them freely, and assisting him in coping with feelings of anger, sadness and confusion.

[123] As she did in her previous report, McCready summarized her sessions before stating her clinical impressions. Those impressions included reference to , and brief excerpts from, source materials which she adopted as consistent with her own opinions. McCready gave much deference to the 1998 work

of Paul D. Steinhauer and more recent work by Daniel A. Hughes (2004).

[124] She wrote:

> This child is in my opinion suffering from an attachment disorder and mourning the loss of his parents. In addition he has been diagnosed by Dr. Jean Gibson with ADHD. Rage reactions are almost inevitable with this child. He has not successfully negotiated the early stages of development - Trust vs. Mistrust, Autonomy vs. Shame and Doubt. He is stuck at age two to three in his development. His feeling of rage comes out of no where and his responses are immediate with little thought. He makes some connection cognitively with feeling mad if dad does not show for access. He also realizes that he feels sad after he gets angry. He is remorseful when he hurts others but has little or no capacity to control his rage when it flares up. I have noted a definite difference in D's capacity to focus since he has been on medication.
>
> D is settled in his foster home but I would not say he is attaching to his foster parents. He will make little things for his foster mother while in therapy but there is no excitement or running to her when she arrives to pick him up. He also does not easily accept comforting from his foster parents.

[125] And later:

> D has not yet formed an integrated valued sense of self. Models have been developed to assist children in becoming securely attached to caregivers. A major part of healing for these children is to participate in countless affective attunement experiences with their caregivers. Nurturing is necessary for a child to feel safe, secure, and subsequently feel they are good and deserve to be loved. ..
>
> It is my opinion these children need a secure foster placement where they will be nurtured with warmth and sensitivity and parented with an attitude that is accepting, empathetic, curious, loving, and playful.

[126] She concluded:

> If D is to remain in foster care, he needs to be supported by his parents in living in foster care. Birth parents need to affirm the fact that the child is safe and being cared for by foster parents if the child is to ever become trusting of the foster parents. Any negative remarks cause conflict and confusion in the child and negates attachment.
>
> I believe D has the capacity to attach. He shows real feelings of sadness and is remorseful over hurting others. He responds to nurturing. He is very sensitive and feels very deeply when his feelings are hurt by children teasing him. He is so vulnerable he reacts in rage. He needs someone with him at all times in school until he has developed enough to control his rages himself. The literature on attachment disorders reports behaviour modification programs do not work for these children. They need to be combined with a nurturing caregiver both at school and at home. Perhaps D is not ready for school five days, every day. Maybe half days could be considered. This will need to be reviewed in depth with the school, the caregiver, and other significant individuals.
>
> At this stage, bi-weekly therapy for D with foster parent participation was recommended as was a meeting with school officials to educate them regarding the issues and the children's needs. Foster parent education was likewise recommended.

[127] There followed a January 24, 2006 report to the agency [Exhibit 4] regarding D. In the intervening time, McCready had telephone contacts with the foster mother, attended to school meetings, and met twice with D. Her report includes progress and incident information derived from collateral sources such as school officials and the foster parents, and accordingly, it is not repeated here. McCready's clinical impressions were succinctly stated:

> D needs to know adults are in charge and will keep him safe when he is feeling out of control. Themes in play are about needing to be safe, so on one level D knows he needs to be kept safe.

[128] Incidental to preparation of her November 16, 2004 Assessment of Parental Capacity [Exhibit 1, Tab 18], Elaine Boyd had contact with McCready. The following excerpts (pages 39-41) of observations and opinions attributed to McCready were confirmed and adopted by McCready:

> Ms. McCready has been involved with Ms. TC, Mr. DG and their children since November 2003. She has had minimal contact with Mr. DG who has attended sessions with D. The original referral was for D to address his anger. She was also asked to assess for indicators of attachment disorder.
>
> In her notes Ms. McCready indicated that Ms. TC originally identified concerns about D's violent behavior and rapid mood changes. She indicated that his behavior was better when Mr. DG was away at sea and seemed to escalate prior to his return home.
>
> Ms. McCready made the following observations about Ms. TC's interactions with the children:
>
> - That she spoke to B like she was much older than she was
> - That she became frustrated trying to calm B down
> - That she focused on her own agenda when playing with D
> - That she used too many words
>
> According to Ms. McCready's reports by December 2003 Ms. TC had reported positive changes in D's behavior but in play therapy sessions he was engaging in aggressive play acting out family violence. (She felt Ms. TC and Mr. DG were involved in mutual family violence.) In one report Ms. McCready noted that her concerns were parenting, family violence, and attachment. She felt that D's behavior was related to family violence and that he exhibited symptoms of PTSD.

She commented that his behavior changed as the violence changed in the family. She felt that there was an attachment disorder between the children and their parents and that D was insecurely attached because his mother was not always available to him and did not always respond in the same way. At that time she recommended family violence education and treatment for Mr. DG and Ms. TC, that D continue therapy sessions with Mr. DG participating, and Ms. TC continue with her therapy. She felt the children were at risk of emotional and psychological harm and perhaps physical harm accidentally.

In a telephone interview on October 20th, 2004 Ms. McCready reiterated the information in her reports. She indicated that she initially began seeing D about behavioral problems which she attributed to his chaotic home environment. She said that during her involvement the focus was constantly changing because of crisis and there was no resolution for the children of any of the issues. She commented that when the children have structure they respond well.

Ms. McCready observed that things got better for the children when the family moved in with Mrs. CG but she was not sure why. She indicated that both Ms. TC and Mr. DG painted Mrs. CG as crazy and a problem.

Ms. McCready reported that Ms. TC would challenge feedback about her parenting (e.g. the issue of age-appropriate expectations). She felt that Ms. TC knows what to do with the children but chooses not to. She described her as functioning like an adolescent and putting her needs before those of the children.

When asked to comment about attachment Ms. McCready indicated that there were issues for both children and that they are not securely attached. They never know what Ms. TC will do so cannot depend on her. She indicated that Ms. TC had a tendency to dramatize D's behavior and kept finding things wrong with him. She expressed concern that Dr. Gibson's report responded to Ms. TC's concerns about D and questioned the appropriateness of the ADHD diagnosis.

[129] McCready also adopted the concerns attributed to her by Elaine Boyd in the Parental Capacity Assessment Update (October 12, 2005), Exhibit 1, Tab 36, page 31:

> In a telephone interview with the assessor Ms. McCready expressed concern about D's continuing behavioral difficulties and suggested that they may be associated to attachment issues. She expressed an intent to continue to work with D but emphasized that progress would be difficult until there was an overall stability in D's life that had not yet been established because of things like extended periods in the respite foster home, and changes in the length, day, and time of access visits.

[130] In testimony, McCready elaborated on the theoretical underpinnings of opinions including reference to attachment issues and the subtle distinctions between "theraplay" and "play therapy".

[131] She confirmed her general awareness of DG's fluid residency and his on-going conflicts with TC and with CG. She said she eventually ended therapy sessions with DG to concentrate on D; and that this was not a reflection on DG's own commitment or progress. She added she had not been asked to provide services to TC.

[132] She reaffirmed her ultimate opinion that D, in particular, is attached to both of his parents, but "insecurely and disorganized".

[133] **Gail MacDougall** ("MacDougall") is the agency's adoption worker. Her curriculum vitae was entered as Exhibit 9. She adopted her written report which appears as Exhibit 10. I am mindful she was not qualified in court to give expert opinion evidence; and I have disregarded those portions of her evidence which strayed into forbidden waters, legally speaking.

[134] Based on her experience, on agency file materials, and on her discussions with the agency's child protection staff, MacDougall characterized both children as having "significant special needs" which (from her sources) she attributed to past physical and emotional neglect, inadequate supervision; lack of structure and consistent discipline, and exposure to violence, abusive relationships and sexually inappropriate behaviour. She noted "significant attachment issues" had been identified. And, she was alert to possible genetic risk factors surrounding epilepsy, learning disabilities, attention deficit disorder, and depression.

[135] MacDougall's evidence was that both children could be successfully placed for adoption, based on age and stage of development; but she stated that they should have the benefit of permanency at the earliest opportunity. She cautioned:

> ...placement in an adoptive home would not be advisable until the children are emotionally prepared for adoption. The first step in preparation is to help the children understand that they cannot return to their birth family and the reasons for this decision. This is accomplished by discussion with the agency workers most familiar to them and through a period of therapy. It is highly recommended that birth parents help to explain the reasons why the children cannot return and give them permission to move on emotionally and attach to a new family. Children must move from the limbo state where they fantasize a return home to a happy family and adjust to the reality that their birth parents are unable to meet their needs. As they progress through the mourning process, they will hopefully come to a stage when they are open to attachment to a new family. The agency would look for stabilization of behaviour to the point where an adoptive family could handle the challenges of parenting the children and help them to heal emotionally over time.

[136] Should the children be placed in the agency's permanent care and custody, MacDougall would be tasked to work with the child protection team, therapists, the birth parents,

the paternal grandmother, and the children to secure a placement as soon as possible.

[137] MacDougall is aware the children's current foster parents do not intend to seek adoption. The agency would therefore next seek a placement where the foster parents would be interested in adoption.

[138] MacDougall's evidence included reference to an April, 2005 Adoption Redesign Project initiated by the Department of Community Services. With improved staffing and other services, it is hoped special needs applications and placement will be expedited. She presented data regarding the number of adoption applicants in the Province, the number of homes approved for special needs children, and related matters.

[139] She wrote:

> There is no way to reliably give a time line on when D and B would be placed for adoption as it would greatly depend on their emotional readiness for placement; the degree to which their behaviour would stabilize after their prolonged period of being in limbo due to the court process; and the availability of a well-matched family who may be willing to consider a foster with view to adopt placement and who also has the parenting skills, patience, reasonable expectations and commitment needed to meet the needs of these children.

[140] MacDougall mapped out a strategy whereby placement prospects of D and B might be optimized.

[141] MacDougall said the agency has been diligent in placing children for adoption in a timely manner "usually within months of a permanent care and custody order, unless there is an access order or delay as a result of appeal". She stressed the emotional readiness of children is a "key factor in the timing of adoption placement".

[142] For children of the ages of D and B, MacDougall said the agency's placement "success rate" has been about 89-90%, but conceded placement of special needs children is generally more challenging. In light of the Government's new initiatives, she stated there is a "substantial interest in special needs adoption" and that "the pool of available families should increase substantially as applicants are approved through the pre-assessment, training and home-assessment process".

[143] She concluded:

> If the Court sees fit to grant an order for Permanent Care and Custody, the agency would reduce parental visits and work towards a goodbye visit in the best interests of the children. This would be on the condition that birth relatives were willing to cooperate with the process and to give a positive and appropriate message to the children. The agency would provide therapeutic service to counsel the birth relatives on how to conduct the final visit in a way which would be sensitive to the needs of the children as well as the adults and would provide an appropriate means of affecting closure.

[144] **L. Elaine Boyd** ("Boyd") is a Registered Psychologist. Her curriculum vitae is marked as Exhibit 2, Tab 46. She is qualified to carry out psychological and functional assessments of individuals and, for our purposes, give opinion evidence regarding the parenting capacity of both parents and the paternal grandmother. For the sake of brevity, her written reports will be referred to as PCA's.

[145] The November 16, 2004 PCA [Exhibit 1, Tab 18] is a comprehensive assessment of both parents which spans 46 pages. It was started following an agency referral when the children were still in their parents' care but concluded after the children were taken into care and after the parents separated (page 2).

Re TC (the mother):

[146] Several pages were devoted to TC's background circumstances as discerned by Boyd from her review of agency file materials and as reported by collateral sources.

[147] TC's self-disclosed family and social history, education, employment, medical and mental health history appear at pages 11 - 13. She has limited education (grade 10) and no employment record. She has epilepsy (page 12). TC also discussed her relationship with DG (page 13).

[148] A variety of standard tests were administered. The detailed results and interpretation regarding TC are found at pages 14 - 22.

[149] Boyd also interviewed the mother on several occasions during which she was invited to discuss, among other things, the agency's reported concerns (pages 22 - 25). That portion of the report speaks for itself. However, a couple of excerpts are highlighted.

[150] At pages 24 - 25, Boyd wrote:

> My impression during discussion with TC was generally that she understood the parenting information that was being presented to her and that she was aware of the Agency expectations of her. However, she minimized the importance of the identified concerns about her supervision of the children and focused on D's misbehavior without seeing that she might actually play a role in supporting his acting out. She was not appropriately concerned about safety issues with the children as observed first hand when she brought them to two of our meetings.
>
> The first time the children accompanied TC my plan was to speak with her briefly and then have her engage in some structured activities with

each child individually while I observed them. My assistant stayed in the waiting room with the children while I attempted to interview TC for a short time but D's behavior was so disruptive I discontinued the interview. We then accompanied TC and the children outside to wait for their drive. While there TC allowed the children to engage in play activities (e.g. climbing up a steep path, jumping off a wall) that were somewhat dangerous because of the level of motor development required. Also on two occasions D went out of her sight and she had to be prompted to determine his whereabouts. She tended to stay in one place and send the children off to do things and then call to them to come back when they strayed to (sic) far from her. TC talked and joked with the children but at times her conversation with them became inappropriate. For example at one point she told D that there was a monster in the field that would get him if he did not come back. At other times she spoke with them as if they were adults about topics they would not understand or encouraged them to engage in activities without considering that what she was encouraging would lead to a problem (e.g. Sending D off to pick flowers and not supervising him so he went out of sight).

On the second occasion when the children accompanied TC they were less active and D was generally co-operative though B was not compliant with many requests. I asked TC to engage in a list of specific tasks with the children and after some persuasion each of them agreed to play with her (they wanted to run around outside in the parking lot). Generally TC was able to engage the children and talked with them appropriately. They appeared to be happy to have individual attention from her and followed her direction reasonably well. However, when these tasks were finished and we were waiting outside for their drive TC showed little concern about supervising the children assuming my assistant would do so. At one point TC sent them on a scavenger hunt that involved retrieving objects that were a distance away from where she was standing and D went out of her sight. At one point the children were climbing a rock wall and when I expressed concern TC indicated that they were used to doing things like that and quite capable.

[151] As noted, Boyd contacted several collateral sources before drawing her conclusions and recommendations regarding the mother. Most of the collateral reports are discussed

elsewhere in this decision. I observe that TC's personal physician (who did not file a report or testify) advised Boyd that she believed her patient was "good at managing her seizures" and that there had been no recent concerns.

[152] Boyd also had access to an assessment conducted by Debbie Johnson-Emberly, Psychologist (Candidate Register) prepared in the summer of 2003 wherein the results suggested "that TC's symptoms meet the criteria for Attention Deficit Disorder (without hyperactivity)". This report is not in evidence.

[153] In a similar vein, Boyd incorporated by reference another report that is not in evidence. No objection was taken to Boyd's summary of the substance of the findings of Dr. Jean Gibson, a Pediatric Neurologist, to whom D was referred in 2004. The relevant portion of Boyd's report is reproduced and serves to highlight some of D's special needs and the associated parenting demands (pages 41 - 42):

> Dr. Gibson evaluated D and presented her findings in a letter dated June 16, 2004. Based on information reported by TC she noted that she believes he meets the criteria for ADHD. She reported that there had been improvements in D's behavior with Clonidine started 1 ½ years ago (taking 0.025 mg thee times daily) but that the effectiveness waned after six months and he developed side effects of increased hyperactivity when the dose was increased.
>
> Dr. Gibson outlined the following concerns about D and the family situation:
>
> - He exhibited difficulty with complex motor planning possibly because of inattention and not focusing on the skills.
>
> - The quality of his drawings was delayed for his age and he had difficulty recognizing shapes, numbers, and letters. She hypothesized that this might be due to a visual-perceptual a (sic) problem, to a visual perceptual lag that is commonly seen in children who are subsequently

diagnosed as dyslexic or to an overall cognitive delay (not suggested by developmental milestones).

- D may have early features of bi-polar disorder or Tourette's syndrome as evidenced by fluctuating moods.

- Dr. Gibson saw the situation as aggravated by the family living at CG's, DG's non-support of TC's attempts to deal with the children's behavior problems, and TC's medical/mental health problem.

Recommendations included the following:

- Change in medication - addition of stimulant medication or gradual discontinuation of Clonidine.

- That TC has ADHD so needs a lot of outside support to provide the necessary structure for D. Dr. Gibson emphasized the importance of consistent consequences for him.

- That TC will need explicit teaching of skills.

- D was referred for EEG and CT scan because of possible seizures.

- D will need to be taught specific motor skills using hand-over-hand for large muscle to smaller muscle practice with letters for example.

- That D is not ready to start school.

- That D have Psychological testing before he enters school.

- That D's hearing deficit be addressed.

[154] Boyd's conclusion at this stage regarding the mother were as follows:

1. During interviews with TC and observations of her with the children it was clear that she has basic knowledge of parenting strategies and can apply them appropriately with her children. As well, she verbalized and demonstrated affection for the children and concern for their welfare. In her current circumstances TC appears to be able to provide for the children's physical needs in that she has a residence and adequate financial resources to meet their basic needs. Various support services have been available to her through the Agency including contact with her therapist, therapy for the children, Day Care for the children, and the services of a Family Skills Worker. It has been reported that she has recently sought additional services from [...]. However, information gained during the course of this assessment suggests that TC has not demonstrated the ability to consistently make appropriate use of the supports provided to her or to place the needs of her children before her own. As a result I do not believe that they should be returned to her care.

2. At times over the past year some improvement in TC's parenting was noted. However, while noting improvement service providers still referred to incidents of lack of appropriate supervision and inappropriate expectations of the children. After TC separated from DG she appeared to lose interest in parenting the children and became more resistant to feedback from service providers. Concerns about her lack of supervision of the children led to their being taken into care.

3. Initially TC's lack of sustained positive response to intervention was attributed to the abusive relationship between she and DG. However, when that stressor was no longer present things got worse instead of better. In my opinion neither her ADD nor the verbal learning disability identified in this assessment explain her lack of response to intervention. The method of presentation of parenting information and the nature of the support she received should have been effective even considering those issues. In my opinion her lack of progress is more likely explained by personality characteristics that lead her to place her own needs before the children's and require that she be the center of attention. In fact results of the personality testing from this assessment support that TC may have been motivated to exaggerate her problems - particularly D's behavior problems - in order to maintain contact with service providers and gain attention for herself. It appears that after her separation from

DG attention from her social contacts, that had not been available when she was with him, became of primary importance and she no longer needed to attain attention through the children's problems.

4. TC's descriptions of D's behavior problems are not consistent with observations of Day Care staff and more recently school personnel and his foster parents. His diagnosis of ADHD seems to have been based predominantly on information provided by TC that may not have been accurate.

5. Questionnaires regarding parenting skills, and the parent-child relationship suggest that TC views parenting as a chore and the children as too demanding of her. This is indicative of the presence of attachment difficulties and consistent with Carol McCready's observations.

[155] Boyd recommended supervised access by TC. She declined to recommend further (services) intervention "because I do not believe that there would be significant benefit to the children".

Re DG (the father):

[156] The portion of the report concerning DG followed a similar format. The background information is largely unremarkable. DG completed his grade 12 GED. He has been working in the fishery, often out to sea for one or two weeks at a time. He was on a medical leave when this assessment was conducted. Boyd flagged several concerns under the medical and mental health history, and relationship history, headings. Boyd's test results and interpretation appear at pages 27 - 33. These are followed by Boyd's summary of her interviews with DG (pages 33 - 36). DG denied to the assessor allegations that he had been abusive to TC; and countered with a long list of complaints and concerns about her (pages 34 - 35). Boyd wrote (page 36):

> After the children were taken into care Mr. DG expressed an interest in having both of them with him. He admitted that he had little knowledge of ADHD and that he would need support of his mother particularly if he went back to sea. I asked him if he could put the children's needs before his own and he said that he could at his mother's because he had help. He indicated that he and his mother would be prepared to participate in services (e.g. Family Skills Worker, therapy) but that he would not go to the Alternatives Program.
>
> My general impression of Mr. DG during interviews was that he was distraught about what was happening to his family but still unable to take any responsibility for the part he may have played in the situation. He minimized his own inappropriate behavior and blamed TC for all of the family's difficulties. He realized that he would need support in parenting the children and identified his mother as his main support. However, when I interviewed DG at his home he would not let his mother participate in the interview in any way (he made her sit outside while we talked) and his interaction with her was concerning. He spoke to her in a very disrespectful and dismissive manner ordering her around in an irritated voice.

[157] Incidental to recommending that the children not be returned to DG (or to TC) at the time, Boyd wrote (at page 44):

> 1. I have had no opportunity to observe DG with the children during this assessment because of initial difficulties scheduling appointments and then change in circumstances. My comments about his parenting are based on background information, interview contact, and test results. He expressed concern about the children's physical safety and seemed to agree with the Agency's concerns about TC's supervision of the children.
>
> 2. It is clear that DG and TC's relationship was abusive and at times physically violent. DG blames TC for his behavior in the relationship and continues to minimize the impact of his behavior. He has some understanding that domestic abuse has a negative impact on children but to this point has not really accepted that his behavior has had an impact on the children. He has not participated in counseling related to domestic abuse and does not see the need to do so.

3. DG has not participated in the services provided to his family by the Agency. He has blamed TC for the Agency involvement and believed that it was her responsibility to address the Agency concerns. He is currently indicating that he is now prepared to participate in services.

4. DG has made inappropriate sexual comments around the children and been at least partially responsible for their exposure to pornographic material. He acknowledges that his behavior has been inappropriate but again tends to blame TC for his actions.

5. Results of personality testing completed as part of this assessment suggest that DG is experiencing significant psychological distress. He has admitted that he called TC and threatened to commit suicide recently but currently denies any suicidal ideation. He is also likely to be self-focused and experiences frequent angry feelings. He may engage in an erratic pattern of explosive anger with periods of guilt or shame. He is highly sensitive to criticism, and perceived affronts. He does not believe that treatment will be helpful to him.

6. Questionnaires about parenting suggest that the (sic) DG may not feel emotionally close to his children. He may have unreasonable expectations of D in particular and see the children as demanding. He does not experience B as a source of positive reinforcement.

7. DG had difficulty presenting a detailed plan of care of the children should they be placed with him. By his own admission DG has had little experience in parenting the children. He currently resides with his mother and if he went back to sea he would be away for several days at a time and need her to care for the children when he is gone. However observations of DG's interaction with his mother are concerning in that he has been noted to be verbally abusive and dismissive of her.

[158] Boyd recommended (among other things) supervised access by DG; and that "his progress in services should be monitored". The latter flows from her opinion that as between the two parents DG seemed to have the best prospects to resume parenting. At page 45, she wrote:

That consideration be given to evaluating DG's ability to care for the children. By giving him the opportunity to participate in services and acquire appropriate living arrangements for he and the children. He should participate in services as follows:

- Therapy and education related to Family Violence Issues. Group treatment is generally accepted as the most effective for these issues and DG should make himself available to participate in group treatment perhaps following a period of individual therapy focusing on preparing him to participate in a group program and addressing his current psychological distress. I do not believe that DG can adequately parent the children until he is able to address the Family Violence issues and take responsibility for his own behavior.

- Participation in parenting education through the Agency family Skills Program

- Participation in anger and emotions management training either in a group or as part of individual therapy. Anger and emotions management is a component of family violence treatment but DG requires more intensive intervention in this area. This should not been seen (sic) as taking the place of family violence intervention.

- That DG participate in therapy with D and Ms. McCready as seen appropriate by Ms. McCready.

- Participation in an addictions assessment related to gambling.

Unless DG is able to exhibit significant improvement related to parenting skills and family violence issues and develop a closer (securely attached) relationship with his children they should not be placed in his care but should remain in the care of the Agency.

[159] Regarding the paternal grandmother, she opined:

If CG is approved as a restricted foster placement for the children DG should not reside there or have unsupervised access there until Family Violence issues have been addressed. The children should not be exposed to his current manner of interaction with his mother.

> As well CG would likely benefit from involvement with the Agency Family Skills Program.

Re CG (the paternal grandmother):

[160] Boyd's PCA of CG is found at Exhibit 1, Tab 34. It was completed between June 13, 2005 and September 21, 2005. By then, Boyd was aware that CG had been rejected by the agency as a possible restricted foster placement for the reasons summarized at page 3, and that CG had countered with an affidavit on April 4, 2005.

[161] CG identified for Boyd a long list of concerns she held regarding TC's care of the children (pages 4 - 5) and a "less condemning" list of concerns about her son's parenting (page 6).

[162] The following appears at page 6:

> While discussing the current situation regarding B and D CG appeared reluctant to say that she did not believe her son could care for the children. She made conflicting statements about DG's ability to meet the children's needs (e.g. "he won't make the right decisions for the kids" vs. it would be a "shame" for him to lose his children because he had depended on TC to care for them.) She believes that the best solution at this point would be for the children to be with her. When asked directly about the Agency concerns about her relationship with DG CG changed her response from one interview to the next. In the beginning of the assessment she appeared to believe that DG would get his own place and was reluctant to speak negatively about him. After she had him removed from her home in June 2005 she was more candid about concerns such as his lack of financial contribution, his lack of productive activity, and his involvement with an eighteen year old young woman who he wanted to move into CG's home. She lamented that DG did not seem to be able to deal with his problems (both financial and emotional).

[163] Boyd highlighted the grandmother's propensity to blame:

> During interviews CG expressed numerous concerns about the care the children are receiving in their foster home and related D's reported behavioral difficulties to problems in the foster home. She blamed the teacher for D's problems at school (wetting, ripping things, and tantrums). She claimed that D never had extreme tantrums when she cared for him and commented that the Day Care he had been attending had not had any problems with him. She noted that she found she had to be strict with D, but his behavior had not been "too bad". CG talked about B having nightmares and wetting the bed as being related to the foster home. File notes indicate that at one point she brought up the possibility of sexual abuse there (foster home) being the cause but on another occasion she noted that B had had some nightmares and bedwetting while staying at her home (summer 2004). In an interview with the assessor she said that B has been "hateful and nasty" since Christmas. She was concerned that the foster parents had noted that the nightmares and bedwetting might be linked to visitation and noted that when the children are in the respite foster home there is not as much bedwetting or as many nightmares. She also had concerns about the location of the foster home (too close to water, too close to road, front porch too high) and the number of caregivers the children have in a week. She referred to an incident when D's school did not have contact numbers for the foster parents.

[164] I note that CG did not call any evidence at the hearing to substantiate the allegations she put to Boyd.

[165] I have disregarded those portions of Boyd's report (page 7) suggesting any sexual impropriety by the father or by one D. H. because the allegations are admittedly unsubstantiated and are not identified by the agency as a basis for protection under section 22(2) of the **CFSA**.

[166] CG's personal and family history as recorded by Boyd is largely unremarkable, with the notable exception of what her children may or may not have disclosed to the foster care assessor, Daphne Falkenham.

[167] At pages 9 - 10, Boyd recounts Falkenham's summary of disclosures made by CG's children regarding their upbringing and CG's response. There is nothing to be gained by restating this material.

[168] I find it is significant that none of CG's children (including DG) testified at the hearing to either dispel the concerns identified *via* the assessments or to support her plan to care for the children, on the merits.

[169] In terms of CG's current medical health, Boyd noted that she had back surgery in October, 2004 for [...]. The surgery reportedly was "successful" but "complications could arise". She manages high blood pressure with medication and also treats bronchitis with medication. She smokes cigarettes. She presented no medical reports at the hearing.

[170] CG's low rental home at [...], Lunenburg County would reportedly be adequate for her grandchildren.

[171] At page 11, Boyd wrote:

> Prior to the fall of 2004 D. H. had resided with CG for several years. Mr. H. is described as being in his thirties and to have suffered from speech, motor and balance difficulties since birth. He moved from their home last fall as the result of allegations that he had sexually abused B. These allegations were investigated but not substantiated (see the section of this report related to CG's understanding of the child protection concerns for further information).
>
> TC and DG as well as some collaterals for the foster care assessment referred to Mr. H. as CG's boyfriend and to her making inappropriate sexual comments about her relationship with him. CG described Mr. H. as a boarder in her home. She said that he slept on the sofa and shared expenses. She commented that he maintained a car and spent a lot of time "getting the children or taking TC places". CG indicated that Mr. H. continues to be a good friend to her and assists her with getting to appointments. It was reported by a collateral in the foster care assessment that she sometimes spends weekends at Mr. H.'s

> home. It was also reported that Mr. H. was a good influence and good to B and D. Access facilitator notes indicate that they sometimes ask CG about Mr. H..

[172] Boyd was particularly concerned about CG's relationship with her son and reports (from collateral sources) of frequent emotional and financial abuse, and her difficulty in maintaining boundaries with her son.

[173] Boyd emphasized that CG's portrayal of their relationship has widely ranged from complaints about his treatment of her to denial that there are any difficulties. Boyd exemplified this extraordinary state of affairs by presenting a non-exhaustive list, culled from information available to her (pages 12 - 13). I find the examples she cites are consistent with the evidence otherwise before the court.

[174] Boyd was mindful that CG had played a significant role in caring for the children before they were taken into care. So too was she aware of generally positive reports about supervised access, subsequent to the apprehension. Boyd had access to file notes prepared by five access supervisors. None of those notes are in evidence. Only one supervisor testified. I accept Boyd's conclusions on the subject (pages 13 - 14).

[175] CG asserted her ability to meet the children's physical and emotional needs (page 15). In discussing her (then) plan of care, CG re-introduced confusion. Boyd wrote, at page 15:

> When asked about her ability to place boundaries on the contact between the children and their parents should that be required CG indicated that she felt that TC would not bother with the children "unless she wanted something" and that she would be able to control DG's access with them. However, at some points during our conversations she referred to co-parenting the children with DG and on one occasion when I visited the home she talked about sleeping arrangements that involved DG living there with her and the children.

> File notes indicate that the co-parenting plan is something she has brought up in the past with Agency staff. In January, 2005 she is reported to have said that DG would not be in the home if she had the children but also referred to the co-parenting saying that DG does not understand why the children cannot be raised in her residence by he and she. In February 2005 she is reported to have brought up co-parenting again and said that she could not call the police to have DG removed if he was supposed to stay away and did not. In April 2005 it is reported that she said DG would always be welcome in her home and that she did not believe she would have conflict with him if she were responsible for supervising his access with the children. CG has commented to both the assessor and Agency staff that DG would not be able to work (in the fishery) and look after the children indicating that the best arrangement would be for them to reside with her. She commented to the assessor that DG is scared to take the children on his own and she does not think he can. She indicated that he wants the children to be with her and him there as well.

[176] Boyd was well aware of TC's opposition to CG's plan of care and the reasons (pages 15 - 16). Boyd's detailed test results will be found at pages 24 - 29.

[177] Boyd's Summary and Impressions (pages 20 - 22), are reproduced below:

> CG was assessed concerning her ability to parent her two young grandchildren D and B. CG had provided care for the children in the past and the family had lived in her home during periods in the past. Information from access visits suggested that CG has a positive relationship with the children who are always happy to see her. She has attended visits as arranged faithfully. CG has maintained contact with the Agency to monitor the children's adjustment in foster care and is clearly very concerned about their wellbeing. CG has been living in the same home and appears to have the capacity to meet the children's physical needs.
>
> Interviews and test results suggested that CG was not suffering from a psychiatric illness or from significant psychological distress. Her physical health is reasonably good. Her support system consists of

friends and some family members and she has been generally cooperative with Agency directives.

During the course of this assessment several concerns became evident that impact on CG's ability to provide a healthy, safe, and predictable environment for D and B. They are as follows:

1. CG attempts at impression management. When responding to much of the psychological testing administered as part of this assessment CG attempted to present herself in an unreasonably favorable light. Although this is not uncommon in individuals who believe unfavorable assessment outcome will be detrimental her reluctance to acknowledge potential difficulties/issues in combination with her tendency to inaccurately report other information (e.g. at one point saying B had not had any nightmares until being in foster care, conflicting accounts of her relationship with DG, details about access visits) is concerning. This leads to questions about her ability to be a credible source of information about the children and suggests lack of insight into the consequences of issues identified such as her relationship with DG which would likely impair her ability to benefit from support services.

2 Indications of parenting difficulties with her own children. Information for CG's children who were interviewed as part of the foster care assessment suggests that she had difficulty parenting them and included accusations of physical abuse, emotional unavailability, and inappropriate sexual behavior. CG denied these accusations and seemed at a loss to explain why her children would say such things about her. At the same time she acknowledged difficulties in parenting K. in particular from the age of thirteen and was not able to make a link between any circumstances in the home or parenting issues that could have contributed to the problems. She appeared to believe that for the most part teenagers were beyond the influence of their parents. This was consistent with her responses to parenting dilemmas discussed as part of the assessment. CG acknowledged that her husband had not wanted children and not been affectionate with the children but did not seem able to articulate that this would have any significant impact on the children. She minimized the involvement of Family and Children's Services with her family and blamed K. for the contact with the Agency and the lack of success of the therapeutic intervention. None of the information

gained during this assessment suggests that the concerns identified and conclusions reached during the Foster Care Assessment should be considered.

3. CG's relationship with her son DG. Observations by Agency staff, collateral sources, this assessor, and information from CG herself suggests that the relationship between she and her son DG is abusive. DG is emotionally, verbally, and financially abusive toward his mother and continues to reside in her home. He has not been able to maintain his own residence for any significant period of time since he and TC separated and at times during their relationship resided with CG because of financial difficulties. Although at times CG complained about DG's treatment of her when that became an issue in the court proceedings she denied that DG had engaged in the abusive behavior she complained about. At times she has asked DG to leave her home and at one point had the police remove him. However, she has allowed DG to return to her home - even after he threatened to kill her - time and again has minimized or excused his behavior on the grounds that he has been under stress. During this assessment she attempted to suggest that DG would be finding his own residence when he had no intention of doing so. She has claimed that she would be able to keep DG and TC away from her home if she had the children there and was required to but the history of the interaction between she and DG and TC does not support her claim. Clearly exposing the children to the abusive relationship between CG and her son would not be in their best interest. In spite of having this explained to her on numerous occasions CG does not appear to recognize the potential detrimental impact of exposing the children to the interaction between them. Several times in the past twelve months she has suggested that co-parenting the children with DG would be appropriate.

4. CG's tendency to blame others for difficulties. During the course of this assessment and in interactions with professionals involved with the family CG has shown a tendency to blame the agency and others for the difficulties experienced by herself, DG and D and B. She tended to blame her daughter K. for the Family and Children's Services involvement with her family and the lack of noted progress by service providers at the time. When responding to her children's accusations about her she disclosed that K. had been involved with drugs and M. had been doing

> "illegal" things after leaving the Armed Forces implying that they were not credible. She indicated that M. was estranged from the family because he became angry at her about something she said that she felt was innocuous. At times, she blamed TC for DG's financial difficulties and for the children being taken into care (i.e. TC was in charge of the money while DG was at sea, TC would not look after the children properly). She portrayed DG as the victim and excused his behavior because he was under a lot of stress related to the situation with his children. She blamed the foster home and the school for D's behavioral difficulties. This tendency toward externalization is concerning in that it interferes with CG's ability to manage situations effectively (e.g. her relationship with DG) and work collaboratively with service providers.
>
> The above concerns lead me to conclude that CG would not be able to protect the children from exposure to domestic abuse (she and DG), that she would have difficulty meeting the expectations of the Agency designed to support the children (e.g. not have DG in her home if that were required, provide accurate information to service providers, report difficulties/concerns if she felt they reflected negatively on her) and work collaboratively with service providers. Although she appears to have a positive relationship with the children at present I am doubtful that she would be able to meet their ongoing developmental needs (i.e. manage older children) without significant support but as mentioned above there are barriers to her being able to use that support effectively.

[178] In the end, Boyd's clear recommendation was against placement of the children with CG.

PCA Update - October 12, 2005 (Exhibit 1, Tab 36)

[179] Boyd updated her work regarding the parents against the background of events since her first PCA. She conveniently summarized her earlier work at pages 3 - 5. For the reasons earlier stated, I have disregarded references to possible sexual abuse (page 6).

Re DG (the father)

[180] To Boyd, DG continued to deny allegations that he had a history of abusive behaviour toward his mother. He complained about the children's foster care (pages 6 - 7), although many of the concerns were not new. He proposed that he would care for both children, on the understanding he would be residing with his mother who would assist with care when he is working. Boyd noted the varying opinions DG had expressed in the past about the quality of care she might provide.

[181] Boyd noted financial stresses resulting from DG's work-related wrists' injuries, surgery, and reduced income (pages 7 - 8). DG told Boyd of his intention to continue residing with his mother.

[182] Boyd wrote, at page 8:

> As mentioned earlier this living arrangement has been the source of significant conflict over the past two years with associated concerns about DG's treatment of CG and her ambivalence about him residing with her. For two short periods between May and July 2005 DG did reside elsewhere. In May after conflict about a young woman DG brought home with him he and the woman were reported to be looking for an apartment but according to DG within a matter of days she went off with someone else. He then resided at the [...] Motel for a short time before going back to CG's . Then on June 8, 2005 CG had the RCMP come to her home and ask DG to leave. He then resided at the [...] Motel for a short time but by the end of July DG was back at his mother's. In August CG indicated that DG was staying with her while looking for his own place. At the same time DG indicated that he planned to stay there and she was telling me he would be leaving because she thought she would not get custody of the children with him there.
>
> When questioned about his relationship with the young woman mentioned above DG indicated that she was another one like TC and he should have known better. He also admitted that he stopped attending his appointments (Family Skills Program, therapy) when he became involved with her. DG's mother indicated that she had been

concerned about his relationship with this young woman who she indicated was eighteen years old. She also indicated that at one point DG had called her and asked if he could bring home another young woman and she refused. DG did not disclose that he was involved in a relationship as this assessment was completed.

[183] Regarding the volatile relationship between DG and TC she stated:

Contact between DG and TC has continued since their separation and at times they appear to have been getting along (e.g. In May DG reportedly called CG from TC's home and threatened her). Late in 2004 CG was reporting to Agency staff that they were in love and that DG could not get over TC. At the same time conflict between DG and TC has been ongoing with DG reporting concerns about TC to the Agency on a regular basis (e.g. that she was on welfare and living with her boyfriend, that she accused him of sexually abusing B, that she accused he and Ms. B. of having an affair, that she and her current boyfriend modeled sexualized behavior for the children).

On July 19, 2005 DG and TC had an altercation at the [...] Mall that led to him being charged with assault and uttering threats. According to DG TC was telling lies about him and he challenged her about this. The argument escalated and TC accused him of sexually abusing B. He then threw coffee on her and she bit his arm. She then got mall security and they called the RCMP who confirmed that DG had been charged with assault and uttering threats in a telephone conversation with Ms. B.. The RCMP indicated that DG was charged but not TC because they considered him to be the instigator, more dominant, and more of a physical threat. When discussing this incident DG commented that TC was never charged by the police even though they had been called at least ten times because of her. He minimized his behavior (it was only 1/3 of a cup of coffee and she had antagonized him) and held TC responsible for his acting out.

DG pled guilty to assault and the charge for uttering threats was dropped. He was sentenced to one year of probation and is not to have any contact with TC. In a telephone interview his probation officer Doug Bruce confirmed that DG will be referred to Addictions Services for a gambling addiction assessment and to Alternatives for

> Family Violence treatment. Mr. Bruce was not aware that DG had been referred for these services in the past.

[184] During the course of the assessment, DG was enjoying regular, supervised access. The visits were going reasonably well, with only a few concerns (pages 9 - 10). His commitment to the access regime was never challenged. Boyd observed DG during some access sessions and reported no serious issues.

[185] Boyd accessed agency materials to update her report regarding DG's participation in services (pages 11 - 15). Her observations are consistent with my own. Much of this is canvassed by me elsewhere in this decision. Given her previous recommendations which left the door open for possible care by DG, Boyd was particularly concerned that DG had not competed an addictions assessment and baulked at the family violence counselling as being unhelpful. She wrote:

> Through my contact with him it is my impression that DG does not acknowledge his behavior as being abusive and consistently blames others for his actions. When I pointed out behaviors that would be considered abusive (e.g. his manner of speaking to CG in my presence) he did not recognize them as such and would immediately want to talk about his own victimization.

[186] Boyd's formal (current) psychological findings regarding DG appear at pages 15 - 16.

Re TC (the mother):

[187] Regarding TC, Boyd recapped the mother's views of the protection concerns to mid-October, 2005. From the agency materials available to her, Boyd developed an unfavourable impression (page 17). Ironically, like the paternal grandmother, she devoted much energy to complaining about the quality of

foster care (pages 18 - 19); and attributed reported deterioration in the children's conduct solely to the foster care experience.

[188] Boyd reported on TC's medical status (page 19). I note again that TC presented no medical reports, and called no medical witnesses, at the hearing.

[189] Boyd was also alert to TC's relationship with one L. M. with whom she shared her apartment at one stage. TC disclosed that cohabitation had ceased (page 20), although the relationship continues. Boyd reviewed the mother's access experience and the agency's rationale for insisting they take place on agency premises. At page 21, there is a review of concerns identified by access supervisors; none of them focus on inadequate supervision but some call into question their judgment on other issues.

[190] TC's opposition to placement of the children with DG and/or his mother was reiterated (pages 22 - 23). Her participation in services is summarized at pages 23 - 25. Boyd's findings coincide with mine. Current psychological findings are found at pages 25 - 27.

Re D and B (the children)

[191] Boyd's final PCA includes helpful summaries of each child's situation at mid-October, 2005. Of particular concern was D about whom Boyd wrote (pages 28 - 30):

> When D and B were moved to the second foster home D transferred to [...] School. The initial transition went well at both the home and the school. However over the ensuing months D has exhibited a number of concerning behaviours at home, at school, at after school and holiday programs. Behaviors of concern include the following:
>
> - Temper tantrums that include aggression (hitting, kicking) and threats to kill himself and/or others.

- Threatening and manipulating behavior toward other children at school (threatening to hurt them, kill them, and call the police).

- Deliberately hurting B.

- Destructive behavior (breaking toys, ripping sheet and mattress cover, plugging the toilet).

- Oppositional behavior (refusing to do as he is asked, running away from adults, talking back to authority figures).

- Sexualized behavior (he and B lying on top of each other and kissing and hugging, exposing himself in the home and at school, asking the foster mother to look at his naked body, sneaking into the bathroom with B, trying to peek at his older foster sister wn (sic) she is changing).

- Nighttime bedwetting.

- Daytime wetting at school.

- One incident of fecal smearing.

- D has told the foster parents he hears voices in his head telling him to do bad things.

- D talks about wishing people would hurt themselves, be killed, etc.

Reports suggest that there often appears to be no significant trigger for D's temper tantrums and he can become very upset about relatively insignificant things (e.g. in an access visit he became very upset when he got a little bit of food on his clothing, a child accidentally bumping into him at school) The adults dealing with D report that his mood can change very quickly from pleasant to aggressive and back to pleasant again. They express concern that he appears to have little remorse for his behavior. The descriptions of his behavior suggest that he has little understanding of the impact of his behavior on others. His behavior escalates quickly and severely when he is determined to get his own way.

> D's extreme behavior appears to be somewhat episodic and unpredictable in nature although there is some suggestion that his outbursts may be linked to access visits. He has been reported to behave better for men and to respond to structure and positive attention. It was necessary to provide extra supervision and support for D at school through the services of a teacher's aide. In an attempt to encourage appropriate behavior at school a reward program was developed for D by school personnel and Carol McCready, D's therapist. The program involved him receiving a reward after a period of good behavior. This proved to be somewhat successful but at a school transition meeting on June 22, 2005 it was noted that D had the reward system figured out and would watch the clock and ask for his reward at the specified time. If he did not get the reward then he would take something from another child.
>
> Although D's acting out behavior has been very concerning he has made academic progress and reports from the foster home suggest that his behavior has improved there somewhat. He has been couched in anger management strategies such as counting and taking deep breaths by Ms. McCready and TC and this is reinforced by the foster mother. He has made gains in self care skills and is able to sit and attend to tasks for a longer period of time. The foster parents report that D wants to learn but has trouble "holding" information for any period of time. The respite foster parents report fewer concerning behaviors than the regular foster home. He is reported to have fewer tantrums and less night time wetting when staying there.

[192] Boyd discusses D's fragile medication regime (page 30). Reports from Doctors Gibson, Guptill, McNeill, and Cox were all vetted by Boyd. With one exception, none of these reports were entered into evidence. Her synopsis was not challenged.

[193] Working with the benefit of agency notes, Boyd commented on access (page 30):

> D's contact with TC and DG and sometimes with other family members has been during supervised access visits. Reports from the visits indicate that he is generally happy to see family members but his behavior is often challenging. Access facilitator reports indicated that he has frequent temper tantrums, he is rough with toys, he often does not follow directives from his parents, he does not play well with B, he

has difficulty with sharing and following rules for games, he demands treats and food, he has run away from the adults, he has threatened to harm others and to kill himself when he did not get his own way. His moods are reported to change very quickly and his reaction can be out of proportion to the triggering event. There have been occasions when it has taken two adults to manage his behavior and keep him safe. He has been distressed when leaving visits on several occasions and talks about wanting to live with both of his parents. His comments (e.g. that his parents have separate visits so they won't fight) suggest that he has information about adult issues such as the conflict between his parents. D's foster parents indicate that he usually does not talk about visits when he returns to the foster home. If he does talk about the visit he appears to change the subject when he realized what he is doing.

[194] Boyd's findings regarding B were straightforward (page 31):

B who is now four is an attractive and chatty little girl. She attends Day Care two or three days a week and there appear to be few concerns about her behavior there other than that she appears to have some lags in gross motor development which have also been noticed by the foster parents (clumsy, spills and runs into things). B is physically healthy.

[195] And later:

...Concerns about B's behavior that have been identified in the months since she was placed in foster care include the following:

- The possibility of delayed gross motor development. She is reported to be clumsy and to spill things a lot.

- The need for continued close supervision because she gets into things.

- Sexualized behavior including laying on D and hugging and kissing him. Foster caregivers reported that on June 24, 2005 she asked D if he would like to come into the bedroom and see her vagina and on July 19, 2005 she told the foster mother that

D and her father had gone into the bathroom and looked at her vagina during the last access visit. This was not substantiated by the access supervisor.

- B began to have nightmares in November 2004 (CG had reported that B had had nightmares in the past while in her care as well) which continue although they appear to be less frequent when B is at the respite foster home and have decreased somewhat at the regular foster home. Her foster mother has indicated that they are more likely to happen on the night after an access visit.

- Short attention span and constant talking.

- Bedwetting which appears to have decreased somewhat.

- Two incidents of urinating on the kitchen floor after access visits.

- One incident of ripping the sheet from her bed after an access visit.

- Destruction of toys.

- Increase in oppositional and defiant behavior perhaps in imitation of D.

- Eating slowly, messy and playing with food at mealtimes to the point that the foster parents and the day care use a timer with her.

[196] Boyd said B's behaviour during access was less concerning that D's, with only occasional tantrums or saucy behaviour. She noted that Carol McCready "questioned B's attachment to anyone in her family".

Boyd's (Final) Recommendations

[197] Boyd recommended against placement of the children with DG. Her summary (pages 33 - 34), while noting many positives concludes he is unable to provide a healthy, safe and

predictable environment for the children. She elaborated on the key concerns which included his financial status, the unstable residence, inability to sustain involvement with services, failure to recognize family violence issues, and chronic deflection of blame to others.

[198] Boyd also recommended against placement with TC. Again, Boyd acknowledged some positive traits and progress (pages 30 - 36). Remaining concerns included, however, ongoing animosity toward the agency and some service providers, failure to acknowledge past parenting challenges or to accept responsibility for her own conduct, and lack of credibility in self-disclosures.

[199] Boyd's recommendations included the following (pages 36 - 37):

> 2. At this point it seems clear that the focus should be on establishing as much stability as possible for D and B. As a result every effort should be made to minimize disruption in their lives related to periods of time spent in the respite foster home, changes in the access schedule, and changes in other activities.
>
> 3. That D and B continue to participate in therapy with Ms. McCready to deal with issues related to attachment. Ms. McCready has also been helpful in consulting with the school and the foster parents and hopefully that will continue.
>
> 4. The frequency and length of access visits should be reviewed in consultation with Ms. McCready and Dr. McNeill in the context of the importance of maintaining stability of the children and the Agency long term plan of care. Access visits should continue to be supervised and take place in a neutral setting. The children's responses to access should continue to be closely monitored.

[200] **Daphne Falkenham** ("Falkenham") is the coordinator of the agency's foster care program. She is a registered social

worker and a veteran employee of the agency. (She neglected to submit a curriculum vitae.)

[201] Falkenham's involvement began in October 2004 when CG expressed an interest in being approved as a "restricted foster parent" for the children. According to Falkenham, the agency has guidelines for such approvals. These were not introduced into evidence.

[202] Incidental to the application, Falkenham contacted references that were provided by CG as well as a number of collateral contacts thought to be appropriate in the circumstances. She spoke with CG personally and by telephone over the course of several months. She said she explained to CG the agency's guidelines and expectations.

[203] Not surprisingly, she said the agency always proceeds cautiously. It generally looks for stable and healthy placements which will not be detrimental to children. Here, in the course of routine investigations, CG disclosed an unhealthy past relationship with her son, DG. Some of the collateral contacts were also aware of this troubled relationship and expressed concerns. Additionally, disclosures made by DG's siblings about CG's parenting were concerning. The disclosures were consistent with those canvassed elsewhere in this decision.

[204] Falkenham testified that she made CG aware of not only the agency's expectations but its continuing concerns about her conflicted relationship with DG. Falkenham was particularly troubled that CG articulated a plan of care that seemed to contemplate a form of co-parenting with DG. Such a plan was known to be opposed by the agency.

[205] Falkenham's written report to the agency in mid February, 2005 appears in Exhibit 1 at Tab 23. The essence of her findings appear at page 1 where she wrote:

> ...The areas of concern relate to CG's inability to assure the Agency that she could adhere to probable restrictions of birth parent access to her grandchildren, her diminished potential to meet foster care standards in many areas including past parenting, healthy relationships, communication, emotional stability as well as her inability to meet her grandchildren's needs in terms of present parenting ability and provision of an emotionally healthy environment.

[206] At pages 2 and 3 of the Exhibit, Falkenham amplified and exemplified her concerns.

[207] Falkenham was invited to comment on CG's affidavit in Exhibit 1 at Tab 28. She elaborated on the disclosures made to her by CG's children, R., M. and K.. I am satisfied that Falkenham accurately captured the disclosures made by CG's adult children to her. Importantly, for our purposes, I note that none of the named children testified in court or filed affidavits to either support the disclosures attributed to them, or to dispute them.

[208] In testimony, Falkenham parenthetically noted that CG's "significant relationship to D. H. has not been assessed nor has D. been included as part of this assessment yet. He has been identified as having a significant relationship with CG for many years". As noted, he also did not testify or submit an affidavit.

[209] Falkenham confirmed that a routine check of police records disclosed no concerns. However, she said cigarette smoking in CG's home was identified. She said that CG disclosed that she smoked outside but that her son, DG, refuses to smoke outside. At one point in her testimony, Falkenham characterized the inside of the residence as being "blue with smoke". Otherwise, the physical premises were characterized as adequate.

[210] **Jacques Perron** ("Perron") is an access facilitator for the agency. He is a former police officer who described his role as "the eyes of the social worker". He supervised access to the children by the parents and by CG for approximately 16 months.

[211] In many ways, Perron's observations of the three adults during their access visits are unremarkable. There were no reported serious concerns about the conduct of any of the adults; and their interaction with the children appears to have been generally appropriate.

[212] I find it unnecessary to detail his observations except to note what he perceived to be a general improvement in D's conduct over time. His description of so-called outbursts by this child are consistent with the descriptions offered by other witnesses during the hearing. So too may it be said that his characterization of B's conduct is consistent with that noted by others.

[213] In terms of D's supervision during access, Perron had no negative observations; and when asked about one particular incident which was outwardly concerning, Perron testified that what occurred should not reflect badly on the parent (ie., the mother).

[214] Insofar as CG is concerned, her access visits were similarly unremarkable.

[215] **S. M.** ("M.") is the children's current foster mother. A summary of her foster parent training was entered as Exhibit 7.

[216] M. is a veteran foster parent who is now approximately 54 years old. She is married to K. M. (who did not testify). According to M., she has fostered more than 100 children between the ages of 4 and 17 years, over the past 16 years. Her own adult children reside in [...] where she formally lived and

assisted another child protection agency as a foster parent. M. said that her husband has taken most of the courses that she has and that he shares parenting responsibilities.

[217] The children currently reside with the M.s who also have a 16 year old female foster child who relocated with them from [...].

[218] Daphne Falkenham contacted the M.s regarding a potential placement of the children. M. was given some background information prior to the placement which occurred in late October 2004.

[219] M. recounted her initial observations of the children upon their arrival at her home. The "honeymoon period" was brief, particularly for D. Within a few days, D demonstrated a wild and unpredictable temper. He unexpectedly lashed out for no apparent reason, and frequently "swore like a trooper". By contrast, B was characterized as withdrawn and "in a world of her own".

[220] D started school where upon M. received negative reports about his conduct there. This is considered in more detail elsewhere in the decision. There followed extensive contact with school officials, particularly regarding D. In time, strategies were developed to deal with his conduct in the school setting.

[221] D's unexplained outbursts were a chronic and daily concern not only at the school, but at home. M. was mindful of a tentative diagnosis of ADHD. However, her personal view was that he likely did not suffer from this condition and she explained why, based on her past parenting experiences. She noted that D appeared to have a "good attention span if things were going his way".

[222] M. was involved with referrals to the pediatrician, Dr. Laurie MacNeill. Apparently, there were a host of consultations

wherein D's medication regime was subject to fine-tuning. With adjustment in D's medications, D's behaviours slowly improved both at home and at school. According to M., D started to sleep through the night, and he experienced less rages. However, there were still episodic outbursts. When those outbursts did occur at school, they were sufficiently serious that she was informed that D's class would often have to be "evacuated" and that his classmates were often afraid of him.

[223] Currently, M. said that D's outbursts are usually no more than once weekly, on average. She finds his conduct much better in the home and at school; and she said that she seldom needs to intervene. She said that D has accepted the routines and that he is helpful around the home.

[224] In M.'s experience, both D and B need structure and routine, throughout the day. She elaborated on the children's current schedules and routine. She stressed that both children need constant supervision. Otherwise, for example, M. said that there is a possibility that D will hurt B. M. also opined that D seems to have little or no respect for females in general, and especially for his female teachers and for his sister, B.

[225] M. also expressed concern that both B and D "sexually act out". She exemplified D's sexually aggressive contacts with others and other concerns including open masturbation. When sexual conduct issues are addressed with D, M. said that the child does not seem to understand the concern.

[226] D is reportedly now doing very well academically and M. characterized him as a "very smart" boy. By contrast, B is behind at school and she needs intense assistance at home. M. referred to speculation that B may also have ADHD. She said this young child cannot sit still and cannot concentrate for any length of time. However, she is not on any medications as yet

and she is mindful that a formal and full diagnosis is yet to be made.

[227] Both children are reportedly very affectionate with the M.s. The same may be said about their relationship with the other foster child (who will be 17 years old next month).

[228] Before concluding her testimony, M. characterized B as more quiet now than she had been in the past but she also noted her to be a child who "never stops talking". With some reluctance, she described this youngster as "oppositional defiant". She elaborated by saying if you tell B not to do something then she will do it.

[229] M. explained her current practices in terms of discipline and supervision, and said each child is in good physical health.

[230] M. testified that she and her husband would love to have the children stay with them as long as possible. However, the M.s have no plans to adopt the children. Asked for an explanation, M. testified "I'm just too old".

[231] Child protection worker **Brenda Bryenton** adopted her January 11, 2006 affidavit [Exhibit 5] which spans 133 paragraphs and 28 pages. It is impractical to summarize all the contents. The highlights, as supplemented by her testimony, follow. (I have omitted reference to many events which were the subject of testimony by others.)

[232] Bryenton's version of events in the immediate aftermath of the apprehension are set out by her starting at paragraph 5. As noted at paragraph 17, "possible inappropriate sexual interference with B" was not substantiated by the agency. The children's progress in early foster care was recounted (paragraphs 19-20). Ongoing agency concerns about family violence were re-presented to DG in early December, 2004. DG's crude behaviours and responses to the issue are found at

paragraph 21 and were never refuted by him during the proceedings.

[233] The agency held a Risk Management Conference in mid-December, 2004 when Elaine Boyd's first CPA's were considered. As appears at paragraph 28, the agency decided it would be open to receiving a plan of care from DG provided he met a series of conditions, premised on an understanding that DG and TC would not reunite. Bryenton informed DG of the agency's position. Bryenton recorded DG's reaction as follows:

> 30. On December 18, 2004, your deponent made a home visit with DG to discuss the outcome of the Risk Management Conference aforesaid; during the meeting, DG admitted to still having an ongoing relationship with TC but he did not think that he was obsessive about the relationship - thinking it might be more of a habit; he also commented on the lack of support TC had received from her birth family, stating that there had been little contact with TC's family while he and she were together; he also commented on the fact that TC's mother had not come forward with a plan for D and B;
>
> 31. During the visit aforesaid, in reviewing with DG his part in the difficulties which had resulted in the children coming into care, he stated that he had difficulty identifying what he could have done differently; about his failure to participate with Art Fisher at Alternatives, he expressed dissatisfaction with Mr. Fisher, stating that he believed that Fisher has a stereo-type of abusers and refuses to listen to evidence that contradicts his theories; he acknowledged that he was not ready for group therapy at the time he was seeing Mr. Fisher;
>
> 32. Your deponent then discussed in detail what the Agency's expectations of DG would be if he were to put forward a serious plan for the care of the children; DG was receptive to this overture and indicated that he would make every effort to secure a lawyer, a separate place to live and would engage in therapy with George Wawin; your deponent stressed that Mr. Wawin would be addressing anger management and emotional issues with DG and also domestic violence issues and establishing sexual boundaries; finally, your deponent stressed that he must

> work with the Family Support Worker and child therapist, Carol McCready and the children on attachment;

[234] In mid-January, 2005, a decision was taken to end TC's counselling with Mary Haylock because the benefits of family support work with her had "run its course". By mid-February, George Wawin was ready to provide counselling to DG. In early March, access arrangements and schooling received special attention:

> 41. On March 2, 2005, your deponent attended at a Risk Management Conference at the offices of the Applicant to review the access regimen of TC and DG; the children had been visiting with their father for 1.5 hours on Wednesdays and Sundays followed immediately by a 1.5 hour visit with their mother on those same days; noted by the team was the fact that there had been an escalation in negative behaviours with both children (at home and at school for D and at home for B); the school was indicating that D has been very aggressive with his peers at school while foster parents have reported that the children's behaviours are more difficult to manage on days when there is parental access; there was concern that back-to-back visits totalling three hours may be over-whelming for the children and it was agreed that access would be reduced by one-half hour for each parent and that the location of the children's visits with their mother would henceforth take place at the Agency's access room rather than at her home; it was agreed to convene a Case Conference with the foster parents, Carol McCready, D's teacher and the worker to further assess the situation;
>
> 42. On March 2, 2005, your deponent had a lengthy telephone discussion with D's primary school teacher, A.H. who advised of, and your deponent believed, very concerning behaviours on D's part at the school, including oppositional defiance toward his teachers, threatening behaviour toward his peers, destruction of property and a lot of personal tension; it was noted that his fine and gross motor skills are delayed, affecting his ability to use a pencil and it was noted that sometimes his hand shakes and that he holds his body very rigidly; his teacher identified his problems as defiance, anger and aggression;

[235] In early April, 2005, TC was admonished that her remarks to the children during access about family reunification were contributing to their instability at home and at school. By then, there was still some expectation, however, that the children could be placed with DG whose work with a family support worker and with therapist, Carol McCready, was progressing. DG's commitment to access was not an issue. Access by TC was canvassed (paragraphs 50-51) as was CG's access (paragraphs 54-56). On May 3, 2005 Bryenton learned of renewed conflict between DG and his mother and CG's ultimatum to him (paragraph 58).

[236] By mid-May, 2005 DG's work with George Wawin had fallen by the wayside (paragraphs 63-65, 68). The agency continued to monitor TC's medical condition (paragraph 69). DG's hostility to the agency further escalated (paragraphs 70-71) but appeared to subside by the end of May (paragraph 72).

[237] D's problematic school conduct also received intense attention in late May, 2005 and in June (paragraphs 73-76, 80). The agency continued to prod DG to complete his addictions assessment (paragraph 78).

[238] DG contacted Bryenton in early June:

> 79. On June 8, 2005, your deponent received an unannounced office visit from DG at which time he asked to cancel his scheduled access with the children that day; DG explained that the RCMP had attended at CG's home yesterday at his mother's request and he had been forced to vacate her premises immediately; he stated that inasmuch as he had no place to go he had slept in his car last night; he advised that he would be moving to the [...] Motel, in [...]; DG's access was accordingly cancelled for that date;

[239] A month later, the agency was continuing to press DG to re-engage in services (paragraph 82). On July 25, 2005 Bryenton learned from DG that he and TC had an altercation at a local mall, that he had been jailed, charged, and released. The incident involved his assault of TC (paragraph 87). By then, DG had returned to live with his mother. The degree of ongoing conflict between DG and TC at this time was amplified by Bryenton (paragraphs 89-90).

[240] Bryenton touched on D's ever-changing medication regime (paragraphs 92, 95, 97) but no medical reports on the subject were introduced.

[241] By late August, 2005 the likelihood of repatriation of the children to DG had dimmed (paragraphs 98-99, 101) and TC's progress was seen as stagnated.

[242] In mid-September, 2005 there was a case conference at D's school (paragraph 104) to address recent conduct. In early October, 2005, DG made belated inquiries about re-engaging in services (paragraph 107).

[243] In October, Bryenton attempted to clarify DG intentions:

> 113. On October 27, 2005, your deponent attended at the residence of CG to meet with DG regarding his plan for the children; DG advised that his plan remains that he wants the children in his care but at the home of his mother in order that she could care for the children when he is away at sea;

[244] A re-cap of any agency risk management conference held in early November, 2005 is found at paragraphs 116-124. Its decisions and rationale about the competing plans of care appear at paragraphs 125-130.

[245] In testimony, Bryenton confirmed that TC's epilepsy was considered to be under control and that it is not perceived to be a current concern. As at the hearing, Bryenton believed that DG was still living with his mother and she confirmed there have been no complaints or referrals regarding that relationship since DG's last return.

CG's (the paternal grandmother's) Case

[246] **F. M.** ("M.") is a 50 year old friend of CG who lives in [...], a small community between [...] and [...], Nova Scotia. Her daughter, T.A., has her own family. Her son, D. H., is about 33 years old, and resides nearby in his late grandmother's former house.

[247] M. testified and adopted an affidavit [Exhibit 2, Tab 41]. She lived at [...] , Lunenburg County beginning in later 1995 and was a neighbour of CG's for a few years. She moved to [...] in May, 1998; and to [...] in March, 1999 where she has since lived. I judicially notice that the communities of [...] and [...] are a considerable distance apart.

[248] M. said her son started boarding with CG in early 1995 and moved to his current residence in September, 2004. She wrote:

> 8. THAT I recall that after her grand children, D and B, were born, that CG spent a great deal of time baby-sitting her grand-children in her home; I recall meeting TC and DG during that period as well.
>
> 9 THAT I observed CG safely manage and take care of her grand-children during those periods of baby-sitting. I observed that the children were well-cared for and loved by CG; THAT I observed her set regular bedtimes, monitor their television programs and provide them with healthy meals and snacks. I had no concerns that the children were not being properly taken care of.
>
> 10. THAT I recall that when DG was not at sea, he would sometimes be at home with his mother while she was taking care of the children.

[249] M. was asked to be a reference in support of CG's foster-parent application. She completed an agency application. She was not interviewed. M.'s written reference was reportedly supportive. (It is not in evidence.) She admittedly expressed concern, however, about DG's past verbal abuse of his mother. She characterized this as "her only concern". Asked to elaborate, she described a telephone conversation with CG in May, 2005 that was "very, very bad". DG was in the background while the women spoke. M. said she was scared DG might get "violent". His voice was loud and angry; he was demanding money from his mother. M. was sufficiently concerned, she said, that she had another phone available to call for assistance while still on the line with CG. As it happens, an emergency call was not needed. When she later checked with yet another call, she was satisfied things had calmed down.

[250] Regarding the recent past, she wrote:

> 11. THAT I recall in June, 2005 a conversation I had with CG over the telephone. I could hear DG yelling at his mother in the background over money and they were arguing over money. I observed CG to be able to stand up to him and insist that he move out of the house, and live on his own.
>
> 12. THAT I learned soon after that DG had left her residence to live in [...]. I was aware that he went back for a meal or two or to do his laundry at his mother's place, while he was living in [...]; one time I met him on the road going back to CG's. I gave a call to CG and in my conversation with her, I learned that everything was going very well.
>
> 13. THAT I have visited the home since July 20, 2005, after DG returned home to live with his mother, and I've noticed a big change in DG. He is showing more independence, and is helping out around the house and I do not see DG being verbally abusive to his mother anymore.

> 14. THAT before DG returned to his fishing job, he showed a lot of stress, and worry about whether he would ever get back out on the boats;
>
> 15. THAT when I stop at the house now, I see that DG and CG have the children's crafts hanging in the kitchen and they are both proud of the children's work. DG is helping around the house and is pleasant to be with.

[251] M.'s last contact with the children was in September, 2004 during a visit to the CG residence. She said in testimony that when the children were with CG, CG ensured regular meals and bedtimes. She characterized the children as neat and tidy, and active. She said the children appeared to be happy when with their grandmother and "well-adjusted at her place".

[252] Upon cross-examination, M. conceded that D was "a little bad at times"; and she was aware that he may have been taking Ritalin at one stage. She infrequently saw him throw toys and scream or throw a tantrum. On one occasion, she saw D play roughly with B. However, M. saw no sexually inappropriate conduct by D.

[253] It appears that some of M.'s visits to the CG residence were after grocery shopping and other errands on Friday evenings. She said B was often in bed by her arrival but mentioned that D was often up until 10:00 p.m. watching television. M. and CG are avid card players and the prime purpose of the Friday contacts was to pursue this past-time. It appears CG may have had the children with her on visits to the M. home at [...] but the testimony was vague and imprecise in this regard.

[254] Asked about allegations of inappropriate conduct and language by CG [Exhibit 1, Tab 34, paragraph 15], M. insisted she has never observed anything inappropriate in front of the children, or otherwise. M. never saw CG and TC in conflict; but

claimed she had seen TC leave the children with their grandmother.

[255] M. was an observer of some of the events at the local hospital when D was treated for a throat injury. She corroborated the presence of CG and DG, as well as TC. She observed DG leave D with CG while he went outside for a cigarette. She saw TC follow suite: "She stomped out and ignored D". DG returned to care for his son. TC returned somewhat later.

[256] **CG** submitted affidavits and testified on her own behalf. As assessed by Elaine Boyd, she receives considerable attention elsewhere in this decision.

[257] I preface my findings with the following excerpts from Boyd's PCA [Exhibit 1, Tab 34, page 18]:

> ...She was responsive to cues from the assessor but often had to be brought back to the topic at hand because of her tendency to think of and talk about things tangentially related to what was being discussed. This is a characteristic noted by other professionals who have had contact with her. Later in the assessment process on several occasions CG cued herself to remain on the topic when she digressed by saying things like "that's not what we're talking about right now". As a result of this manner of presenting information it was sometimes difficult to follow the thread of the conversation with CG.

[258] With respect, CG demonstrated similar characteristics in the courtroom, whether responding to questions by her own lawyer, by other counsel, or by the court. At times, her testimony was vague, rambling and quite confusing; and it was frequently unresponsive to questions being asked, despite cautions and admonitions from several quarters.

[259] As I listened to her testimony, I was reminded of Boyd's observations at page 19:

CG's responses to the MCMI-III and the MMPI-2 were not consistent with any psychiatric disturbance or personality disorder. Scale elevations on these instruments suggested the presence of the following personality/behavioral characteristics:

- The tendency to manipulate events to avoid disapproval from others and maximize attention and favors.
- There is likely to be an underlying fear of autonomy and a need for repeated signs of acceptance and approval.
- Infrequent expression of angry feelings and a tendency not to respond to provocation appropriately (may appear passive) with occasional exaggerated aggressive (not necessarily physical aggression) responses.
- A tendency to be both punitive and self-blaming.
- Feeling suspicious, and mistreated while being excessively sensitive and responsive to the opinions of others. May blame others for difficulties and be emotionally labile.

These characteristics are generally consistent with CG's presentation during this assessment and her interaction with professionals involved with the family as evidenced by her attempts at impression management during testing, her tendency to blame the foster parents for the children's present difficulties while at times minimizing or ignoring past difficulties, her tolerance of her son's abusive behavior toward her and vacillation between condemning and supporting him, and her tendency to present information to the assessor in a way to minimize issues related to her ability to care for D and B. Obviously, the circumstances of this assessment would create anxiety and a desire to present oneself favorably for anyone. However, CG's reluctance to acknowledge potential difficulties/issues is more pervasive than would be expected even in this situation.

[260] CG's first affidavit appears at Exhibit 1, Tab 17. She is about 58 years old. She said she has lived in a three-bedroom

house at [...] for over ten years. She presented (at paragraph 6) a summary of dates she asserts she cared for one or both children, from January to late September, 2004.

[261] Regarding, D. H., whose name was mentioned by several other witnesses, she wrote:

> 8. THAT D. H. has been a boarder at my house for the last 4 or 5 years; he was contributing $150.00 to the household. He has a car which I have been using for transportation needs. He will still be doing this for me. He has now moved out to rent his mother's house in [...], while his mother is living about two houses away. He is still a close friend of mine and he will still be driving me to places and visiting me at my house.
>
> 9. THAT D. has been present with the children in my home but he was never charged with looking after the children alone. He gets along well with the children and I have never seen or even suspect that he would ever hurt or abuse the children in any way. B and D know D. as "Papa D.".

[262] CG confirmed she had "expressed concerns" about TC's supervision of the children to the agency. She apparently gained access to one of Carol McCready's early reports and asserted there was no abuse (by anyone) of the children within her home. She confirmed DG's presence in her home at the time (November 10, 2004), but declared "he is intending to get his own place".

[263] CG filed this affidavit when seeking a restricted foster parent placement and/or her own plan of care (paragraph 14 and 15). Noteworthy, at this critical juncture, was CG's failure to candidly disclose that she and Mr. H. also experienced a personal, intimate relationship (See Exhibit 1, Tab 28, paragraph 23).

[264] Another affidavit by CG is in Exhibit 2, Tab 40. There she expressed her plan for "permanent care and control" of her grandchildren, with the support of her son, DG. She reiterated

her love for the children, her concern about foster care placement, and her extensive involvement with the children since infancy. She professed awareness of D's "ADHD and ODD" and committed to ensuring he receives his medications and keeps his medical appointments. She also committed to education and training, as need be, to meet the children's special needs. She made similar commitments to the children's counselling, schooling and general well-being.

[265] CG did not dispute the agency's history and characterization of her access visits (paragraphs 11 - 13).

[266] Regarding the conflicted relationship with her son, she wrote:

> 17. THAT DG has been living with me since May, 2004. He had to have operation on [...], and was unable to work at sea, until he had surgery. I acknowledge that in the past, DG has been verbally abusive to me and that this was witnessed by the parental capacity assessor, Elaine Boyd and the social worker, Brenda Bryenton when they were visiting me in 2004.
>
> 18. THAT I asked DG to leave my house in May, 2005, and he complied with my request. I did not feel threatened by DG in this situation.
>
> 19. That in June 2005, I was insisting the (sic) DG find another place to live, which he complied with only after I had called the police. That after he left DG was back and forth between my house and his temporary accommodations, and by July 20, 2005, he had returned to live with me and I have not experienced anymore conflict between us since June 8th, 2005.
>
> 20. THAT I have been supportive of DG and helped him to get back on his feet after the break-up of his relationship with TC, and assisting him while he was off work and recovering from [...] surgery.
>
> 21. THAT DG has now returned to work at sea in the fisheries. I have discussed with DG the fact that he would be assisting me financially for the care and needs of my grandchildren.

> 22. THAT DG has changed in his attitude towards me, and there have not been any incidents where he has been dis-respectful of my wishes, and he has been willing to assist me around the house.
>
> 23. THAT if I were granted custody of my grandchildren, I would be able to use my authority as the custodial parent to deal with any problems that may arise out of having to prevent any conflict arising from either TC or DG. I would ensure that the grandchildren would not be exposed to any abusive interactions in my household.

[267] CG did not accept Boyd's conclusions and recommendations regarding her (CG's) plan of care. In conclusion, she wrote:

> 25. THAT I will at all times place my loyalty with my grandchildren, B and D, over my loyalty to my son, DG.
>
> 26. THAT I acknowledge that TC is not supportive of my plan, however, I would still be willing to supervise any access to her, and would also supervise DG with the children, in my own home.

[268] In testimony, CG recounted her access experiences. Jacques Perron supervised many of the visits. She gave her version (confusingly) of one session during which D reportedly "locked himself" onto a chair during a tantrum. However, Perron did not unduly emphasize the event. I do not see any need to do so either, because most other witnesses characterized the experiences as positive for the children and the grandmother.

[269] As CG's rambling, "tangential" testimony progressed, she volunteered other observations and comments. For example, she said that even if DG had his own place and returns to work at sea, "he needs more than a babysitter; the kids will need complete care". She testified that "it was his best idea - that we could work together on this", or words to that effect. She was asked (by her lawyer) to name her proposed family and

community supports. Of the four mentioned (two children; D. H.; and H.'s mother, F. M.), only M. testified on behalf of CG.

[270] Asked about D's schooling problems, CG said they were "terrible". She asserted both children are fearful and frightened; and that (if placed with her) they should be kept home for one or two weeks to restore their feelings of safety and security, and to help with the transition. She proposed changing D's school to one close to her home, but was vague and evasive on whether she has made the necessary inquiries, contacts or arrangements. She said she could arrange transportation (by car) in case there is an emergency at school involving the children. (D. H.'s name came up again in this context.) She reiterated her awareness of the need for ongoing counselling/therapy for the children.

[271] Child protection worker Bryenton wrote in Exhibit 5:

> 60. Further during the conversation aforesaid [on May 3, 2005] CG confirmed that she had told son, DG, to leave her home; that DG had been sleeping with an 18-year-old girl at CG's home; CG stated that when she told the girl that she cannot be in her home, the girl was angry and CG stated that she is afraid of this girl; CG then related that DG and his girlfriend had gone to TC's home and that DG had called her from TC's saying that he was going to kill her (CG); CG remarked that it was like history repeating itself;
>
> 61. Your deponent advised CG that if she was afraid she should change the locks on the door; however, CG replied that she had done this before but that DG and a girlfriend had broken in through a window; your deponent advised her to call police if she felt unsafe ...

[272] Asked, by her own lawyer, about the accuracy of the foregoing, CG replied that Bryenton "got the gist of it right", and that "if Ms. Bryenton said that's what I said, I guess I did", or words to that effect. She then volunteered that DG's exact words to her were "You'll get yours one day!"

[273] CG insisted her son's attitude and conduct changed in August, 2005 when he started to help more around the household, became more respectful to her and to others, and agreed to help with finances, as best he could. In the late fall, DG reportedly worked for a [...] business. She said he expected to return to fishing in the New Year but he received word that his employer (...) would be leaving its vessels tied up until March or April, 2006. At the time of the hearing, he was not working.

[274] Asked about her relationship with TC, CG had little to say in testimony except that she "feels really bad" for her and guessed that she "didn't get across that I cared for her".

[275] CG's testimony jumped back to Exhibit 1, Tab 28 which she adopted as truthful. This April 5, 2005 affidavit was submitted in support of her plan of care and intended to update her November 10, 2004 affidavit. She purported to challenge the work of Daphne Falkenham incidental to the restricted foster parent application. Her relationship with her children is assessed elsewhere. I have noted that her children (R., M., and K.) did not testify. She also mentioned her former husband, D., from who she was divorced about ten years ago. There was some indication that she and he are on cordial terms. He did not testify. In this affidavit, she also purports to summarize DG's (then) living circumstances and her expectations regarding his future. Starting at paragraph 16, CG summarily stated her concerns about TC. As appears elsewhere, a full litany of complaints was reported to Elaine Boyd. There is no need to repeat these.

[276] Cross-examination of CG proved challenging, largely for the reasons set forth in my preface. Noteworthy was her propensity to characterize D as a "determined" child who experienced, in her home, only occasional tantrums and who was only occasionally disruptive. She insisted she had not observed the extreme behaviours reported by school officials, by the foster

parents, and by others. This struck me as remarkable in the circumstances. Against the background of those reports, she nonetheless asserted she could manage D in her home. CG said she knew "support systems" will be needed.

[277] It was in cross-examination she finally and reluctantly admitted that D. H. (one of her supports) was an individual of her son DG's age with whom she had an "intimate relationship at times". She gave a confusing explanation of their current relationship. At one point, she stated he would be "good" (for the children), but stated she does not expect him to return to her residence. H. is reportedly unemployed and receives some form of disability benefits related to a congenital medical condition.

[278] CG testified she has not seen D hurt his sister B to the extent reported by others. Nor has she seen sexually inappropriate behaviours by either child. Asked what she would do to deal with such conduct, CG stated "she would have to watch them more" and "distract them", as need be.

[279] Also, in testimony, CG conceded DG likely cannot parent the children, whether he is working or not. She said he will need help; and the children will need lots of love, care and discipline.

[280] Pressed about DG's future residency, CG said she hopes he will be able to establish his own residence some day but agreed she really has no idea how long he will be with her. Asked whether she would be prepared to put her son out of her home (again) if need be to protect herself and the children, CG hesitated and weakly asserted she would do so. She added, "It's my house; I guess"; and that she would call the police in a worst-case scenario.

[281] Regarding her financial situation, CG's income is only about $800 - $900 monthly. Most, if not all, of her income goes toward ordinary household expenses. She has no savings. She

agreed her son traditionally has not helped out with expenses. She did not state how she would meet any new expenses associated with the care of her grandchildren. No financial information or statements were introduced.

[282] Asked what is different in her relationship with her son since the PCA's were submitted by Elaine Boyd, CG simply stated it is "not like that now". She added that, "TC is not in our lives. It's as simple as that".

[283] CG is aware the agency opposes DG living with her and a "co-parenting" regime. She admitted she had past concerns about her son's gambling; and that she is aware he never completed an Addictions Assessment, as ordered. She is also aware that her son did not fully complete what was expected of him regarding family violence counselling and anger management. She could not (or would not) articulate a comment or reaction to his non-compliance, except to volunteer her belief that much of DG's conduct was "provoked" and that "I don't think he'll be like that any more", or words to that effect.

[284] Before concluding her testimony, CG confirmed she was employed as a personal care worker from 1987 until 1993 when she became disabled and started to receive public assistance. As noted elsewhere, she had back surgery in October, 2004. She still takes Tylenol, three times daily, for back pain. Her high blood pressure is controlled by medication, as is episodic bronchitis. She conceded her cigarette smoking has increased to about one package per day; and that DG still smokes in her residence (although he usually opens windows).

TC's (the mother's) case

[285] **J. M. C.** is TC's mother. She and her husband, W. L. C., have been married for about 36 years. TC's siblings are M. C. and A. C.. A. C. and her son, C. C., reside with J. and W. C..

[286] In her brief affidavit [Exhibit 2, Tab 43], J. C. said she speaks to her daughter, TC, daily and sees her at least once weekly, and sometimes more frequently.

[287] J. C. said she had been caring for her grandson C. and therefore was "unable to provide much assistance, other than emotional support to TC". Additionally, an unnamed "eldest granddaughter" had also been staying with her every second weekend.

[288] Now that C. is attending school, J. C. said she is "more available to support" her daughter with parenting (of D and B).

[289] J. C. wrote as follows (paragraph 9):

> I have committed to calling TC each morning to ensure that she is awake with the children. TC has informed me and I verily believe that waking in the mornings has been a problem in the past. TC has further informed me and I verily believe that due to changes in her epilepsy medication, TC no longer has such difficulty waking. However, we have agreed that a phone call in the mornings would provide a safe guard in case she does experience difficulty in the future.

[290] J. C. last saw TC with the children in December, 2004. Before then, she had observed them during access visits at TC's home, at the agency's access room, and at the [...] Shopping Mall. On those occasions, she said TC was good with the children, that the children were generally well-behaved, and that the children followed TC's directions.

[291] In testimony, she stated she did not observe the incident during which D's throat was injured and which occurred just before the apprehension. She learned about the events the next day.

[292] Asked to specify what supports she can now offer TC, she responded she could care or help care for the children "at certain times", and "whenever". She did not otherwise elaborate. Since their births, she thought she might have cared for the children about 10 times, most recently in September, 2004.

[293] Cross-examined regarding D's conduct during access visits she attended, J. C. said she was at five or six visits and observed no tantrums or violent outbursts but characterized him as "depressed, sort of", at times.

[294] J. C. testified she had read some agency file materials (such as school reports and portions of the Parenting Capacity Assessments) but claimed she did know the specific reasons her daughter and DG separated. She said she was aware there are some developmental concerns regarding D. She was imprecise about his medications and had little knowledge about delays or problems surrounding his motor skills. TC has told her about D's school conduct. She characterized B as "meek and mild".

[295] J. C. said she generally got along well with DG, before the separation. She was aware of the now competing plans for primary care of the children, but clearly did not know the specifics. She said the TC and DG families do not get along well. She has had limited contact with the paternal grandmother who, she asserted, "verbally abused" her over the telephone on an unspecified, past occasion. She seemed unaware of the extent to which the paternal grandmother provided care for the children (before they were apprehended). She also characterized CG as outspoken and critical, but did not elaborate. She has made no inquiries about potential future access (by herself) but added "It's important to me, " as she concluded her testimony.

[296] **E. R. M.** ("M.") of [...], Lunenburg County, is a friend of TC's who is employed as a "[...]" by the [...]. In her brief affidavit [Exhibit 3], she said she has known TC for about three

and a half years and visited TC and DG "socially about two times a week" before the parties separated. She and TC had infrequent contact immediately after the separation but, more recently, they have grown closer and see each other frequently.

[297] M. said TC began to foster animals about a year ago and commended her services. However, she has seen TC with the children only once (at a yard sale apparently before the apprehension) when the children "looked happy". She has no current knowledge, or recent observations, which would assist the court in its deliberations.

[298] When she testified, **TC** adopted an affidavit she had submitted in mid-October, 2004 (Exhibit 1, Tab 13).

[299] Her brief version of the events surrounding D's injury and medical treatment in late September is reproduced:

> 10. **THAT** Brenda Bryenton states in paragraph 9 that she was told by CG who is the mother of DG, that after my child D had received an injury to his throat where CG drove D and myself to the hospital where the child received medical attention and that I refused to go to the hospital a second time when the child complained of pain. Ms. Bryenton states that I allowed DG and his mother take the child while I went to a bar. It is true I called DG and his mother to come and drive the child to the hospital. The pain the child was experiencing was not related to his recent injury to his throat but rather, I believed, to be caused by the possible dislodging of the tube in one ear. I wanted this possibility to be checked out. DG, upon arriving, informed me that he would be taking the child to his place once he was finished at the hospital. Therefore it made more sense for DG and his mother to take the child to the hospital. It was not until after they left for the hospital that I asked my boyfriend if he would like to go out for a while.

[300] At paragraph 19, TC asserted the initial injury could not reasonably have been anticipated in any event. In testimony, TC

said she had phoned DG for assistance because he was the father, she does not drive, and her boyfriend does not drive either. She admitted she could have gone back to the hospital on the second occasion had she really wanted to (since she had prompted it), claimed the decision to go to the bar was spontaneous, and stated she had a cell phone with her in any event. When she did not hear from anyone, she said she assumed everything was okay and that DG had taken D home.

[301] She refuted allegations (paragraph 11) that she had irresponsibly delegated supervision of B to other children by stating there were two twelve year olds involved, both of whom "had their babysitting courses". (She did not state the source of this information. She did not see any certificates or make any inquiries.) She stated that on all relevant occasions she knew where the children would be and that her permission was always first sought.

[302] TC also explained (at paragraph 12) that some missed professional appointments were related to her relocation following the parents' separation; and one (for neurology) was related to transportation difficulties and other challenges in the immediate wake of the apprehension.

[303] TC refuted some allegations made by family support worker Dee McLean (paragraphs 16 - 20). She was particularly adamant in denying McLean's allegations about inadequate attention to and supervision of outdoor play. She conceded she could not recall the particulars of all the conversations (which MacLean recorded) and had difficulty refuting all of the words attributed to her by the worker.

[304] She listed the changes she had made in response to the agency's concerns (paragraph 21):

a) That I am much more careful about who is near my children and I keep a closer eye on how others interact with my children;

b) All poisons and medications are kept under lock and key;

c) I use an alarm to ensure myself that I will be up before the children are up.

d) The children are not permitted outside to play without myself being with them.

e) That I will in good faith participate in the programs mentioned in paragraph 6 of this my Affidavit.

[305] When asked why she had not earlier thought about an alarm she responded "I don't know". She also said she expects the children will "tell on" each other if there is inappropriate conduct.

[306] TC's January 28, 2005 affidavit appears in Exhibit 1, Tab 21. She noted her disqualification, at the time, for legal aid assistance because her boyfriend (L. M.) and she were cohabiting. She noted she had discontinued the services of the family support worker, but was continuing therapy with Mary Haylock. She reasserted her wish to have the children return to her care and committed to "follow anything the court wants, in order to have my children returned to me".

[307] In testimony, TC said M. only stayed with her for two weeks and that he left so she would qualify for legal aid assistance. Currently, she said their relationship "is on the back burner" so she can focus on the children. In Exhibit 2, Tab 42, she wrote:

30. L. has been a constant source of support for me and will continue to support me if my children are returned to my care.

31. My children have met L. and were beginning to develop a good relationship with him prior to their apprehension. They have not seen L. since their apprehension.

32. L. and I have committed to putting our relationship on the "back burner" so that I can focus on my children upon their return and so that my children are not faced with too many changes or disruptions. I expect that there would be a transition period from the foster home to my home.

33. At no time has L. been violent towards me or otherwise abusive. DG's allegations of abuse by L. are false.

34. I will never again place myself in an abusive relationship. I will not expose my children to domestic violence ever again. Currently, there is a peace bond to ensure that DG cannot contact me.

[308] M. did not testify.

[309] According to TC, after the first PCA from Elaine Boyd was released, she referred herself to her personal physician who, in turn (at her request) made a referral to Dr. Simon Brooks, a psychiatrist with South Shore Health Services. (Brooks was incorrectly referred to as a psychologist.) According to her, no psychiatric disorders were diagnosed. No report from Dr. Brooks was submitted; he did not testify. Thereafter, TC said she was referred to a neurologist for fine-tuning of her epilepsy medication. She said she had a consultation in early October, 2005 once she had time to settle following the apprehension.

[310] TC was asked to comment on S. D.'s evidence. She said she was surprised to learn of the magnitude of D's problems at school; and that it "scared her" that he could be so violent in that setting. If the children are placed with her, she foresees meeting with school officials and Carol McCready to develop appropriate safety plans for D and his classmates. She also said she anticipates D changing schools to [...] (where she lives). She has not yet approached the school about her plans. She is mindful that D will have a medications regime. She intimated she would like to see further assessment of D by specialists to

see if there are any other (as yet unidentified) reasons for his conduct. She said she is committed to ongoing therapy with McCready. She anticipates full-time daycare for B in the near-term, if need be, but she did not elaborate.

[311] TC's evidence was that there are community supports available, some of which are not under agency auspices. She is hopeful any related costs will be "subsidized". In Exhibit 2, Tab 42, she wrote:

> 11. **THAT** at paragraph 37, Brenda Bryenton states that the services had run its course. I agreed at that time and continue to agree that I do not require further assistance from the Agency as I can ensure the safety and well-being of my children without such services. Additionally, when necessary, I am able to access other services, including the Family Support Centre and [...] Women's Centre.

[312] Her evidence was that she has also been "independently researching parenting information and largely use (sic) written materials, not the internet". (She does not own a computer or have one in her residence.)

[313] TC's most recent affidavit (Exhibit 2, Tab 42) speaks as of January 19, 2006. She challenged, not for the first time, Bryenton's claims that she has not made much progress.

> 7. **THAT** Brenda Bryenton states at paragraph 25, that I have continually placed the children at risk despite the services provided. I have made a number of changes in my parenting behaviour and to ensure the safety of my children including: leaving a relationship that exposed my children to violence, installation of safety locks throughout the house, installing plug covers, using an alarm clock to ensure I wake before the children, purchasing safety helmets and ensured they are worn consistently, and implementing parenting strategies to better manage the children's behaviours and to ensure their safety.

8. **THAT** after the children were apprehended, I made further changes. I successfully addressed the issue of my waking with the children by changing my epilepsy medication. I am no longer taking Epival but take Keppra and Lamotrigine. With the new medication I do not find it difficult to wake in the morning, and now wake easily even without the aid of an alarm clock.

[314] At paragraph 9, TC wrote about the support of her parents. Her mother testified; her father did not.

[315] For reasons given elsewhere, I have disregarded the unsubstantiated allegations and rumours about possible sexual abuse of B.

[316] On the key issues (as identified by her) TC wrote:

24. **WITH RESPECT TO** paragraph 118, I did not lose interest in parenting after I separated from DG. I acknowledge that I did become more resistant to feedback as my life was in crisis at that time. The separation and the move was very stressful. This is attributable to the stress I felt after leaving DG. At that time, I was searching for new accommodations, being subject to DG's requests to take him back, and dealing with the separation in general. I do not view parenting as a chore and do not think my children are demanding of me.

25. **WITH RESPECT TO** paragraph 119, I take responsibility for the apprehension of my children and believe that I need to supervise them closely. I recognize that my children require much attention, and that they need structure, routine and consistent parenting and discipline. I believe that the access reports reflect that I have provided this to my children. Further the reports indicate that I continually and actively ensured their safety both in the access facilities, during outside play, at my home and at visits to the mall. I planned appropriate activities for my children during my access visits and implemented a consistent routine.

26. **WITH RESPECT** To paragraphs 127 to 129, I do not agree that I have not benefitted from the services provided. I have

> changed my parenting style, have implemented a consistent routine, and have taken steps to ensure my children's safety. I recognize that my children are high-needs and I am able and willing to respond to their needs. I will ensure my children receive any counseling and medications they require.

[317] At paragraph 28, TC emphasized her generally good health and that she has overcome past problems with wakefulness. She mentioned her mother's commitment to call her daily to ensure she is awake for the children. She stated her residence is "child-proofed" and that all dangerous materials are in high areas and locked.

[318] TC's safety plan is as follows:

> 39. I have developed a safety plan to be used if I suffer from a seizure with the children present. D or B will call my mother (Nanny) and inform Nanny that I have had a seizure. There is a safety plan on the fridge and I have obtained age-appropriate books to teach my children what to do when I have a seizure. All emergency numbers, including my mother's, my landlords, police, poison control, fire department, 911, and the hospital are posted in my kitchen. I know D can use the phone. I can anticipate when a seizure is coming and will turn off the stove when I feel one coming on. Additionally, I cook on the back burners.

[319] She agreed it was Bryenton's idea that she should not rely solely on the children in such circumstances and that adults should be part of her plan. In testimony, she volunteered that her current landlord would likely be available in the event of a medical crisis. However, he did not testify.

[320] Regarding sexualized behaviours attributed to her children, TC said she would address the issue "by ensuring my children are not alone together, and correcting such behaviour when it occurs".

[321] She also wrote:

> 41. I am aware that my children are high-needs and require more supervision, structure, and consistency as a result. My children will not be left unsupervised. If necessary, I can ask my mother for assistance in supervising the children if such a need arises.
>
> 42. While in my care, my children were always clean, well fed, and received the medical attention they required. In the past, I have been an excellent advocate for my children's medical needs. I ensure they see doctors when necessary and seek second opinions when I do not agree with their diagnoses. For example, I sought a second opinion when D was diagnosed with Tourette's Syndrome. I will continue to ensure that my children's needs are met in the future.

[322] Asked to explain what she meant by "high needs", TC struggled to elaborate.

[323] TC lives in a two-bedroom, ground-floor apartment of a two-apartment house which has a small backyard, suitable as a play area. Regarding a nearby brook, she stated:

> ...At the other side of the house, past the driveway there is brook running through the property. The brook is a safety concern that I am aware of and have taken steps to address this. My landlord has committed to putting up a fence in the spring after the ground dries up. Additionally, I am currently seeking larger accommodations. I am applying for low-income housing.

[324] She proposes to "give each child their own bedroom, and I will sleep in the living room" which, she said, will "ensure each child has privacy and address concerns related to the sexual acting out of the children" and that her children cannot wake or leave without her knowing.

[325] TC exemplified some of the books and materials she has studied and her efforts to implement (during access) some of the methods she has read about. She mentioned a recent course she completed [Exhibit 14;and Exhibit 1, Tab 26, page 2]; however, no testimony was forthcoming from the program organizers or presenters. Exhibit 14 confirms participation and completion of a "Women's Life Enhancement Program" in late April, 2005, but there is scant evidence about its value or significance. This is important because Bryenton testified that the community resources identified by TC were of general value but not sufficiently refined to meet the very special needs of B and D.

[326] TC's summary of her access visits does not differ materially from the evidence of other witnesses and therefore, will not be re-stated. Allowing that access was always in a "controlled setting", she said she expects to be able to parent equally well without observers or other agency support or intervention.

[327] Asked about CG's past care of the children, TC challenged some of the detail (eg whether lengthy stays were for full or part-days, etc.), but did dispute the general of CG's evidence [Exhibit 1, Tab 17, paragraph 6]. She agreed she initially supported CG's application for restricted foster placement but said this was only in preference to possible placement with strangers. She refuted the allegations made against her by CG to Elaine Boyd. She denied threatening CG at any time and that she had characterized CG as somebody who should be locked up in a psychiatric ward. She agreed she soured on any possibility of placement of her children with CG after the final PCA was completed.

[328] Regarding allegations of sexualized language by CG in the children's presence, TC insisted she personally had heard the same (in the children's presence) "on several occasions".

[329] In testimony, TC said there is still a Peace Bond in effect which prohibits DG having contact with her. In terms of potential transition problems or access should she achieve custody, she thought these were not insurmountable.

DG's (the father's) case

[330] DG's affidavit of April 12, 2005 in Exhibit 1, Tab 30 was admitted into evidence, by consent, notwithstanding his decision not to testify on his own behalf. In April, 2005, DG said he was engaged in counselling with Wawin for "anger issues" and with the children for play therapy (McCready), family skills (Carmichael), and addictions counselling (Middelton). He took exception with the apprehension. He stated that while they were in his care the children had never been injured, had always received medical attention, were properly supervised, and had the necessities of life. He asserted that agency criticisms of his parenting (before he and TC separated) were "false and manufactured in an attempt to justify the inappropriate apprehension". He wrote that the agency's parenting concerns with TC were "wrongly blamed on me". He sought re-testing under the (first) PCA, declared the report of Art Fisher to be "false", denied addiction to VLTs, denied any problems with alcohol or drugs, and denied all allegations of abuse of TC and/or the children. He concluded by asking for an opportunity to demonstrate that he can care for the children.

[331] For the reasons stated, there was no cross-examination of DG on his affidavit or no elaboration. Although he did not testify, in his closing submissions, DG asked that the children be placed in his care.

Discussion/Decision

[332] Relevant to the outcome are the following sections of the **CFSA**:

- The preamble to the **CFSA**.
- The purpose of the **CFSA** [section 2(1)]; and paramount consideration [section 2(2)].
- The definition of child care services [section 3(g)].
- Best interests of the child [section 3(2)].
- Agency functions [section 19].
- Services to families and children [section 13].
- Substantial risk [section 22(1)] and need of protective services [section 22(2)].
- Disposition hearings [section 41(1)]; and evidence taken at the protection hearing [section 41 (2)].
- Disposition orders [section 42] and total duration of disposition orders [section 45].
- Restrictions on removal of children [section 42 (2)];
- Placement considerations [section 42 (3)]; and time limitations [section 42 (4)].
- Review applications [section 46(1)]; court powers on review [section 46(5)]; and factors to be considered upon review [section 46(4)].

- Consequences of a permanent care and custody order [section 47(1)]; access upon such an order [section 47(2)].

- Termination of a permanent care and custody order [section 48].

[333] I am mindful that directions regarding the relevant issues and scope of evidence upon review of disposition [in some jurisdictions, called status review] has been given by the Supreme Court of Canada in **Catholic Children's Aid Society of Metropolitan Toronto v. M.(C.)** [1994] 2 S.C.R. 165.

[334] In approving the order at the disposition hearing in the present case, the court necessarily considered the evidence then presented, as well as the evidence taken at the protection hearing [section 41(1); section 41(2)] and the agency's plan of care [section 41(3)]. Also relevant at disposition was the potential scope of supervision orders [section 43 (1)]. At the variation hearing, regard was had to section 46, notably subsections (3) and (4).

[335] The foregoing is important because of the legal framework mandated by the **M.(C.)** case. Some of the relevant passages (*per* L'Heureux-Dube J.) follow:

> ..... As a starting point for this analysis, one must look at the [Ontario] Act as a global legislative scheme whose purpose and rationale should not be overshadowed by an unduly restrictive and strict interpretation of the sections of the Act, which would be at cross-purposes with the whole philosophy of the Act .....
>
> ..... Finally, the only determination to be made by the court in a status review application is whether the order previously made to protect the child continues to be required for the future protection of the child. In this regard, courts on a status review application are not faced with a review of the rightness or wrongness of the original

finding that the child was in need of protection. In the words of H. D. Wilkins in *Status Review Applications*, Canadian Bar Association (Ontario), Continuing Legal Education Program on *The Child and Family Services Act*, March 22, 1986:

> A status review presupposes an earlier court hearing, a finding that the child was in need of protection, and a resultant court order which is still in existence. It is that order which is being reviewed on the status review application. It is necessarily an order of supervision, an order of Society wardship or an order of Crown wardship.
>
> The underlying philosophy of the Act of balancing the best interests of children with the importance of keeping intact the family unit, without neglecting the protection of children in need of protection, must be kept at the forefront of this analysis. Keeping in mind these purposes and the particular provisions dealing with the status review hearing.....

[336] Following an analysis of the jurisprudence in this subject area it was stated:

> ..... It is clear that it is not the function of the status review hearing to retry the original need for protection order. That order is set in time and it must be assumed that it has been properly made at that time. In fact, it has been executed and the child has been taken into protection by the respondent society. The question to be evaluated by courts on status review is whether there is a need for a continued order for protection. This is why I cannot agree with the respondent society and the Official Guardian that, once a finding of the need for protection has originally been made, there is no requirement, upon a status review, to consider whether the child is or is no longer in need of future protection. Children's needs are continually evolving as they are governed by occurrences in the lives of children and their families which cannot be held still in time. These ever-changing circumstances must be taken into account. In this regard, just as it is important to allow in new evidence in order that the court may have accurate and up-to-date knowledge of the situation at hand, similarly courts must continually evaluate the need for state intervention in order to insure that the objectives of the Act are being met .....

The question as to whether the grounds which prompted the original order still exist and whether the child continues to be in need of state protection must be canvassed at the status review hearing. Since the Act provides for such review, it cannot have been its intention that such a hearing simply be a rubber stamp of the original decision. Equal competition between parents and the Children's Aid Society is not supported by the construction of the Ontario legislation. Essentially, the fact that the Act has as one of its objectives the preservation of the autonomy and integrity of the family unit and that the child protection services should operate in the least restrictive and disruptive manner, while at the same time recognizing the paramount objective of protecting the best interests of children, leads me to believe that consideration for the integrity of the family unit and the continuing need of protection of a child must be undertaken.

The examination that must be undertaken on a status review is a two-fold examination. The first one is concerned with whether the child continues to be in need of protection and, as a consequence, requires a court order for his or her protection. The second is a consideration of the best interests of the child, an important and, in the final analysis, a determining element of the decision as to the need of protection. The need for continued protection may arise from the existence or the absence of the circumstances that triggered the first order for protection or from circumstances which have arisen since that time. As the Court of Appeal said:

> We agree that a children's aid society, as the representative of the state, must continue to justify its intervention by showing that a court order is necessary to protect the child in the future.

Regardless of the conclusion reached at this first stage, the need for continued protection encompasses more than the examination of the events that triggered the intervention of the state in the first place. As the Court of Appeal further noted:

> We do not agree, however, that this means, in the absence of proof of some deficiency in the present parenting capacity on the part of the natural parent, that the child must be returned to the care of the natural parent. A court order may also be necessary to protect the child from emotional harm, which would result in the future, if the emotional tie to the care givers, whom the child regards as her psychological parents, is severed. Such a factor is a well recognized consideration in determining the best interests

> of the child which, in our opinion, are not limited by the statute on a status review hearing.

This flexible approach is in line with the objectives of the Act, as it seeks to balance the best interests of children with the need to prevent indeterminate state intervention, while at the same time recognizing that the best interests of the child must always prevail. In this regard, I agree with the conclusions reached by Professor Phyllis Coleman in "A Proposal for Terminating Parental Rights: `Spare the Parent, Spoil the Child'" (1993), 7 *Am. J. Fam. L.* 123, at p. 133:

> Focus on parental fitness is inappropriate in many termination cases. Rather, when the child is young, emphasis should be on needs and interests of the child. . . . [P]arental rights should be terminated if . . . it is determined it would be in the best interests of the child to terminate.

Thus, the best interests of a child under the Act are to be decided through the balancing of all the considerations set out in s. 37(3), including consideration for the family, the importance of the continuity of care, the child's physical, emotional and psychological needs as well as the other criteria set out in s. 65(3). In determining what is in the child's best interest, the Act provides extensive guidance. Notwithstanding the specific provisions of the Act, however, traditional discussions with respect to best interests remain highly relevant. Especially apposite to the case at hand is the English Court of Appeal's appreciation of the breadth of best interests in *In re McGrath*, [1893] 1 Ch. 143, at p. 148:

> The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense.

This wide approach was accepted in *Re Moores and Feldstein* (1973), 12 R.F.L. 273, in which the Ontario Court of Appeal concluded, at p. 287, that the benefit of a child's bond to her mother was encompassed within the best interest test.

I conclude, therefore, that it is the duty of the court to view all the circumstances relevant to what is in the interest of a child, including a consideration as to whether the evidence disclosed that the child would benefit from the tie of a child to its mother.

The wide focus of the best interests test encompasses an examination of the entirety of the situation and thus includes concerns arising from emotional harm, psychological bonding and the child's desires, which the Act contemplates as well.

Within the realm of best interests perhaps the most important factor in the present case, as probably in many others, is regard to the psychological bonding of a child to her or his foster family. Section 37(3) imports such considerations as the relevance of a child's emotional needs, the significance of continuity of care and the child's views. In *C.C.A.S. of Metro. Toronto v. H.(K.)* (1987), 6 R.F.L. (3d) 1 (Ont. Prov. Ct. (Fam. Div.)), reversed (1988), 21 R.F.L. (3d) 115 (Ont. Dist. Ct.), affirmed (*sub nom. G.(C.) v. H.(J.)* (1989), 23 R.F.L. (3d) 300 (Ont. C.A.)), in reversing the trial judge's finding, the District Court concluded that the judge of first instance had failed to give sufficient weight to the evidence of the potential for long-term psychological harm that may arise from the child's being separated from his psychological parents. In *G. (A.) v. C.C.A.S., Metro. Toronto*, Ont. Gen. Div., No. 105/89, September 19, 1990, summarized at [1990] W.D.F.L. 1222, Matlow J., dismissing the appeal of the child's birth mother from an order for Crown wardship without access, relied on the fact that harm would be caused to the child by removing him from his foster family. Such considerations are not limited to child welfare cases, nor are they new. In fact, this Court examined the importance of bonding to psychological parents in *Racine v. Woods*, *supra*, at p. 188:

> The real issue is the cutting of the child's legal tie with her natural mother. This is always a serious step and clearly one which ought not to be taken lightly. However, adoption -- given that the adoptive home is the right one and the trial judge has so found in this case -- gives the child secure status as the child of two loving parents. While the Court can feel great compassion for the respondent, and respect for her determined efforts to overcome her adversities, it has an obligation to ensure that any order it makes will promote the best interests of her child. This and this alone is our task.

In *King v. Low, supra*, at p. 101, McIntyre J. held:

> . . . the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. . . . The welfare of the child must be decided on a consideration of

> these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

These concerns apply in matters of guardianship, as well. (See *New Brunswick (Minister of Health and Community Services) v. C. (G.C.),* [1988] 1 S.C.R. 1073 , at p. 1079.)

Among the factors in evaluating the best interests of a child, the emotional well-being of a child is of the utmost importance, particularly where the evidence points to possible long-term adverse consequences resulting from the removal of the child from his or her foster family and the return to his or her birth parents. The focus of maintaining family units is only commensurate as long as it is in the best interests of the child, otherwise it would be at cross-purposes with the plain objectives of the Act, as Wilson J. noted in *Racine v. Woods*, *supra*, at p. 185:

> . . . it is the parental tie as a meaningful and positive force in the life of the child and not in the life of the parent that the court has to be concerned about. As has been emphasized many times in custody cases, a child is not a chattel in which its parents have a proprietary interest; it is a human being to whom they owe serious obligations.

Finally, it is clear that the best interests of a child require different solutions over time and such interests may have to take precedence over any parental interests. As was recently said in *Young v. Young*, *supra*, at p. 60, the "furtherance and protection of the child's best interests must take priority over the desires and interests of the parent". Further, as examined in *New Brunswick (Minister of Health and Community Services) v. S.G. and S.A.* (1989), 100 N.B.R. (2d) 357, at p. 360, a child's best interests must take precedence over all other considerations including the effect of delay:

> While it is correct to say there were administrative delays in the processing of the guardianship application in this case, there is no proof that the delays were deliberate or that there was any bad faith on the part of anyone involved in the proceedings. Moreover it is to be observed that the trial judge never lost sight of the fact that the sole issue before him was to determine what was in the "best interest" of the child .....

[337] And later:

> While cases of this nature necessarily imply the application of statutes and legal norms, they inescapably touch on human emotions and are inextricably linked when the determination of the fate of young children and the natural desire of parents to bring up their children collide. Every judge in this country would probably prefer not to have to make these difficult decisions. But, in the last resort, courts have to decide and, in order to decide, the law as written by legislatures must be their guide.....

[338] The combined effect of the relevant **CFSA** sections and the above analysis is that evidence at a post-disposition (or status) review hearing may properly be confined to an examination of the circumstances since the last order was imposed.

[339] The circumstances at the time of each prior order would be a matter of record. In some instances, the last order will be the one made at disposition. In other instances, where one or more review orders also have been made, the starting point normally will be the last review order, not the original disposition order.

[340] In the present case, however, because of the sudden turn in events in September, 2004, counsel agreed that the current hearing should take the disposition order as its "baseline".

[341] While the main focus may be the circumstances since the last order, reviews are not conducted in a vacuum; they are conducted against the background of accumulated evidence in a continuous proceeding.

[342] It is in light of the past evidence that change (or lack of change) is measured. Once the evidence has been circumscribed, the "twofold examination" called for in **M. (C.)** may be conducted.

[343] In practise, much evidence in uncontested hearings comes in the form of affidavits and reports, with little or no oral testimony. In aid of consensual orders, counsel may seek to reserve (on the record) the right to subsequently cross-examine on affidavits and other evidence, or perhaps to later lead reply evidence. Even in those situations, however, the court's decision must be made on evidence then found to be admissible, by consent or otherwise.

[344] I have frequently suggested the prudent course is for each party to address the prevailing circumstances by affidavits at each stage; and, in consensual matters, to clearly delineate the disputed from the undisputed facts, and to state the agreements, if any, regarding the future use of that evidence, before the court makes its findings and renders its decision. The risk in not doing so is that the court may later refuse to receive evidence predating the last order on the basis that the facts have already been conclusively determined, and that to permit such evidence would be tantamount to a retrial. In the present case, this is not without significance because the agency's evidence up to and including disposition was admitted without any replies or responses from the parents, without opposition, and with no reservation of cross-examination or other rights. Indeed, everything was consensual.

[345] As noted earlier, the Supreme Court of Canada has mandated a two-fold analysis in status review/review of disposition cases. The first consideration is whether the children continue to be in need of protection and, as a result, need a court order for their protection. This includes an examination of the events that triggered agency intervention (or its continued intervention, if there have been multiple reviews). The second consideration is the children's best interests against the entirety of the situation.

[346] Broadly speaking, on the first arm of analysis, the agency's position as delineated by its final plan of care is that both children in the present case continue to be in need of protective services because there is still a substantial risk that they will suffer physical harm as a consequence of inadequate supervision and protection by the parents; because there is still a substantial risk they will suffer emotional harm which the respondents cannot or will not remedy or alleviate; and that there is still a substantial risk the children will suffer physical harm flowing from chronic and serious neglect which the respondents similarly cannot or will not remedy or alleviate. Early agency intervention was against a backdrop of chronic family violence and other issues, including alleged addictions. The decision to take the children into care was prompted by events centered on inadequate supervision, by minimal progress in addressing identified child protection issues, and by the children's deteriorating behaviours pointing to emotional harm as contemplated by **CFSA** section 22 (2) (f).

[347] The parents were twice assessed in regard to parenting capacity. In each instance, the recommendations were against returning the children to either parent. An assessment of the paternal grandmother resulted in a recommendation against placement with her.

[348] Regular access by the respondents has continued throughout. In this controlled context, no serious issues have emerged regarding parenting skills, meeting the children's physical needs, or supervision. Nobody has questioned the respondents' commitment to access, or their outward affection for B and D. The respondents (who testified) verbalized their concern for the children's welfare.

[349] At the risk of understatement, both children have special needs which have been the subject of exhaustive professional assessment, diagnoses, treatment, and other remedial action which has necessarily extended into the school setting (for D) and which will likely follow for B. In foster placement, they have needed intense care and constant supervision. They appear to be settled in their current placement where they are the beneficiaries of exceptional foster-parenting.

[350] Regarding TC's plan for return of the children to her, there remains a central concern that despite counselling and her ingestion of basic parenting information from a variety of sources over many months TC will be unable to successfully parent both children full-time with limited family supports and questionable community-based assistance. As noted by Boyd, documented lack of progress (outside of access) is most likely explained by personality traits that chronically lead TC to place her own needs before the children's.

[351] Although TC has committed to voluntary continuance of services, I find she does not appreciate the magnitude of the task. This may help explain why she has not fully come to grips with, or developed concrete plans for, housing, schooling, transportation, household finances, or counselling and other professional appointments for the children. With respect, she has a very weak and vague support network in circumstances which call out for a strong and competent one. Given the exceptional amount of evidence by a variety of witnesses who exemplified

the children's behaviours and identified a wide range of needs, I was struck by TC's abbreviated and simplistic strategies for addressing the issues. With respect, for example, she did not seem to fully appreciate that a whole team of professionals in D's school setting has been needed to constrain his unpredictable outbursts. Or that his sexualized conduct is exceptional for such a young child and therefore requires exceptional strategies.

[352] Undoubtedly fear of permanently losing her children was a prime motivator in TC's apparent change in attitude toward agency and service providers. Unfortunately, her capacity to follow through has often waned as such fear dissipates; and her conventional behaviours resurface, predictably. It is therefore not surprising that TC presents a generally optimistic view of her prospects while the agency's view is guarded, at best.

[353] Notwithstanding her admitted good intentions, the weight of the evidence is that she is highly unlikely to successfully parent on a full-time basis; and likely as not she will revert to old patterns and not recognize, and therefore not respond appropriately, to the special needs of these children who require constant care and supervision.

[354] Lurking in the background is significant potential for conflict with DG and CG over access – another subject TC has not thoroughly considered. That there was an incident of personal violence with DG at a public mall after the children were taken into care is obviously of concern, keeping in mind that the current no-contact prohibition has a limited life expectancy. I find that the risk of the children's exposure to more inter-personal conflict has only temporarily abated by the reality of the children's current placement and supervised access.

[355] I am obliged to consider DG's plan, even though he elected not to testify. I have concluded, as did Boyd, that he is likely distraught about his family situation but is unable or

unwilling to accept responsibility for the significant role he has played in bringing the case to its present stage. He continues to lay the blame at TC's doorstep. On the key theme of actual or threatened family violence, involving both TC and his own mother, DG has not followed through with appropriate counselling and related services even though court-directed, and even though he knew or ought to have known it would be front-and-centre when assessing the viability of his plan. In the same vein, he has baulked at addictions assessments. As a consequence, from the evidence, there remains a long list of uncontradicted, negative assertions which auger against his plan. It includes but is not limited to allegations of physical and emotional abuse of TC, inappropriate sexualized comments and language in the presence of the children, exposure of the children to pornography, volatile personality and explosive temper, resistance to treatment regimes, a conflicted relationship with his mother, limited understanding of the children's special needs (outside of access), and a precarious financial situation.

[356] Regarding CG's plan, for the reasons expressed earlier, placement of the children with her under the **CFSA** is not an option. It may only be considered should the **CFSA** action be dismissed.

[357] Looking at the children's situation, they are stable within their current foster placement. Allowing that episodic incidents continue, by and large the children's physical and emotional circumstances have been "normalized". This is largely due to the efforts of the foster parents. I am mindful that the socioeconomic situation of the foster family contrasts starkly with that of TC and the other respondents. That, coupled with their extensive parenting and life experience, certainly better equips them to maximize the children's potential and to manage their needs.

[358] The court has not had the benefit of much expert testimony on the question of the actual or potential "psychological bonding" of the children, despite the Supreme Court of Canada's admonition that in some cases the evidence of bonding may be of the utmost importance.

[359] TC has remained a dedicated parent in a tightly managed access arrangement. Her attendance record has been enviable. Her interaction with the children and her conduct has been uniformly appropriate. Undoubtedly, she and the children have derived benefit.

[360] In this case, as in others, attention has been drawn to perceived lulls in service provision or outright refusals, notably after the agency decided to seek permanent care and custody. Under section 13 of the **CFSA**, the agency was obliged to take reasonable measures to provide services to promote family integrity. However, it was not obliged to exhaust every resource conceivably at its disposal. Against the historic background of this case, I am satisfied the agency met its statutory duty in this regard.

[361] I agree the agency witnesses who observed that more than once when it was thought that TC was making progress there was yet another intervening crisis or unexpected turn of events which set her back and only served to underline the concerns the agency had long ago identified.

[362] The following passage from **Nova Scotia (Minister of Community Services) v. L.L.P. et al** (2002), 211 N.S.R. (2d) 47 provides guidance:

> The test is not the hopelessness of the mother or the failure of the public agency to place all its resources at the disposition of the mother. The court, as well as others, has often repeated that the only test is what is in the best interests of the children.

[363] In considering the children's best interests in the context of the entire situation, the court must consider the factors set out in section 3(2) of the **CFSA**. The Supreme Court of Canada has directed that the best interests test necessarily has a wide focus. The emotional well-being of a child when identified as a protection issue is a very important factor, particularly if the evidence points to possible long-term adverse consequences to the child should she/he be removed from her/his current placement and returned to her/his birth parents.

[364] Crucial to the outcome in the "best interests" framework is the distinction to be drawn between the respondents as outwardly successful access parents versus their potential role as full-time parent(s) of two relatively young, and demanding special needs children. Within the artificial confines of supervised access, it would be surprising if the respondents did not make improvements in addressing issues such as supervision, safety, routine, nutrition, etc. Indeed, each respondent may have achieved some limited appreciation of the children's special needs and the impact of the past conduct of the adults on them. However, the cumulative effect of all the unresolved and outstanding issues is that the children would be best served by placement elsewhere than with any of the respondents. I am satisfied that each of them would be soon overwhelmed. To place the children with any one of the respondents at this stage would be setting them up for failure and, more importantly, would expose the children to unnecessary turmoil in circumstances where there is little prospect for success and every prospect for failure and re-apprehension.

[365] In making my decision, I have considered the factors set out in section 46(4) of the CFSA. I am mindful of the consequences of my order [section 47(1)]. I am satisfied that less intrusive measures have been attempted but have failed

[section 42(2)]. I am aware of section 48 which addresses the circumstances in which a permanent care and custody order may be terminated, including those dealing with variation applications.

[366] On the evidence as a whole, I determine that the children continue to be in need of protective services; and that it is in their best interests that they be placed in the permanent care and custody of the agency.

[367] Under section 47 (2), the court may make an access order but it must not do so unless satisfied that one of the circumstances set out in subsection (a) - (d) pertains. Here the agency has declared its intention to place the children for adoption and introduced evidence that satisfies me that the prospects for adoption placement are quite good. The onus is on the parents to establish on a balance of probabilities that exceptional circumstances exist. I find they have not done so. Save for final visitations by the respondents under agency auspices, there shall be no order for access.

[368] No evidence was introduced on the subject of the children's religious faith. Accordingly, I make no order under **CFSA** section 50 (2).

[369] In light of my placement order under the **CFSA**, it is unnecessary for me to consider any orders under the **MCA**.

[370] I direct Mr. Allen to submit an appropriate order within ten days.

Dyer, J.F.C.