SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. C.C., 2010 NSSC 129

Date: 20100409
Docket: SFHCFSA-61779
Registry: Halifax

Between:

M.C.S.

Petitioner

v.

C. C. , J. S. and C. C.

and

R. W. J.

Respondents

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:

"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 relative of the child."

Editorial Notice

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

Judge: The Honourable Justice Beryl MacDonald

Heard: January 11, 12, 13 and February 9, 2010 in Halifax, Nova Scotia

Written Decision: April 9, 2010

Counsel: Peter McVey and Katherine Carrigan, counsel for MCS
Patrick Eagan, counsel for C. C. and J. S.
Wayne Matheson, counsel for R. W. J.

By the Court:

[1] This is a review hearing to determine whether the Disposition Order issued in this proceeding dated June 22, 2009 should be changed in any way. That Order placed the adolescent, who is the subject of these proceedings, in the temporary care of the Minister of Community Services. Access between the adolescent and the Respondents, his grandparents, was to be as arranged by an agent of the Minister upon reasonable terms and conditions. The Minister's plan for this adolescent was to provide him with a variety of services in a secure residential care facility. The Minister reviewed the history of the provision of community services to this family and determined it had no further services available in this community that would meet the needs of this adolescent.

[2] On November 22, 2008 this adolescent was taken into the care of the Minister. At the time the Minister decided to take this adolescent into its' care, it did so in response to the adolescent's grandparents acknowledgment that they were unable within their home to prevent the adolescent from engaging in risky behaviours that may harm himself or others. This adolescent would leave their home without their permission whenever he chose to do so. When out on the street he had engaged in antisocial, personal risk, and criminal behaviors.

[3] The adolescent and his grandparents had participated in numerous services provided by the Minister since he came into their care when he was 4 almost 5 years of age. Given the circumstances existing in November 2008 it was evident that none of those services had achieved the goal of preventing the situation then faced by the Minister and the adolescent's grandparents - an adolescent who was totally out of control, who would not obey instruction, and who presented as a risk to himself and to his community. A list of the services delivered to this family both before and after November 22, 2008 is attached as Schedule "A" to this decision.

[4] The grandparents did not object to the interim finding required by section 39 of the *Children and Family Services Act,* S.N.S. 1990, c-5 that there were reasonable and probable grounds to believe the adolescent was in need of protective services and that, on an interim basis, he should be in the care and custody of the Minister. That finding and Order is dated December 4, 2008.

[5] On February 26, 2009 the grandparents consented to the finding that the adolescent remained in need of protective services. At this time the adolescent, as a result of charges proceeding through the criminal justice system, had been remanded to the Nova Scotia Youth Centre at Waterville, Nova Scotia. The

grandparents wanted him to live with them upon release. Where the youth was to live was to be a topic of discussion at further appearances.

[6] At an appearance on April 24, 2009, the grandparents informed the court they would contest a continuing finding that the adolescent was in need of protective services. This determination would be part of the disposition hearing that, according to the provisions of the *Children and Family Services Act*, was to be held on or before May 27, 2009. Due to difficulties in scheduling this hearing could not be set down for the five days requested until June 22-26, 2009.

[7] On May 12, 2009 the grandparents requested this proceeding come back before the court as an emergency review of the protection order. The grandparents had been informed by the Minister that the adolescent was to be sent to a secure residential treatment facility in Utah, United States of America. The requested hearing was scheduled to be held June 1, 2009.

[8] On June 1, 2009 this court heard evidence and rendered an oral decision finding the adolescent to be in need of protective services and approving the Minister's plan to have the adolescent reside and receive program services in a secure residential treatment facility even if that facility was out of the province of Nova Scotia and out of Canada.

[9] On June 22, 2009, the date to begin the Disposition hearing, the grandparents decided not to have a hearing in respect to disposition and they did not object to the finding that the adolescent remained in need of protective services and, at least on that date, that he should remain in the temporary care and custody of the Minister. At this time the adolescent was residing at the Wood Street Center, a secure residential treatment center in Truro, Nova Scotia, although all parties knew this facility limited their services to a 30 day period. Generally services at this center were limited to a maximum of two 30 day periods. The parties also knew the placement in Utah had been rejected by US authorities. All parties agreed it would be appropriate to return this proceeding to the court as part of a disposition review. That review was scheduled as a review pre-trial for September 29, 2009.

[10] At the review pre-trial on September 29, 2009 the Minister informed the court a residential placement for this adolescent had been found at the Bayfield Treatment Center in Ontario to which he had been transferred. The grandparents wanted to have the adolescent returned to their care and requested hearing dates be set for the disposition review. Those dates were set for January 11-13, 2010.

The grandparents also requested the court to set specific terms for their access with the adolescent should he remain at Bayfield. This issue also was to be determined at the January hearing.

[11] The review disposition hearing was held, not only from January 11-13, 2010, but also on an additional day on February 9, 2010.

Disposition and Plan of Care

[12] When reviewing a disposition order section 46 (4) of the *Children and Family Services Act* requires the court to consider:

(a) whether the circumstances have changed since the previous disposition order was made;

(b) whether the plan for the child care that the Court applies in its decision is being carried out;

(c) what is the least intrusive alternative that is in the child's best interests, and

(d) whether the requirements of subsection (6) have been met.

[13] Subsection (6) provides jurisdiction for the court to make a further orders of temporary care and custody unless it is satisfied that the circumstances justifying the previous order for temporary care and custody are unlikely to change within a reasonably foreseeable time within the time limitations imposed by the Act. This section of the Act has been referred to by D.A. Rollie Thompson, in "The Annotated Children and Family Services Act" August 1991, as "a mandated reassessment of the foreseeability" of return of the child to its family of origin.

[14] The power of the court upon a review is outlined in section 46 (5). The court is directed to consider the child's best interest and in doing so it has the authority to vary or terminate all or any part of the previous disposition order and to make any of the other disposition orders available pursuant to section 42 subject to the time limitations set out in the Act.

[15] Because this adolescent is over 12 years of age, the effect of section 45 (2) (c) and (3) is that there is no limitation on the number of temporary care and

control orders that may be granted. There is no legislated end point other than the child reaching an age when the provisions of the *Children and Family Services Act* would no longer apply to that child because of his age. However these orders for temporary care and custody must be reviewed yearly.

[16] During the present hearing no evidence was provided to suggest that circumstances had changed since the previous disposition order was made. The Minister was carrying out the plan it provided when the Disposition Order was made with the exception that Bayfield is not a secure residential facility. The question to be determined in this review is whether continuing with the Minister's plan is the least intrusive alternative that is in the child's best interests. Given the testimony of the adolescents's grandmother, who said the adolescent cannot return to live in her home at this time, it is unlikely this adolescent can return to the care of his grandparents in the near future.

[17] During this review the grandparents argued that there is a less intrusive plan of care that should be developed for this child. Their request is that I order the Minister to provide intensive services to this adolescent in this community ie. the Halifax Regional Municipality.

[18] In conducting this review, as was the case in respect to my finding during the June 1st hearing, I, as a justice of the Supreme Court of Nova Scotia, must remain within my jurisdiction when rendering my decision. In my oral decision at the conclusion of the June 1st hearing I said,

> "The principles applied by the Supreme Court of Canada in a case known as Nova Scotia Minister of Health v. J.J. are applicable, and they confirm that when the province has a child in care the court is required to review and monitor the province's judgment and decisions about the care the child is to receive and the programs to be delivered. The issue before me is what is the scope of that court review.
>
> The Children and Family Services Act is the document that tells the Minister and the court what we are to do. It does not tell the Minister how to carry out its functions but it sets the goal post against which the Minister's decisions can be measured. The over arching principle is the best interest of the child and the legislation has articulated some examples of best interests......
>
> The Children and Family Services Act provides more factors to take into account in assessing best interests in section 2. Those factors were reviewed by counsel for the Minister in this proceeding. These are factors that cannot all be

achieved at the same time. The requirement is that they be considered and in doing so one must use a measure of practicality and reasonableness....

The Minister argues that my authority in this case is restricted to either choosing the plan of the Minister or the plan of the family.....

In addition, the Minister suggests I do not have authority to reject the Ministers present plan and substitute one developed by myself. Further, if I did have this authority, it is argued I do not have sufficient precise material presented to me in this hearing to develop any such plan.

After reading the submissions of the Minister and of the family, I am satisfied that implicit in the Children and Family Services Act itself is a supervisory function required of this court similar to that described in the Minister of Health v. J.J. I am not satisfied that before I exercise that supervisory function there must be a formal application before me by way of judicial review. The requirement for court supervision is built into the Act and does not need the exercise of a parens patriae jurisdiction in order to ensure that the Ministers decisions are in the best interest of the child.....

However, the court supervision that is required is not without structure,....

The Children and Family Services Act requires all actions and decisions taken pursuant to its provisions to be examined through the prism of what is in the child's best interest. The court is not merely to be a rubber stamp in approving the Minister's decisions. The court must independently evaluate what is in the child's best interest and not consider itself to be bound by what the Minister and those employed by the Minister or the family or the child believes to be in that child's best interest. However, courts have been directed to recognize that the Legislature has given the Minister the authority to devise plans and those decisions, as incorporated in the Minister's plans of care, are to be given great respect and careful review. This court is not authorized, nor can it be, to substitute its own plan of care. That is an administrative function....

This court can decide, within those parameters that an important best interests issue has been overlooked by the Minister and, therefore, request the Minister to reevaluate its decision and plan taking into account that overlooked factor or factors. As a result, I've decided that my jurisdiction is to determine whether there is a best interest factor in respect to (the adolescent) that has been overlooked by the Minister in developing its plan for him."

[19] In *Re: J. (J.)* 2005 SCC 12, Justice Abella in delivering the decision of the Supreme Court said:

> 21 To meaningfully fulfil its statutory duty to measure the proposed services against the best interests standard, the court's jurisdiction must of necessity include the ability to amend proposals suggested by the Minister. That in turn means that in putting the Minister's plan on one scale and the adult's welfare on the other, the court must be able to attach reasonable terms and conditions to the Minister's suggestions (see Nova Scotia (Minister of Community Services) v. K. (L.) (1991), 107 N.S.R. (2d) 377 (N.S. Fam.Ct.) at paras. 62 and 63, per Daley J.F.C.). It makes no sense to give a court jurisdiction to assess the Minister's plan without including in that authority the ability to refine the government's intervention to ensure legislative compliance.....
>
> 24 In assessing the terms and conditions it considers most conducive to the adult's welfare under s. 12 and best interests under s. 9 (3) (c) , the court is of course obliged to consider the availability of services and the Minister's capacity to provide them. However, having made the decision to take responsibility for the adult, the state is obliged to develop a plan in that adult's best interests.

I consider these comments to also apply to decisions made pursuant to the *Children and Family Services Act.*

[20] The essence of the request put forward by the grandparents in this proceeding, as it was during the June 1st proceeding, is that I should make the decision that it is not in this adolescent's best interest to receive services outside of the Halifax Regional Municipality. Their submission is that I do have jurisdiction to then order the Minister to put together a plan to provide the services required by the adolescent in his own community. At one time these grandparents wanted the adolescent to live with them so that services would be provided to them as a family unit. However, the grandmother was quite adamant on the stand during testimony in this proceeding that this adolescent could not at this time return to her home. The implication is that the adolescent should be returned to the Halifax Regional Municipality to live in a therapeutic foster home although this was not clearly articulated because the grandparents have failed to file a plan of care in this proceeding. The grandparents implied request would require this court to order the Minister to find persons who will provide, or be trained to provide, a therapeutic foster home, to prepare a plan of coordination for the intensive services that will be required and to deliver those services to the adolescent in this community. The grandparents have not provided any information about the type of treatment, counseling, therapy or interventions this adolescent may be able to access in this community except to suggest the Minister knows or should know what is required and must find and provide those services. The grandparents submission is that I have jurisdiction to order the

Minister to develop this plan even though I know nothing about how many personnel may be involved, what level of skills will be needed, whether there are persons available to provide these services H.R.M. , whether there are individuals who can coordinate the delivery of those services and monitor the success of those delivery systems, and without understanding the cost that may be associated with devising and implementing such a plan.

[21] The Minister's submission does not deny that, as a general proposition, it is in the best interest of an adolescent to receive services in his or her community. What the Minister does say is that a community based plan is not in the best interest of this particular adolescent because:

- community based services available in this region have been provided and have not assisted this adolescent or his family;

- the present needs of this adolescent, as identified in two assessment reports, require that services be provided to him in a setting where his option to leave his residence is constrained and where there is an intensity and consistency of programming to assist him to change his behaviour;

- this adolescent presents as a risk to his community and to himself because of his criminal behaviours and propensity to involve himself with persons who are not suitable role models and who may also have a propensity to engage in criminal and risk taking behaviours.

[22] To convince this court it is in the best interest of this adolescent to receive services in this community and not in a residential treatment facility the grandparents rely on the evidence given by Dr. Charles Emmrys, PhD. Psychology. Dr. Emmrys prepared a report entered as Exhibit 7 in this proceeding. In that report he states he was contacted by council acting for the grandparents to conduct a review of the assessment report prepared by IWK Youth Justice Services dated February 26, 2009 and, by way of a later addendum, the Psychological Report prepared by David Cox dated May 7, 2009. The purpose of his review was to determine whether the judgments made in the assessment reports were properly substantiated and were in keeping with accepted best practice. In his report Dr. Emmrys confirmed he had not met or interviewed any of the parties involved in this proceeding nor had he met with or interviewed the authors of the reports he intended to review. He states his report

should not be interpreted as being “clinically relevant or applicable to any treatment decisions save those decisions based on the interpretation of the reports in question”.

[23] Dr, Emmrys is an enthusiastic advocate of intensive community-based programming for adolescents with behavioral and impulse problems. Neither in his report or testimony did he describe what this programming looks like nor how it works. He suggested this programming requires a collaboration between corrections personnel, teachers, social workers, families, foster care providers, neighbors etc. all of whom will come together to develop a plan for the adolescent. He does not describe how this would actually work for a child with needs like those of this adolescent. It is his opinion these programs, when fully implemented, have a far better chance of success in changing problem behaviours than do residential based programs, which in general consistently fail to change behaviour. He provided references to research literature he considers fully supportive of his opinion.

[24] Dr. Emmrys has made several criticisms about the reports he undertook to examine. I reject the criticisms he has put forward and rather than go into each criticism independently I will use two examples I believe can satisfactorily explain the basis for my rejection of his criticisms overall. Dr. Emmrys commented negatively upon the suggestion in these reports that the grandparents failure to accept recommendations and diagnostic findings in respect to the adolescent would adversely affect therapy. He also testified that the reports did not contain sufficient detail to support the recommendations made. In respect to the first mentioned criticism Dr. Emmrys commended the grandparents for refusing to blindly accept the conclusions of others. He recommended they should receive better communication from and additional time with clinicians who would make a concerted effort to educate and explain these diagnosis to them so that all could arrive at a common understanding. The problem is Dr. Emmrys did not review the extensive history various professionals have had with this family including the efforts made to explain the adolescent’s diagnosis and treatment requirements, a diagnosis I am satisfied the grandparents have rejected up until recently and about which they may still be suspect. The authors of the reports did undertake the extensive review of the history. I accept their conclusions that the grandparents lack of understanding about and acceptance of the adolescent’s cognitive deficiencies and their continuing belief that “he just needs to be taught how to behave in a different way” (page 4 of the IWK Youth Justice Services Assessment) has contributed to their inability to respond

appropriately to his needs. I find this is one underlying reason why services provided have ultimately not provided the expected outcome.

[25] In respect to the second mentioned criticism, the lack of detail, the detail is in fact in the written reports and case file notes that were reviewed by the assessors, the accuracy of which, except for some minor details, has not been challenged by the grandparents. The summaries the assessors provided from the materials they had reviewed, all of which is identified in their reports, provide sufficient detail when those same materials are made available to the court, which in this case they were. That material, in addition to other detail, includes descriptions of services provided and the expected outcome as a result of the provision of those services including the intervention methodologies used by each.

[26] Essentially Dr. Emmrys was called as a witness to convince this court that residential treatment services provided by Bayfield or by any other residential facility would not be successful because this is what research has shown when outcomes have been examined . His argument is that best practice is in favor of intensive community-based treatment programs but he does not describe in detail the design of or delivery platform for those programs. His suggestion is that the Minister should know how to design these programs and should be ordered to do so. However I find it important to note that Dr. Emmrys did not disagree with the statement appearing on page 555 in an article “Outcomes for Children and Adolescence After Presidential Treatment: Review of Research from 1993 to 2003" reported in the Journal of Child and Family Studies, Vol. 14, No. Four, December 2005 filed as Exhibit 10 – C in this proceeding:

> “Although the goal is to use the least restrictive setting possible, there are times when a community-based setting can not meet the therapeutic needs of the child or adolescent. These are situations where highly specialized treatment is only available in our restrictive setting....... therefore, residential treatment remains a needed service for a small but significantly challenging group of children and adolescents.....”

[27] Also instructive is the comment appearing on page 556 of that report:

> “....... Maintaining gains after discharge (from the residential facility) appear to be associated with three key factors: (a) the extent that the residents of family is involved in the treatment process before discharge (for example, in family

> therapy), (b) the stability of the place where the child or adolescent goes to live after discharge, and (c) the availability of aftercare support for the child or youth and their families..........

[28] My evaluation of the evidence presented by the Minister both in June 2009 and during this proceeding is that even if the Minister had a fully developed intensive community-based service program for behaviorally challenged adolescents and their family such a program would not be able to meet the therapeutic needs of this particular child thus requiring residential care in any event. I accepted this evidence in June and nothing has changed since then to suggest otherwise.

[29] Additional reasons why the grandparents do not consider the placement at Bayfield to be in the adolescent's best interest are:

- an appropriate educational program has not been developed to meet his individual needs;
- he is allowed to self medicate;
- inappropriate restraint has been used by staff at Bayfield.

[30] Exhibit 4 filed in this proceeding provides the plan of care to be implemented at the Bayfield Treatment Center. In respect to the individual educational plan developed for this adolescent it covers the following topics:

- areas of strength
- statement of needs
- the program required to meet the needs
- the classroom accommodations required
- the assessment data relating to this adolescent and his needs and abilities

- the special educational services and personnel required to deliver the individual education plan

- the educational expectations

- the accommodations/modification strategies and methods of evaluation

[31] Letitia Chow, the "clinical coordinator" employed with the Bayfield Treatment Center, provided testimony about the implementation of Bayfield's plan of care as it relates to this adolescent. I am satisfied this adolescent's educational needs are being met at Bayfield.

[32] Bayfield's plan of care also has a detailed plan in respect to health services to be provided to this adolescent. He has regular contact with a consulting Child and Adolescent psychiatrist Dr. Mark Voysey. Dr. Voysey prescribes and monitors the adolescent's medication in coordination with the attending physician Dr. James McLean. There are certain medications the adolescent may self prescribe and I accept the decisions made by these qualified personnel about when and how the adolescent may take these medications.

[33] Bayfield staff use and are trained in physical restraint protocols the purpose of which is to protect the staff and other residents receiving treatment at Bayfield from aggressive acts perpetrated by the adolescent that may cause harm or injury but also to prevent the adolescent from potential self harm. There have been incidents at Bayfield requiring restraint of the adolescent, all of which are reported to the Minister. The Minister has provided these reports to the grandparents by sending them to their counsel. Many of these incidents are described in Exhibit 14 filed in this proceeding and further in the testimony of Letitia Chow. I am satisfied the staff at Bayfield have used only as much restraint as is necessary to bring the situation under control and I do not find the adolescent is being physically abused in any way at this facility.

[34] The adolescent is in need of protective services and it is in his best interest to remain in the temporary care of the Minister pursuant to the plan of care the Minister continues to pursue and implement in this proceeding.

Access between Grandparents and the Adolescent

[35] Some of the evidence given by the Minister's witnesses and as contained in reports it filled differs from that given by the grandparents. When witnesses have different recollection of events the court must assess the credibility of their statements. I adopt the outline for assessing credibility set out in *Novak Estate, Re*, 2008 NSSC 283, at paragraphs 36 and 37:

> [36] There are many tools for assessing credibility:
>
> a) The ability to consider inconsistencies and weaknesses in the witness's evidence, which includes internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the testimony of other witnesses.
>
> b) The ability to review independent evidence that confirms or contradicts the witness' testimony.
>
> c) The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in ***Faryna v. Chorny***, 1951 CarswellBC 133, it is "in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions", but in doing so I am required not to rely on false or frail assumptions about human behavior.
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> d) It is possible to rely upon the demeanor of the witness, including their sincerity and use of language, but it should be done with caution ***R. v. Mah***, 2002 NSCA 99 at paragraphs 70-75).
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> e) Special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate evidence. ***R. v. J.H.*** [2005] O.J. No.39 (OCA) at paragraphs 51-56).
>
> [37] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See ***R. v. D.R.*** [1966] 2 S.C.R. 291 at paragraph 93 and ***R. v. J.H.*** *supra*).

[36] There have been serious concerns about the likelihood this adolescent's progress at Bayfield will be undermined as a result of the nature of the

conversations that Bayfield staff and the adolescent have had with the grandparents in particular the grandmother. Through counsel the grandmother has admitted some of her comments have been unhelpful and ill advised. The written information about the conversations the grandmother had with staff clearly suggests a lack of support for the services to be offered by Bayfield and these conversations certainly alerted staff about her potential to pass on her negative view of Bayfield in her conversations with the adolescent. Their concern was if the adolescent understood his grandparents did not respect the work of the facility neither would he. He could then become non-compliant with staff and non-responsive to the programs and services offered to him. There is evidence that this did occur and it is contained in the affidavit of Heidi Conrad sworn September 22, 2009 appearing at Tab B of Exhibit 2 filed in this proceeding and in the testimony of Letitia Chow. I accept as credible the information provided by Ms. Conrad and Ms. Chow in respect to this matter. In addition the conversations between the adolescent and his grandmother, reported in Ms. Conrad's affidavit, that were compiled by Bayfield staff who were tasked with monitoring these calls, are clearly suggestive. Some are subtle in nature but all have, at their core, a transmission of information I conclude would lead this adolescent to feel justified in disrespecting staff employed at Bayfield and in resisting the programming services provided to him. I have accepted this information as credible and reliable notwithstanding the grandparents attempt, through the introduction of one transcript of one evening and next day conversation with staff and the adolescent, to convince me Bayfield staff failed to accurately record conversations .The only error in the recording of those two conversations is the suggestion by staff , written in their notes, that the grandfather was aggressive and rude in his conversation with staff. The transcript would suggest otherwise. A comparison of the remaining information reveals consistency between the written information provided by Bayfield staff and the transcript. An exact comparison is impossible because much of the conversation is noted in the transcript to be "inaudible".

[37] Initially the grandparents were to have daily telephone access with the adolescent five days per week. By July 2009 a decision was made to reduce telephone contact because of the difficulties that had been experienced as I have described above. Telephone calls were reduced to twice weekly and they were to be monitored by Bayfield staff. If Bayfield staff deemed the conversation to be inappropriate they were to terminate the call. Consistently staff noted that telephone conversations between the grandfather and the adolescent were positive

and supportive. It was contact with the grandmother that raised the primary concern.

[38] On September 4, 2009 the Minister was informed the grandparents wanted to visit the adolescent in person while traveling to Toronto for two weeks. To accommodate this request the parties entered into a "Memorandum of Understanding" dated September 11, 2009 which was signed by the grandparents. The dates, times and terms of this access were very clearly stated in the Memorandum. Nevertheless the grandparents, in particular the grandmother, misconstrued the Memorandum and argued with staff to accept her interpretation which was clearly in error. Her erroneous interpretation of this Memorandum leads to the question whether the grandparents carefully read and understood the memorandum either at the time they signed it or after. After what Bayfield staff interpreted as significant violations of the Memorandum during the grandparents first visit with the adolescent, further face-to-face visits at the Bayfield facility were suspended and a visit was arranged between the adolescent and his grandfather to take place at the offices of the Children's Aid Society of Prince Edward in Pickton Ontario supervised by Bayfield staff. The grandmother was not permitted to attend that visit although a visit was arranged at that facility for both she and the grandfather the following day.

[39] A parental capacity assessment of the grandparents was prepared by the assessment team at the IWK Health Center dated September 4, 2009. These assessors concluded at page 29 that:

> " His grandmother appears to actively seek to encourage a distrust in the professionals with whom he is working at the present time, placing the adolescent in a loyalty blind which is a serious potential to cause emotional harm and to compromise his ability to work toward improving his functioning."

[40] The evidence I have reviewed in this proceeding supports this conclusion. I do know the grandparents are now in a therapeutic relationship with a counselor the purpose of which is to assist them in understanding the adolescent's needs and in accepting how they might best support him in his placement. If progress is made the Minister will then assess what changes should be made from time to time to the provisions relating to access between the grandparents and the adolescent. I consider this to be an appropriate plan and I am not prepared to order that specific terms of access be provided to these grandparents. The present

arrangements are in the best interests of this adolescent. The Minister is therefore tasked with determining from time to time the nature and extent of access that may be appropriately exercised by these grandparents. If this adolescent is ever to be returned to their care they must come to understand his needs as they have been identified by professionals and they must be prepared to accept and act upon the recommendations of those professionals. If they are unwilling or unable to do so the Minister will be tasked with finding a suitable residence for this adolescent and may, as a result, make a determination that he will need to be taken into permanent care.

Beryl MacDonald, J.

See Schedule "A" attached

SCHEDULE "A"

Services Provided to the Family

Protection Caseworkers - these workers are responsible for arranging services to assist the family in addressing the protection concerns; monitoring the family's progress; supervising the child's placement; providing support and direction to the grandparents throughout the Minister's involvement.

Family Support Services - the support of a Family Support Worker was offered to the grandparents to assist them in understanding the care the adolescent required but for one reason or another the grandparents had not availed themselves of this service.

Counseling - J. M. a psychologist provided individual counseling services to the adolescent focusing on the abuse he suffered while in his mother's care and on his disruptive behaviors in his grandparents' home and in his school. The counselor also worked with the grandparents to assist them in managing the adolescent's behaviors. Services commenced in 1999 and ended in the spring of 2000. These services were reinstated in 2001 and terminated July 2002.

IWK Development Clinic - this clinic provides diagnostic assessments and services for children and youth with a variety of developmental difficulties. The adolescent was involved with this clinic from 2000 until 2003 because of his severe behavioral difficulties in school, his oppositional behaviors, his impulsivity, short attention span, and restlessness. In 2000 he was diagnosed with Alcohol Related Neurodevelopmental Disorder.

Transportation - the family was provided with the services of case aides to assist with the adolescent's transportation to respite care, tutoring, and summer camp. This occurred from 2001 until 2002.

Parent Family Resource Center - provided support and advocacy to assist this family from 2000 until 2002

Tutoring - tutoring services were provided in 2001 and from 2003 until 2004.

Youth Alternative Worker - several persons provided youth alternative worker services to the adolescent between 2002 and 2004

Recreational/Afterschool Programming - various recreational programming was supported by the Department of Community Services to provide the adolescent with positive social experiences and respite to the family. This programming included Big Cove Camp, North Brook Day Camp, Boys and Girls Program, lunch and after school programming, Excel, as well as summer and March Break camps. These services were offered between 2001 and 2004.

IWK Day Treatment Program - this program serves children and families by providing individual and group therapy in a Day treatment setting. The adolescent and his family were involved in this program from April until July 2003.

IWK Community Mental Health - in 2003 and 2004 the adolescent and his grandmother engaged in assessment/counseling services specifically regarding the behavioral challenges this adolescent presented. In 2005 the adolescent was once again assessed and a medication consult was arranged.

Halifax Regional School Board - in 2005 a Psycho- Educational Assessment was completed on the adolescent for the purpose of assessing his strengths and needs in the development of an individualized program plan.

IWK Mental Health Program - this service provides mental health services and assessments to children and youth. The adolescent was seen in 2005 at the clinic regarding medication for his diagnosis of ADHD. He was in once again in 2006/ 2007 for the completion of a Psychological Assessment report.

Family SOS, Veith House, Big Brothers/Big Sisters Program, Attention Deficit Association - these community organization provide a variety of services to families such as counseling, parenting education, youth programs, mentoring etc. This family was made aware of these organizations and the information and services each could provide but it is unclear if they were utilized.

Mental Health Mobile Crisis Team - this team provides intervention and short-term crisis management for children, youth and adults experiencing a mental health crisis and was accessed by the family in 2007 relating to the adolescent's running behavior.

IWK Health Center Crisis Team - this team provides emergency mental health assessments and crisis intervention services to children youth, and families at the IWK emergency department. This service was accessed by the family in 2007 because of the adolescent's running behaviors.

IWK Department of Social Work - a social worker with this service provided supportive services to the family from the time the adolescent came to live with his grandparents up until 2008.

Churchill Academy - this school provides an environment specializing in developing an educational curriculum to meet the needs of students who have been diagnosed with learning disabilities and have struggled in traditional educational settings. The adolescent had the benefit of this programming in 2007/2008 at which time he was expelled due to his continuing running behaviors.

Direct Family Support for Children, formally known as the In Home Support Program, Services for Persons with Disabilities - this service provided respite care as well as financing for transportation and other needs. The service was utilized by the grandparents from 2000 until 2008

Choices - this program provides addiction and treatment services to youth. The adolescent met with a counselor on two occasions in 2008 but subsequently refused to access this service.

Wood St. Center - this is a short term secure residential treatment facility for youth in the care and custody of the Minister. This facility provides a secure and safe environment to help stabilize children's behaviors so that they may return to the community safely.