Case Name:

Catholic Children's Aid Society of Toronto v. J.D.

IN THE MATTER OF a Status Review Application Under Part III of the Child and Family Services Act, R.S.O. 1990, c. 11, for the Crown Wardship of T.D., born on July 11, 1999, Tra.D., born on September 15, 2000, Je.D., born on June 2, 2002 and M.D., born on June 18, 2003
Between
Catholic Children's Aid Society of Toronto, Applicant, and
J.D., G.A., V.S. and E.T., Respondents

[2007] O.J. No. 3575

Court File No. C4124/99

Ontario Court of Justice

S.B. Sherr J.

Heard: June 11-15, July 9-11 and 13, 2007.
Judgment: July 24, 2007.

(116 paras.)

Family law -- Child protection -- Public trustee or guardian -- Permanent appointment or Crown wardship -- Appointment, considerations -- Best interests of child -- Child in need of protection -- Parents' ability to provide stable environment -- Access to child -- Application by the Society for Crown wardship without access allowed in part -- The four children of the mother were apprehended following their nighttime abandonment while she attended work -- Supervised access visits were characterized as chaotic, but with recent improvement -- The court found that Crown wardship was in the children's best interests due to a continued failure to appreciate parenting deficiencies or the children's needs -- The mother's relationship with the two oldest children was sufficiently beneficial to warrant an order of access -- Child and Family Services Act, s. 59(2).

Status review application by the Catholic Children's Aid Society of Toronto for Crown wardship of the children of the respondent mother, JD -- The mother, age 25, was raised in an atmosphere of

domestic violence -- In 1999, she gave birth to the first child at age 15, and the Society became involved with the mother on an ongoing and intermittent basis thereafter -- The four children, TD, TraD, JeD, and MD, were found to be in need of protection and apprehended from the care of the mother in 2005 -- At the time of apprehension, the mother worked as an exotic dancer -- She left the children uncared for while attending work, and one child was found by neighbours locked out of the apartment -- The mother was convicted of child abandonment -- Supervised access visits were described as chaotic, with the mother exhibiting hostility towards Society workers -- Recent visits that included the mother's new partner were described as positive and an improvement -- The Society submitted that the mother had not made changes in her life since the apprehension -- It sought a Crown wardship order without access for the purpose of adoption -- An expert opined that the children would do better in foster care than the mother's care -- The mother opposed the order, seeking return of the children, or alternatively, access -- The father of three of the children did not participate in the proceedings -- HELD: Application allowed in part -- Crown wardship was in the best interests of the children -- The limitations in the mother's parenting abilities posed a risk of an inability to recognize and protect the children from dangerous situations -- The mother had a lack of insight into or appreciation for her problems, inhibiting her ability to obtain help -- She continued to exercise poor judgment -- Her plan of care was insufficient -- The mother demonstrated little understanding of the children's special needs or an ability to establish a stable environment -- The mother's deficits would undermine the children's mental and emotional development and were unlikely to change in the future -- The risk of harm at apprehension was unabated -- However, the mother's relationship with TD and TraD was sufficiently beneficial to warrant an order of Crown wardship with access.

Statutes, Regulations and Rules Cited:

Child and Family Services Act, R.S.O. 1990, c. 11, s. 59(2)

Previous proceedings:

G.A., found not to be a parent of Tra.D., pursuant to the order of Justice S.B. Sherr, dated June 11, 2007.

V.S., found not to be a parent of any of the children, pursuant to the order of Justice Geraldine Waldman, dated May 6, 2005.

E.T., father of the three youngest children, noted in default by the order of Justice S.B. Sherr, dated June 11, 2007.

Counsel:

Chris Andrikakis, for the Applicant.

Lance C. Talbot, for the Respondent, J.D.

REASONS FOR JUDGMENT

S.B. SHERR J.:--

Part One -- Introduction

1 The Catholic Children's Aid Society of Toronto (the society) has brought a status review application seeking an order that the children, T.D., born on July 11, 1999, Tra.D., born on September 15, 2000, Je.D., born on June 2, 2002 and M.D., born on June 18, 2003, be made crown wards without access for the purpose of adoption.

2 All four children were apprehended from the care of their mother, the respondent J.D., on January 10, 2005. They have remained in society care since then. J.D. opposes the society's application and seeks an order that all four children be returned to her care subject to society supervision. In the event that one or more of the children are made crown wards, she seeks access to them.

3 T.D.'s biological father, the respondent V.S., was found not to be a parent within the meaning of subsection 37(1) the *Child and Family Services Act* (the Act) by Justice Geraldine Waldman on May 6, 2005. He has had no involvement with T.D. since the apprehension.

4 The respondent, E.T., is the biological father of the other three children. He has not participated in any of the court proceedings and has chosen not to exercise access to the children since they were apprehended. I noted him in default at the outset of this trial as well as making the finding that the respondent, G.A., is not Tra.D.'s parent.

5 The children were found to be in need of protection pursuant to clause 37(2)(b) of the Act by Justice Waldman on May 6, 2005. Her order was made on default as no respondent filed an Answer/Plan of Care.

6 The primary issues for me to decide are:

a) What disposition order is in the best interests of each of the children?
b) If one or more of the children are made crown wards, what order for access, if any, should be made?

Part Two -- Factual History

7 J.D. will be turning 25 years old on July 29, 2007. She is of mixed-race heritage; her mother was born in Guyana and her father in Portugal. She is one of six siblings. Her parents divorced in 1990 and she has had little involvement with her father since then. She did not complete Grade 10.

8 J.D. described a difficult childhood. Her parents' relationship was marked by domestic violence. In referring to their living arrangements, she testified that, "we bounced around a lot." She felt that she was primarily raised by her older sister. She did not find her mother to be emotionally available to her and felt that she was often left to her own devices. She testified that she does not want to be a parent like her mother. J.D. testified that when she was a child, the society was involved with her family, at one time removing her two younger brothers from her mother's care and placing them with her father. She did not see her brothers for about three years. It appears that this was the genesis of her distrust of the society.

9 J.D. moved into Rosalie Hall, a maternity home for young mothers, when she was 15 years old and pregnant with T.D. The society became involved with her on a voluntary basis just prior to T.D.'s birth as it was felt that she would need supportive services. On September 17, 1999, the

society brought the matter to court for a supervision order. They were concerned that J.D. was about to leave Rosalie Hall, where she had supports, and reside on her own in the community.

10 On September 28, 1999, J.D. was suspended from Rosalie Hall for non-compliance with their rules. Since she had no place to go, T.D. was apprehended by the society, but was returned to J.D. on October 1, 1999 under a supervision order.

11 On October 15, 1999, J.D. moved with T.D. out of Rosalie Hall and into her own residence. On November 24, 1999, T.D. was apprehended again, primarily due to incidents of domestic violence by J.D.'s boyfriend towards her. T.D. was returned to J.D.'s care on February 1, 2000, subject to a temporary supervision order. The society terminated their court action later in 2000.

12 J.D. commenced her relationship with E.T. in 1999. They moved in together in 2001. They briefly moved to Nova Scotia in 2002. They continued to live together at several residences in Toronto over the next two years. J.D. testified that in the middle of 2004, their relationship changed and E.T. would only stay with her on occasion. She said that she ended all contact with him near the end of 2005. J.D. described E.T. as a selfish parent, who gave her little assistance and who was emotionally abusive. She said that he preferred Je.D. and he would sometimes deny paternity of his sons.

13 Early in 2004 the society became re-involved with the family. J.D. said that this was due to the children having marks on them when they touched a floor heater. The society obtained a supervision order that was terminated on July 14, 2004 when J.D. agreed to sign a voluntary working agreement with them.

14 The society remained involved with J.D. for the remainder of 2004. They had several concerns: about her level of supervision of the children, reports they had received from the school that T.D. had witnessed J.D. and E.T. arguing and hitting each other with a belt and J.D.'s lack of co-operation and open hostility to the society.

15 On January 10, 2005, all of the children were apprehended from J.D.'s care. Her testimony was that she could not find a babysitter and was scheduled to work a night shift from 7 p.m. to 2 a.m. as an exotic dancer. She said that she put the children to sleep and left to work, without anyone to care for them. The children woke up and Tra.D. was found by neighbours, locked out of the apartment. J.D. was charged with child abandonment and failure to provide the necessities of life. She pleaded guilty to the charge of child abandonment on November 17, 2005 and was sentenced to a period of house arrest.

16 On January 14, 2005, Justice Waldman made a temporary order placing the children in the care of the society, with access to be supervised in the society's discretion. These visits started off supervised for 90 minutes once each week at the society's office and were problematic. J.D. and her mother would attend these visits and were openly hostile to the society workers, often in front of the children. The visits were described as chaotic.

17 J.D. did not file an Answer/Plan of Care to the society's protection application and on May 6, 2005, Justice Waldman made the order making the children society wards for a period of six months, with access to be in the discretion of the society. She endorsed that:

> "I am satisfied that the evidence supports concerns about the care of the children and in particular the level of supervision when mother is home and when mother

> is out. Mother's cooperation with the society through a period of voluntary supervision was marginal and the relationship between mother and C.A.S. has deteriorated. I am satisfied that C.C.A.S. considered grandmother's plan and rejected it.

18 The society could not find a foster home that could care for all four children together. Tra.D. and Je.D. were placed in the foster home of C.M. and remain there today. T.D. and M.D. have not been as fortunate. After a brief stay in an emergency foster home, they were placed in a foster home together. They were removed from that home in October of 2005 after the foster mother picked up M.D. by the neck and slapped him. It should be noted that J.D. and her mother had been complaining about bruising on M.D. in this home for some time and felt that the society had ignored their concerns. This was a major source of friction. Due to the incident with M.D., he and T.D. had to be placed quickly and the society acknowledged, in retrospect, that they were not placed in a good foster home. The society had concerns about the care for T.D. and M.D. in this home, including their hygiene, quality of clothing, attention to their medical needs, missed access visits and poor communication with the society. This placement broke down and on October 27, 2006, T.D. and M.D. were placed in their current foster home with A.V. and her family.

19 J.D. was arrested for the child abandonment charges in February of 2005 and was required to return to her aunt's home after work each day as a condition of her release. In August of 2005 she said that she was assaulted by co-workers in Niagara Falls. The police arrested her at that time for failure to comply with her bail terms, as she was not supposed to be in Niagara Falls. J.D. pleaded guilty to this charge and was sentenced to community service and 18 months probation. In August of 2005, J.D. returned to live with her mother. She continues to reside there.

20 On March 3, 2006, on consent, Justice Waldman made an order for an assessment pursuant to section 54 of the Act. The parties consented to having Dr. Shukri Amin, a registered psychologist, conduct the assessment. There was a long delay in having this assessment completed. This was largely due to J.D. missing three scheduled appointments with Dr. Amin. His report is dated January 5, 2007, and in very strong terms, he gave the opinion that J.D. does not have the capacity to adequately parent any of the children.

21 On May 16, 2006, the society agreed to increase the length of the weekly visits to 2.5 hours. The society subsequently agreed that the visits would become semi-supervised, which meant that their workers would monitor, but not be present for the entire visit. The visits continue in this form.

22 J.D. testified that she began dating J.R. in February of 2006 and they moved in together at her mother's home in July of 2006. They have lived there together since then. Due to a recent fight with J.D.'s mother, they need to find a new residence by August 1, 2007. J.D. did not advise the society that J.R. would be living with her and be part of her plan until May of 2007 (one month before the start of the trial). J.R. started attending the visits on a regular basis on June 9, 2007, two days before the start of this trial.

Part Three -- The Children

3.1 T.D.

23 T.D. was described by the witnesses as a bright and affectionate child who is socially interactive, with good manners. He was described as a perfectionist who experiences a fair amount of anxiety. When he first came into care, T.D. would explode into severe temper tantrums. This

continued for a long time. This was one of the factors that led to the breakdown of his foster home placement in the fall of 2006. I heard evidence that T.D. was not doing well at that time. His children's service worker from the society testified that T.D. was becoming "out of control." The witnesses were consistent that T.D. has done much better since he moved to his current foster home with A.V., although issues remain, including how he treats girls. A.V. testified that T.D. has made a lot of progress and has only had two temper tantrums with her. She said that he fits in very well with her family and has become particularly close with her husband. She said that T.D. is very affectionate, polite and wants to please. She said that T.D. wants to belong to a family and has spoken to her of his multiple homes. In describing the impact on T.D. if he did not have contact with both his mother and her family, A.V. said, "if he had to go anywhere strange, it would tip the scales." She also testified that T.D. is not that close with M.D. She did not think that T.D. would be upset to be separated from him. Until recently, T.D. attended play therapy. The evidence showed that he benefited from this. T.D. still requires a speech and language assessment.

24 Dr. Denise Vallance, a registered psychologist, prepared reports on each of the children that were filed as evidence. She also gave testimony. No evidence was led to contradict Dr. Vallance's evidence and I find that her psychological findings regarding the children, as of the date of her reports, were accurate. Dr. Vallance testified that T.D. was not doing well at the time of her second report about him (November 9, 2006). She found T.D. to have extremely high anxiety. She saw him as an emotionally fragile child, whose sense of self could fragment easily. She wrote that he was sad and lonely and sees the world as frightening, chaotic and disorganized, where he can be hurt. She felt that he had difficulty regulating his behaviour and could lose his good judgment when overwhelmed. She testified that T.D. was frightened of his rage and represses these feelings. She testified that T.D.'s caregiver needs to provide him with consistent care and protection, be attuned to his developmental needs and ensure that he receives appropriate services.

25 The evidence was consistent that T.D. looks forward to his visits with his mother and siblings and derives considerable benefit from them. The evidence indicated that T.D. is ambivalent about whether he wishes to continue in his present foster home or return to live with his mother.

3.2 Tra.D.

26 The witnesses described Tra.D. as a loving, sociable, intelligent and playful child. J.D. described him, with affection, as the comedian of the family. He likes to be the centre of attention and presents as the leader of the children, although he is younger than T.D. Tra.D. is doing well in school. He was described as being very protective of Je.D., although he can often be dismissive with her and has blamed her for the apprehension. T.D. initially had difficulties in adjusting to his foster home. Erika Reicher (Ms. Reicher), the society's family service worker testified that Tra.D. had the hardest time of the children coming into care. She stated that Tra.D. was aggressive, had problems in school and was bedwetting. He had considerable difficulty separating from his mother at the end of visits. The evidence was that by the beginning of 2006, Tra.D. began making gains. His behaviour improved and he did better in school. However, Tra.D.'s foster mother testified that she is concerned that recently, some of Tra.D.'s negative behaviours have resurfaced; he is getting angry more often and is lying. She felt that this regression might be due to two of the babies in the foster home being returned to their families. She said that Tra.D. had become attached to them and was upset by their move. Tra.D., according to his children's service worker, needs speech development and to be involved in sports activities.

27 Dr. Vallance testified that Tra.D. is emotionally fragile but coping reasonably well. She said that he resents, but wants to protect J.D. She testified that Tra.D. has average intelligence. She said that he worries about being harmed, but represses this as a means of coping. She said that the consequence of this, if left unresolved, is that Tra.D. might lash out impulsively and have greater social and emotional difficulties. She said that Tra.D. sees family life as chaotic, dangerous and disorganized, where children's needs are not met. She said that Tra.D. sees his biological family as his family and that it was unclear if he was developing an attachment to his foster family. She feels that he needs a secure and stable placement as soon as possible. She also recommended that he receive play therapy.

28 The evidence was consistent that Tra.D. looks forward to his visits with his mother and siblings and derives significant benefit from these visits. He is closest to T.D. and plays with him during the visits. Tra.D. is the most vocal child about his wishes. He has consistently said that he wishes to return to live with his mother.

3.3 Je.D.

29 Je.D. was consistently described as a shy, quiet and polite girl who makes few demands. She often plays on her own during the visits, overshadowed by her boisterous brothers. She has adjusted well to foster care. She plays well, enjoys and is doing well in school and is interacting a bit more with her family during the visits. Je.D. is physically healthy, having only a minor medical issue with a flat foot.

30 Dr. Vallance testified that Je.D. has average intelligence. Je.D. is most connected, she said, with Tra.D. and her foster family and sees her foster family as being able to meet her needs. She said that Je.D. is coping reasonably well. She said that Je.D. has fears of being persecuted and harmed. In her first report (September 2005), she wrote that Je.D. saw maternal figures as rejecting and angry and unable to meet her nurturance needs and that she felt rejected and isolated. She testified that Je.D. copes by repressing those fears. She expressed that it was important for Je.D. to receive a permanent placement as soon as possible.

31 The evidence was that Je.D. enjoys her visits with her mother and siblings. She usually plays with M.D. More recently, she is seeking more attention from her mother. She has expressed that she wants to live both in the home of her foster family and with her mother at the society office.

3.4 M.D.

32 The evidence was consistent that M.D. has the most needs of any of the children and is a very difficult child to parent. He is not doing very well. Although he was described as a delightful child when "he is on", M.D. is extremely demanding and prone to frequent and lengthy tantrums where he becomes physically aggressive. He has received speech therapy, occupational therapy for balance issues and behaviour management therapy. A.V. testified that his needs are so great that she does not believe she can look after him for much longer. She said that he will need two skilled parents, with considerable supports, as he is too exhausting for one parent. M.D.'s day-care supervisor testified. She said that M.D. has extreme tantrums several times a day and is the hardest child that she has ever had to manage. She is very worried about his ability to attend school in the fall.

33 Dr. Vallance testified that M.D. is functioning at a very low level, has limited coping strategies, a high anxiety level and multiple special needs. She said that his primary connection is to

his foster family (the home he was removed from in October of 2006). She said that M.D. has to be stabilized as soon as possible and requires a caregiver who understands his special needs, has strong knowledge of child management skills, the ability to implement them, be able to take him to appointments and work closely with service providers.

34 The evidence was that M.D. enjoys the access visits with his siblings and mother. He runs to greet J.D. at the beginning of visits, is affectionate with her and is competitive for her attention.

Part Four -- The Society's request to make the children crown wards

4.1 Legal Considerations

35 Subsection 65(1) of the Act reads as follows:

> **Court may vary, etc.**
>
> **65**(1) Where an application for review of a child's status is made under section 64, the court may, in the child's best interests,
>
> (a) vary or terminate the original order made under subsection 57(1), including a term or condition or a provision for access that is part of the order;
> (b) order that the original order terminate on a specified future date;
> (c) make a further order or orders under section 57; or
> (d) make an order under section 57.1.

36 Subsection 57(1) of the Act sets out the orders available to me. This section reads as follows:

> **57**(1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders, in the child's best interests:
>
> **Supervision order**
>
> 1. That the child be placed with or returned to a parent or another person, subject to the supervision of the society, for a specified period of at least three and not more than twelve months.
>
> **Society wardship**
>
> 2. That the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding twelve months.
>
> **Crown wardship**
>
> 3. That the child be made a ward of the Crown, until the wardship is terminated under section 65 or expires under subsection 71(1), and be placed in the care of the society.

Consecutive orders of society wardship and supervision

4. That the child be made a ward of the society under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding an aggregate of twelve months.

37 Subsection 57(3) of the Act requires that I look at less disruptive alternatives than removing the children from the care of the persons who had charge of them immediately before intervention, unless I determine that these alternatives would be inadequate to protect the children.

38 Subsection 37(3) of the Act sets out the criteria to determine the children's best interests. It reads as follows:

Best interests of child

37(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child's physical, mental and emotional level of development.
3. The child's cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.
6. The child's relationships by blood or through an adoption order.
7. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
8. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.
9. The child's views and wishes, if they can be reasonably ascertained.
10. The effects on the child of delay in the disposition of the case.
11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
12. The degree of risk, if any, that justified the finding that the child is in need of protection.
13. Any other relevant circumstance.

39 A crown wardship order is the most profound order that a court can make. To take someone's children from them is a power that a judge must exercise only with the highest degree of caution, only on the basis of compelling evidence and only after a careful examination of possible alternative remedies. *Catholic Children's Aid Society of Hamilton-Wentworth v. G.(J) (2000) 23 R.F.L. (4th) 79.*

40 It is important not to judge the parent by a middle-class yardstick, one that imposes unrealistic and unfair middle-class standards of child care upon a poor parent of extremely limited potential, provided that the standard used is not contrary to the child's best interests. *Catholic Children's Aid Society of Hamilton v. J.I.* [2006] O.J. No. 2299 (Ont. S.C.).

41 In determining the best interests of the children, I must assess the degree to which the risk concerns that existed at the time of the apprehension still exist today. This must be examined from the children's perspective. *Catholic Children's Aid Society of Metropolitan Toronto v. C.M.* [1994] 2 S.C.R. 165 (S.C.C.).

42 I have given significant consideration to all of these legal principles in making my decision.

4.2 The Plans of Care

43 The society's plan is to have all four children adopted. While they will look for a foster home that would take all four children, Ms. McNally testified that due to M.D.'s special needs, it might be preferable to place him in a separate home. M.D., Tra.D. and Je.D. will have to be moved from their current foster homes since their foster parents are not prepared to care for them on a long-term basis. A.V. testified that she is prepared to care for T.D. on a long-term basis. She said that she is also prepared to adopt T.D. if both he and J.D. gave it their blessings. When asked if she would adopt T.D. without J.D.'s blessing, she stated that she would have to think very hard about that. Ms. McNally testified that the society would seek an adoptive home that is compatible with the children's heritage.

44 The society does not believe that J.D. can adequately parent any of the children. They submit that she has not made any real changes in her life since the children were apprehended. They state that J.D. continues to demonstrate poor judgment and that she has little insight into her parenting deficits. They submit that she is secretive and dishonest with them, not trusting and unwilling or unable to engage in services to address her parenting deficiencies. She remains, they say, hostile to society intervention. Until recently, they submit that there has been little improvement in the quality of J.D.'s visits with the children; she has difficulty managing the children and meeting their needs during the visits. They argued that her plan of care is poorly thought out and is really no plan at all. They argued that to return any of the children to J.D. would be to return them to a life of chaos and that their needs would not be met.

45 J.D. presented three plans of care. In her first plan of care dated October 20, 2005, she proposed to live with the children at her mother's home until her period of house arrest ended, at which time she would find her own residence. In her second plan of care, dated June 12, 2007 and filed during the trial, J.D. proposed to live with J.R. at her mother's home, until such time as they could afford their own residence. A third plan of care was filed on July 10, 2007, during the trial. In this plan, J.D.'s mother is no longer involved and J.D. proposes to move into her own residence with J.R. and the children as of August 1, 2007. J.D. testified that this change was made because she had a fight with her mother, they were no longer speaking and her mother told her that they had to leave her home by the end of the month. When the evidence was completed on July 13, 2007, J.D. had still not found alternative accommodation. J.D.'s brother testified on her behalf. He testified that he thought that J.D. is a good mother and the children should be returned to her. He indicated that he would provide her with financial assistance to the best of his ability and with whatever emotional support he could.

46 J.R. is 35 years old. He was married for 11 years and has been separated for three years. He has a 10 year old child from this relationship whom he sees on alternate weekends. He says that he has a good relationship with this child. He says that he regularly pays child support, although he is about $2,000 in arrears. He said that he acted as a parent to his wife's 19 year old daughter and continues to have a good relationship with her. He works for J.D.'s brother as a hardwood installer. He says that he is working very hard at this job, often 12 hours each day. He says that he has a youth criminal record and spent time in jail in Florida when he was 18 years old for trafficking in drugs. He stated that he has had no criminal involvement since then. He expressed a desire to be part of J.D.'s plan and said that he will be financially and emotionally available to her. He said that he would like to be a father figure to the children and provide them with guidance and teaching. He said that he enjoys sports and would engage the boys in sports activities and discourage video games. He said that he found J.D. to be a good and attentive mother. He said that he met the children for the first time two months ago and they get along well together. He said that he would cooperate with the society and had already signed the releases requested of him.

47 J.D. and her counsel gave a detailed financial accounting of how she and J.R. would financially support the children. J.D. presently works at two minimum wage jobs, as a counter staff at a restaurant and as a cashier in a grocery store. She expects to be able to keep one of those jobs when she moves out of her mother's home. I find that J.D. and J.R. should be able to financially support the children with this plan.

48 It is very unfortunate and inexcusable that J.D. did not advise the society that J.R. would be part of her plan until one month before the trial, especially in light of her testimony that they had been living together since July of 2006 in a serious relationship. This made it impossible for the society to assess this plan in time for the trial; a trial that needed to proceed because these children have already been in care for two years and six months, far beyond the statutory maximums. As counsel for the society stated in his closing submissions, J.D. placed the society and this court in a very awkward position.

4.3 The Access Visits

4.3.1. Before J.R.'s participation

49 A large portion of this trial was spent discussing J.D.'s visits with the children. I heard evidence on this issue from Ms. Reicher, three children service workers from the society who supervised visits, two special service assistants from the society who supervised many of the visits, a parent support worker from the society, Dr. Amin, J.R., J.D. and her brother. The evidence of the society witnesses varied to some degree. The evidence of Dr. Amin, Ms. Reicher and the special service assistants was very negative to J.D. The evidence of the three children service workers was somewhat more positive. Having carefully reviewed this evidence, I make the following findings of fact:

a) J.D. came to every visit, although frequently late.
b) The children are happy to see J.D. at each visit and usually greet her with affection.
c) J.D. clearly loves her children.
d) The children seek J.D.'s affection and she gives it to them.
e) J.D. has brought appropriate foods on visits since this was suggested to her by the society.

f) J.D. will sometimes bring activities for the children on visits.
g) J.D. will clean up at the end of the visits.
h) When the visits started, J.D. would inappropriately criticize the society in front of the children. She has improved in this area, although she makes it clear to certain workers that she wants no interference or suggestions from them.
i) When the visits began, J.D. would not assist the children in ending the visits when they were distressed about separating from her. She has also improved in this area.
j) J.D. is often able to soothe the children when they become upset.
j) The quality of the visits are very dependent on J.D.'s mood. When she is smiling they go much better. However she is often and easily agitated, which creates tension for the children on visits. Her moods will often change abruptly during the visit, turning a positive experience into a negative one.
k) J.D. often has difficulty managing the children and can become overwhelmed. Part of this can be explained by the difficulty of managing four energetic children in a confined space while being observed. However, to a larger extent, this is due to J.D.'s parenting deficits and the challenging behaviour of the children.
l) J.D. tends to have unrealistic expectations of the children's behaviours. As a result, she often overreacts to minor situations, causing her to yell at the children in frustration. She frequently will yell at them, "what is wrong with you?" I heard evidence of at least two incidents of J.D. being overly aggressive with M.D. on visits this year, at one time screaming at him, with her face up close to his face.
m) J.D. tends to be passive in addressing initial conflicts between the children, resulting in escalation of negative behaviour. When the children are upset, she will rarely try to understand their feelings and what precipitated their behaviour. Dr. Amin testified that this is consistent with the test results as to how J.D. approaches problems.
n) J.D. will often focus on one child and leave the others on their own, even when they seek her attention.
o) Je.D. tends to be overlooked on these visits.
p) J.D. will often impose what she wants to do during the visit over the children's desires, creating conflict.
q) J.D. has difficulty structuring the visits. She has often relied on the television and staff to assist her. Many of the visits are chaotic. There has been some improvement in this area since J.D. has been able to take the children outside on the visits.
r) The overall quality of the visits has fluctuated over time, and can fluctuate within the visit itself. While the visits are not as consistently chaotic as they were in 2005, they had not improved to a significant extent as of May of 2007.

4.3.2 After J.R.'s involvement

50 J.R. first attended at an access visit in May of 2007. This was done without the society's permission. It was a continuing complaint of the society that J.D. would introduce new persons to the children, without first clearing this with the society. J.D. was asked to make formal arrangements for J.R. to see the children. This was done and J.R. began attending the visits on June 9, 2007.

51 J.R. had attended at five visits with the children as of the date he gave evidence. By all accounts these visits were positive. I heard that he interacted well and appropriately with the children. I heard that J.D. did much better with another adult to help her at these visits. As a result, she was able to spend more one-on-one time with the children. The witnesses said that J.R. and J.D. worked well together on these visits and there was an improvement in the structure of the visits. Together, they were open to society suggestions. I heard that J.R.'s son attended at one visit and interacted well with the children. One society worker described J.R. as pleasant and friendly and as someone she feels that she can work positively with in the future.

4.4 Factors in support of J.D.'s plan

52 In addition to the positive aspects of the evidence above, I considered the following factors in support of J.D.'s plan:

a) The children would be raised within their own culture and heritage. Ms. McNally testified that the society currently does not have any mixed-race or black families on their adoption list.
b) The children would be raised together with their own mother.
c) The sibling relationship is very important in this case. If one or more of the children are adopted, it is uncertain what their level of contact would be, despite the society's stated intentions to place them together and maintain their contact.
d) The children could continue a relationship with their extended biological family, although at this time it appears that this might only be with J.D.'s brother. The evidence indicated that the children had mixed feelings about contact with J.D.'s mother, who was uniformly described by witnesses as being very difficult to deal with.
e) J.D. places a high emphasis on hygiene and cleanliness. I accept that she would be able to attend to instrumental needs of the children.
f) J.D. does not use drugs or abuse alcohol.
g) J.D. was able to make some improvements in her parenting. She has been able to incorporate a discipline technique learned in her parenting course. She now brings appropriate food to the visits. She positively responded recently to parenting suggestions by a child service worker with whom she gets along, specifically with respect to how her mood impacts on the quality of the visits.
h) J.D. has made some positive changes in her own life. She no longer works late hours as an exotic dancer and works at two jobs to support herself. She has not committed a criminal offence since August of 2005.
i) J.R. is now part of her plan. By all accounts, he has created a good first impression. J.R. presented to the court as well-groomed, soft-spoken and respectful. I consider it to be positive that this appears to be the first relationship that J.D. has had where she is treated with respect. It is also positive that she has been able to maintain this relationship.

4.5 My Concerns with J.D.'s Plan

4.5.1 Dr. Amin's Assessment

53 Dr. Amin's report dated January 5, 2007 was filed at trial. He also gave expert testimony. I am mindful of the fact that the court should not delegate its decision-making authority to an expert. It is one piece of evidence, to be assessed in conjunction with all other evidence that the court hears. What is important for the court to do is evaluate how the other evidence fits with the expert's report. If the evidence is consistent with the report, it becomes a source of significant corroboration. In this case, the evidence I heard was very consistent with Dr. Amin's report and I gave it considerable weight.

54 Dr. Amin testified that in conducting an assessment, he reviews the documentary history, conducts interviews and clinical testing with the parent and observes access visits. In his experience, he finds that the clinical testing is the most reliable portion of his assessments. He testified that the other aspects of the assessment are important to see if there are any inconsistencies with the test findings, and if so, he would explore the reasons for this. Dr. Amin testified that in this case, all aspects of the assessment fit very well together and that he was very confident about its accuracy.

55 Several themes emerged in Dr. Amin's report and testimony that I will review in the following paragraphs.

4.5.1(a) -- Poor Judgment

56 Dr. Amin testified that J.D.'s testing revealed poor social judgment and awareness. He wrote that she is vulnerable to acting erratically and unpredictably without considering the consequences of her actions. He said that her behaviour can be self-sabotaging. The following is some of the evidence that supported this:

a) J.D. left the children alone resulting in their apprehension.
b) J.D. misrepresented to the society who the fathers of the children were. The society did not obtain a clear understanding of their roles until she gave evidence at trial. She testified that the society did not really need this information because the fathers were not involved with the children. I found her answers to be immature and obstructive. She also gave incomplete information to Dr. Amin about her relationships with these men.
c) Prior to J.R., J.D. had been involved in several dysfunctional relationships with men who had treated her poorly.
d) J.D. did not advise the society or Dr. Amin that she was living with J.R., until just before the trial. Her excuse for not advising the society about this, is that she wanted to be "100% sure about him" and felt that it would hurt her case if she broke up with J.R. after introducing him as part of her plan. This is not a valid excuse. J.D. has been involved with the society for many years. She knew that any proposed caregiver for the children would need to be fully assessed by the society. J.D. testified that her relationship with J.R. was serious when they moved in together in July of 2006. Perhaps a short delay can be rationalized, but not a delay until the eve of trial. If she had introduced J.R. in 2006, he could have been properly assessed by the society; he could have participated in access visits and developed a relationship with the children. If everything was positive, the society could

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have attempted extended visits with one or more of the children in her home. If the children were to be returned home, they could be returned having a meaningful relationship with J.R., greatly improving the chances of this succeeding. It is revealing that J.D. did not trust the society or even her own judgment enough about J.R. to properly introduce him to the society and her children in a timely way.

e) J.D. testified that her mother was prepared to move out of her home and let her live with the children on the main floor of the home. Despite this, and in the middle of the trial, J.D. engaged her mother in a childish argument that resulted in her losing this generous offer. J.D. testified that she had questioned her mother because her brother's girlfriend was not paying rent in the home, yet J.R. had been required to pay rent. J.D. continued to feel aggrieved by the unfairness of this at trial. She could not see the desirability of keeping the peace with her mother, who was a crucial ally in her plan, in order to provide the best possible environment for the children.

f) J.D. was provided a parent support worker by the society to assist her with her parenting. She acknowledged that this worker was helpful to her. Despite this, she only attended two of the scheduled ten sessions with her. When asked why, J.D. testified that she felt she could obtain more benefit from other parenting programs she had arranged to attend. As it turned out, the evidence was that the quality of her visits quickly regressed after her two sessions with the parent support worker. J.D. showed poor judgment by not following through with a resource that she said was useful and provided her with one-on-one assistance.

g) J.D. missed three visits with Dr. Amin, resulting in a very long delay in this case. I found her excuses for missing these visits to be very weak. One would think that she would have wanted to put her best foot forward with Dr. Amin.

h) J.D. did not file an Answer/Plan of Care to the original protection application. The order was made on default. She rationalized that she had difficulty getting legal aid. She said that she was aware of the importance of filing material, but didn't. This was a very poor excuse. In this court, we have free full-time advice counsel, duty counsel and law students on site to assist people to prepare their documents in a timely way and it would have taken very little effort for J.D. to access this assistance.

i) J.D. would frequently miss scheduled meetings with Ms. Reicher and service providers, often without the courtesy of calling them. Sessions with both her parent support worker and even with her own counselor had to be cancelled because of her lack of commitment. J.D. attributed much of this to the stress in her life and complained that it was difficult to find the time to meet all of the expectations of the society. It is interesting to note that J.D. also described considerable stress in her life on the night of the apprehension. She said that her rent was late, she couldn't pay bills, she was receiving no help from E.T. and she couldn't find babysitting, primarily because she had had a fight with her mother, and wasn't talking to her. The evidence indicated that J.D.'s judgment breaks down under

> stress. The reality is that if the children are returned to her, her life will be very stressful. She will have to deal with challenging children, meet and work with service providers and deal with the close scrutiny of society workers. At this point, it does not appear that she has the necessary emotional resources to deal appropriately with this type of stress.

4.5.1(b) -- Ability to attend to the children's emotional needs

57 Dr. Amin testified that J.D.'s most apparent limitation is her failure to see things from the children's perspective. He said that she gave no evidence of being able to empathize with them or attend to their emotional needs. He said that the test results show that her thinking is very shallow for someone of her intelligence. She is not introspective. He said that she does not communicate well with her children and that this is confusing for them. He said that she is inconsistent and reacts on her feelings. He said that she tested extremely poorly on a test of parent awareness skills. She has a poor ability, he testified, to understand and solve problems. He said that she misses signs or signals of others' intentions because she does not pay enough attention to their facial expressions and other non-verbal cues. He said that she doesn't interpret her environment to deal with it. He said that she responds by trial and error, the worst way. Dr. Amin testified that J.D. does not appear to understand the motives of others and as a result, she has difficulty interpreting social situations and responding appropriately to them. He said that she loses control easily because she operates by her feelings. This evidence was consistent with much of the evidence I heard about the access visits. When asked how she would deal with Tra.D.'s lying, the best J.D. could answer was, "it is something we will have to keep an eye on." She also testified that she didn't think T.D. had any problems, despite her having received overwhelming evidence that he has had some serious issues. These deficiencies explain, to some extent, J.D.'s poor judgment.

58 Dr. Amin's evidence was that in the testing, J.D.'s perceptions revealed dark, painful and unpleasant emotions, such as rejection, sadness, aggression, manipulation, sadism, depression and victimization. There was no indication of joy, hopefulness, ambition, affection, support or guidance and no indication of love or understanding in her relationships. Dr. Amin testified that the theme of depression ran through J.D.'s stories, as well as themes of neglect in her own life. Dr. Amin's opinion is that J.D. is the product of a disordered attachment with her mother and that history has repeated itself with her children.

59 The risk this evidence poses to the children is that J.D. will not be able to recognize their emotional needs or address them in a constructive manner and that she will continue to make bad decisions that adversely affect them. This could undermine their emotional and mental development and their behaviour could regress. There is a real risk, as Dr. Amin testified, that J.D. may not be able to recognize dangerous situations and protect the children.

4.5.1(c) -- Lack of Trust/Inability to work with service providers

60 Dr. Amin's testimony was that J.D. is resistant to help that is offered to her. He said that this is not unusual for someone who has suffered the mistreatment J.D. has. He said that she is very mistrustful of authority. There was significant evidence led of this including:

> a) J.D. acknowledged that she was hostile to Ms. Reicher and other society workers. It was clear from the evidence that J.D. has been a very difficult client for the society to work with. She frequently missed scheduled

appointments with Ms. Reicher or cut short meetings. She frequently treated society staff with anger and a lack of respect.

b) J.D. stalled in following through on society recommendations such as counseling. The counseling eventually broke down, just as the sessions with the parent support worker broke down. The counselor testified that J.D. missed many sessions and was not invested in the process. J.D., she said, felt that she was there to satisfy other people, such as the society and her probation officer.

c) The manner in which J.D. introduced J.R. to the society was significant evidence of her lack of trust and inability to work with the society. She has also not been fully open and trustful with J.R., as she had not shared the children's psychological reports or Dr. Amin's report with him. It was clear to me from his evidence that J.R. does not have a full understanding of the challenges he will face with the children or of J.D.'s parenting limitations.

4.5.1(d) -- Lack of Insight into her Problems/Ability to seek help

61 Dr. Amin wrote that J.D. is not someone who will be receptive to help because she is in extreme denial about her limitations. She does not accept that there is anything wrong with what she does and does not accept responsibility for her actions. Dr. Amin said that this is common with persons like J.D., who have a victim personality. The reason is that they have usually grown up in an environment they experienced as harsh and uncaring and tend to see this as within the average range. To them, he said, this is just normal life. They may be harsh towards their children, but do not recognize this harshness as abusive or harmful. He said that she does not address problems that could be dealt with through moderate effort. He said that she ignores these problems until they become larger. Dr. Amin testified that a major reason why he feels that J.D. will not be able to adequately parent the children is that she does not have the ability to take the steps necessary to address her deficiencies, because she does not appreciate the seriousness of these deficiencies. He said that she may be able to comply with certain recommendations or instructions for a while to achieve a certain result, but she will not internalize this and will likely slip back into how she has always done things, with no awareness of her difficulties. He testified that to make any real change in her parenting and in her life, J.D. would need to participate in extensive psychotherapy for two years. I heard considerable evidence that supported Dr. Amin on this issue this issue including:

a) While J.D. acknowledged, in her testimony, that it had been wrong to leave the children alone, Dr. Amin said that she minimized this and told him, "they were only alone for one hour."

b) J.D. testified that the children should not be kept in care due to this one mistake. She seemed to have little understanding of why the society had been continually involved in her life and the extent of their concerns about her, both before and after the apprehension. She did not appreciate that the abandonment was a product of her parenting deficiencies.

c) Despite considerable evidence to the contrary, she claimed that she doesn't yell at the children; that her voice just needs to be raised sometimes in a crowded room. It appears this is consistent with Dr. Amin's evidence that she views this as normal behaviour.

d) J.D.'s counselor testified that J.D. showed little insight or self-reflection in their sessions. She testified that at times she felt that J.D. was there in body only. She didn't see a huge amount of change in J.D., or a motivation to change. She was concerned about J.D.'s pattern of missing visits with her and Dr. Amin, questioning her motivation to change. In the end, she said that the counseling was not a success and J.D. was a poor candidate for future counseling because she does not recognize the need for it.

e) J.D. minimized giving misinformation about the children's fathers to the society and Dr. Amin, saying, "I like to keep long stories short." She didn't think the society needed to know about the fathers and wondered what the big deal was about. She minimized her missed visits with Dr. Amin, saying, "what could I do?"

f) I received extensive evidence that J.D. does not address problems between the children on visits when they are small, and that as a result, they escalate into difficult situations.

g) J.D. claimed that she would attend psychotherapy as recommended by Dr. Amin. However, she quickly put conditions on this, saying that it could be difficult to work into her schedule. She said that she would not participate in this process if the children were not returned to her. This is consistent with Dr. Amin's view that she might attend with a service provider if there was a tangible benefit, such as the return of her children, but not because she really feels the need for it. The consequence is that J.D. is unlikely to take the necessary steps to make meaningful changes in her parenting.

4.5.1(e) -- Dr. Amin's conclusion

62 Dr. Amin's evidence was that a continuing pattern of improvement and then regression for children leads to reduced potential for change with each occurrence and an entrenchment of the regressive behavior. He testified that J.D. would be a passive parent if the children were returned to her. He stated that the children would raise themselves and be deprived of teaching, guidance and the ability to relate to the world at large. He felt that there was little that J.D. could do to provide for the healthy development of the children and there is much to be undermined if there is continued contact. He testified that with all of the faults of the foster care system, the children would do better as long-term foster children than they would in her care. Dr. Amin concluded that permanent plans need to be made as soon as possible to undo the harm that J.D. has already done to the children.

4.5.2 Other Concerns

63 In addition to the concerns set out in the evidence above, the following caused me concern about J.D.'s plan:

a) I agree with the society's submission that J.D.'s plan of care was shallow and not well thought out. Aside from not having present housing for the children, she does not offer any detail about the services the children would attend to meet their needs, or any detail about childcare arrangements for them. There has been little, if any, research done by her in these important areas.

b) J.D., in her evidence, demonstrated little understanding of the children's special needs. Consistent with Dr. Amin's testimony, she minimized their needs. This makes it unlikely that she will be able to meet these needs in a constructive manner. I also found that J.R. had little understanding of the children's needs, although this can be explained by the fact that he hardly knows the children and J.D. is his filter for how the children are functioning.

c) I agree with Dr. Vallance who wrote that the children require a caregiver who can get the children to appointments on time and work collaboratively with service providers. J.D.'s history over the past two years, has demonstrated an inability to do this. The evidence shows that she quickly becomes overwhelmed with too many expectations.

d) It is likely that J.D. will continue to have a difficult relationship with the society. It is also likely that J.D. will continue to be secretive with the society and might not report any circumstance that has placed a child at risk. All of this creates a significant risk for the children, as the society would have difficulty enforcing a supervision order in a meaningful way.

e) J.D. has isolated herself from many of her supports.

f) J.D. has a history of having conflict in her relationships. This ranges from conflict with her mother and brothers, her partners and society staff to becoming embroiled in the situation where she was assaulted by her co-workers. She has not addressed this issue. I would likely be returning the children to a milieu where conflict is the norm. This is not healthy for their development.

g) With the exception of her present relationship with J.R., J.D. has not maintained any real stability in her life. This is understandable given the difficult childhood she described. She was a child when she had her first two children and was robbed in many ways of her own childhood. She has constantly moved residences and currently has no residence to move to. Her relationships have often been abusive. She has had difficulty sustaining consistent employment. Even during the middle of this trial, she could not maintain stability and has no current housing due to the rift with her mother. These children require consistency and stability to develop properly. They will not receive this if their primary caregiver is unstable.

h) Although J.R. has made some favourable impressions with the society (and this court) I have concerns about him that relate to his plan with J.D. I am concerned that he did not press J.D. to introduce him earlier to the children and the society. His answer is that they are her children and he had to accept her wishes. This is only an acceptable answer to a degree. J.R. confirmed that he had accompanied J.D. to court on more than one occasion, so he was aware of the process. Surely, he should have realized that a major decision was being made about these children and that if he was living with J.D., he would play a major role in any consideration as to whether the children should be returned to her. He should have had the common sense to realize that a period of evaluation would be required to assess his interaction with the children. I am concerned that he was passive

in deferring to J.D., who was demonstrating terrible judgment about this. I am also concerned that it required considerable discussion with counsel for the society during cross-examination for J.R. to acknowledge this.

I am also concerned about J.R.'s limited knowledge of the needs of the children and that he has not made concrete efforts to learn more about them, given that he proposes to be their caregiver. Given J.D.'s significant limitations, J.R. would need to play a more prominent role in child care decision-making if their plan was to work. He cannot just sit back and only be involved with the children to the extent that J.D. will permit.

I am concerned that J.R. is working up to six days a week for 12 hours a day. The gains that J.D. seems to make while he is present will have little effect if he is rarely home.

I am concerned that J.R. and J.D. have not given much thought to the special services the children will require, or how they will get them to these services. Their approach was along the lines of, "we'll deal with it when we get to it."

I am also concerned about how having to care for challenging children will impact on the relationship between J.D. and J.R. J.D. does not have a history of dealing with stress well and maintaining relationships under stress. Despite their best intentions, there is a big question as to whether this relationship will last if one or more of the children are returned to their care.

(i) The Act requires that I look at the impact of delay on the children in assessing their best interests. The children have been in care for far too long without a permanent decision being made. The impact of the statutory timelines is that parents must now act promptly to make positive changes in their life and in presenting viable plans for their children. The Act is not designed to have parents present new plans and new caregivers on the eve of trial for children who have been in care for this long. Long-term planning should not be delayed for late and speculative plans of care.

4.6 Discussion

64 After a careful consideration of the law and evidence, I have decided that it is in the best interests of the children that they be made crown wards. There is no less disruptive alternative for them consistent with their best interests. The children, to varying degrees, all have significant needs. They will all require committed, stable and competent caregivers. J.D. has demonstrated little understanding of the many needs of her children. The evidence indicated that she has difficulty empathizing with her children and minimizes their problems. The evidence convinced me that J.D. has limited ability to address the children's emotional needs, including the ability to obtain the proper care and services for them. These deficits would undermine the children's mental and emotional development.

65 The evidence established that J.D. continues to exercise very poor judgment, has difficulty understanding and coping with the behaviour of the children and does not cope well with stressful situations. These deficits are compounded by the fact that J.D. lacks little insight about them; she does not believe that there is anything wrong with her parenting. This has meant that she has not been able to make effective use of supportive services to improve her parenting. As a result, she has demonstrated remarkably little change in her life since the children were apprehended on January 10, 2005. It also means that her prospects of making any meaningful changes to improve her ability to care for the children in the future are poor. J.D. continues to be secretive and distrustful with the society. These feelings are deep-rooted and unlikely to change in the near future. She is a very poor candidate to work effectively with a supervision order. J.D. continues to live an unstable life. Her plan of care was poorly thought out and changed during the course of the trial. These children require stability and consistency of care as soon as possible and, unfortunately, J.D. cannot provide this. The risk of harm to the children at the time of the apprehension was significant. The evidence established that the risk of harm to the children, if returned to J.D.'s care at this time, would not be much different.

66 The introduction of J.R. to the society and the children just prior to the trial is a case of "too little, too late." Despite the positive first impression J.R. has made, it is far too early in his relationship with J.D. and the children to properly assess if it would eventually be in the best interests of any child to be returned to him and J.D. The children have been in care for over 30 months and the law requires that I make a decision about their future now. It is speculative at this point whether J.D. and J.R. would be able to adequately care for any child in the future. Far more information would be needed to assess this. We would need to see how J.R. and J.D. function together and with the children over an extended period of time. If a child was to be returned to the care of J.R. and J.D., it would be irresponsible, in these circumstances, to immediately go from the current semi-supervised access arrangement to a return home. There is a huge difference between exercising access for 2.5 hours each week in a controlled setting and caring full-time for a child. The best interests of the child would require his or her return home in a transitional manner, starting with day access, then overnights and then extended overnights. The court would need to evaluate the child's adjustment to this access. All of this requires considerable time: time that has run out in this case. This is the type of plan that J.D. should have proposed well over a year ago, to have had a reasonable expectation that the court would delay permanency planning for the children in order to implement such a plan.

Part 5 -- Access

5.1 Legal Considerations

67 It is important to note that this case was commenced prior to the passage of the *Child and Family Services Statute Law Amendment Act*, 2006, S.O. 2006, c. 5 on November 30, 2006. Ontario Regulation No. 495/06 (transitional matters) provides that the former version of subsection 59(2) of the Act shall apply to proceedings initiated before the amendments came into force. This case will be governed by the legislation (and case law interpreting it) as it read preceding these amendments. The relevant test in deciding access to a crown ward is contained in subsection 59(2) of the Act, which then read as follows:

s. 59(2) Access: Crown ward -- The court shall not make or vary an access order with respect to a Crown Ward under section 58 (access) or section 65 (status review) unless the court is satisfied that,

(a) the relationship between the person and the child is beneficial and meaningful to the child; and

(b) the ordered access will not impair the child's future opportunities for a permanent or stable placement.

68 Subsection 59(2) should be regarded as establishing a threshold test that must be met before the court goes on to consider whether an access order is in the best interests of a child. *Children's Aid Society of the Districts of Sudbury and Manitoulin v. C.T.* [2003] O.J. No. 3041 (Ont. Sup. Ct.)

69 The onus to rebut the presumption against access to a crown ward is on Ms. De Abreu. *Children's Aid Society of Toronto v. D.P.* [2005] O.J. No. 4075 (Ont. C.A.).

70 Once there has been an order for crown wardship, the legislation reflects an intention to shift the direction of assistance, service and planning away from a plan for reintegration of the child back to the natural family, to a focus on long-term, permanent placement, preferably through adoption. *Children's Aid Society of Ottawa v. R.L.* [2004] O.J. No. 3112 (Ont. Sup. Ct.) par. 57.

71 The meaning of the phrase "beneficial and meaningful" was examined by Quinn J. in *Children's Aid Society of the Niagara Region v. M.J.* [2004] O.J. No. 2872 (Ont. Sup. Ct. -- Family) where he said:

> (45) What is a "beneficial and meaningful" relationship in clause 59(2)(a)? Using standard dictionary sources, a "beneficial" relationship is one that is "advantageous". A "meaningful" relationship is one that is significant. Consequently, even if there are some positive aspects to the relationship between parent and child, that is not enough -- it must be significantly advantageous to the child.
>
> (46) I read clause 59(2)(a) as speaking of an existing relationship between the person seeking access and the child, and not a future relationship. This is important, for it precludes the court from considering whether a parent might cure his or her parental shortcomings so as to create, in time, a relationship that is beneficial and meaningful to the child. This accords with common sense, for the child is not expected to wait and suffer while his or her mother of father learns how to be a responsible parent.
>
> (47) Even if the relationship is beneficial and meaningful, I think that, as a final precaution, there still must be some qualitative weighing of the benefits to the child of access versus no access, before an order is made.

72 Section 140 of the Act requires that a society shall make all reasonable efforts to secure the adoption of every child who is a Crown ward. No such placement can be made if there is an outstanding order for access.

73 In *Children's Aid Society of Ottawa-Carleton v. T.C.* [2002] O.J. No. 3711, (Ont. S.C. -- Family) Justice MacKinnon commented on the juxtaposition of section 140 and subsection 59(2) of the Act as follows:

> Taken together, these provisions mean that, where the Society is able to secure an adoption placement for a crown ward, and where, on the facts as found by the court, that placement better promotes the best interests of the child than a non-adoptive placement combined with an order for access to a parent, then the court should not make an access order. To do so, would simply invite an application to terminate the access order as not in the best interests of the child because it is an impediment to adoption, the duty of which to secure lies on the Society.

Justice MacKinnon went on to say in Paragraph 18:

> Access to M.H. as a Crown ward should not be ordered for the primary or sole purpose of enabling this specific foster placement to continue. The inquiry directed by s. 59(2) is not as to whether a specific foster placement is in the child's best interests. In so doing, the court can give consideration to the merits of a specific placement but the weight to be given to this is limited by the fact that the court cannot order a specific placement, rather the Child and Family Services Act places this decision in the hands of the Children's Aid Society.

74 Stable placement as set out in subsection 59(2) of the Act is not restricted to adoption. There have been a number of cases where it has been determined that it is in the best interests of the child to remain with foster parents committed to being long-term foster parents. It depends on the facts of each case and the court must determine the best interests of the children. *Children's Aid Society of the Niagara Region v. D.M.* [2002] O.J. No. 1461 (Ont. Sup. Ct. -- Fam. Ct.); *Lennox and Addington Family and Children's Services v. M.S.* [2005] O.J. No. 5109 (Ont. Sup. Ct.); *Children's Aid Society of Toronto v. K.T.* [2001] O.J. No. 1260 (Ont. C.J.). There is an excellent discussion of the different approaches to this issue by Justice E.B. Fedak in *The Catholic Children's Aid Society of Hamilton v. M.W.* [2006] O.J. No. 4229 (Ont. S.C.), where he adopts the approach taken by the courts in this paragraph in ordering crown wardship with access for a six year old child.

75 In certain circumstances, it is obvious that a child is adoptable and little evidence is required in support. At this end of the "adoptability spectrum" are infants or toddlers who are healthy and who suffer from no impairments. At the other end of the spectrum are older children with serious mental and physical disabilities. These children are the least adoptable and accordingly, the onus on the society to prove adoptability is much greater. The court must also consider the fact that, pursuant to subsection 137(6) of the Act, an order for the adoption of a child who is seven years of age or more shall not be made without the child's written consent and whether that consent is likely to be granted. *Children's Aid Society of Toronto v. C.T.* [2006] O.J. No. 5491 (O.C.J.), Spence J.).

76 I have considered all of these legal principles in making my decision.

5.2 -- Is the relationship with the children beneficial and meaningful?

77 The evidence, as set out above, satisfied me that access with their mother is beneficial and meaningful for the children. J.D. has satisfied the onus in the first part of the test in subsection 59(2) of the Act. Eva Molnar, a society witness, testified that all of the children have a great attachment with their mother. All of the children look forward to their access visits with her. They usually run to greet her at the start of the visits. They seek and compete for her love and attention. The importance of this relationship does range for the children. Tra.D. has the closest relationship with his mother and it is also very important for T.D. It is less so for J.D. and M.D., which is

understandable given that they have spent much of their lives in foster care. However, even in their cases, J.D. has met her onus respecting the first part of the test.

5.3 Will access impair the children's opportunities for a permanent or stable placement?

5.3.1 T.D. and Tra.D.

78 Ms. McNally gave evidence that T.D. was adoptable. She attributed this to the fact that he is beautiful, intelligent, personable and has made considerable gains in care. She felt that T.D. might be open to the possibility of adoption, based on her discussion with him. She said that she did not discuss the consequences of adoption with him (specifically, that it might mean that he has little or no future contact with his mother). She said that he has thrived in his present home. She said that the society's plan was to try to place the children together in a different adoptive home, but not in the V. foster home. However, when I pressed her, she said that the society would seriously consider the V. family as an adoptive home for T.D. She agreed that the advantages of this would be that:

a) T.D. has established a positive relationship and attachment with the V. family.
b) T.D. has made considerable gains in this placement.
c) T.D. has established a positive relationship with the other children in this home.
d) T.D. has already suffered considerable disruption due to the frequent moves he has made. He is comfortable and happy in this home.
e) T.D. is comfortable in his school, his community and has friends. He would be negatively disrupted by another move.

79 Ms. McNally testified that she believed Tra.D. was also adoptable. She attributed this to the fact that he is an attractive and sociable child. She believed that he would be able to positively adapt to an adoptive home. She did not believe that his behavioural issues posed any impediment to being adopted.

80 I share the frustration Justice Robert Spence expressed in *Children's Aid Society of Toronto v. C.T.* (supra) about the quality of the evidence the court is receiving from societies concerning adoptability. He says at Paragraph 81 of his decision:

> It is unfortunate that, in this age of computers and sophisticated record-keeping technology, the society is not in a position to provide more detailed and helpful historical data with respect to the adoptability of a child like D.T. Regrettably, the data contained in Exhibit 8 is of little use in assisting this court to determine the issue of D.T.'s adoptability.

81 The society produced little in terms of statistical data with respect to adoption of older children. Ms. McNally did testify that last year the society placed 39 children and 7 were siblings. She said that she had personally placed one eight and one nine year old child for adoption and was aware that colleagues had placed children of this age, but had few details of this. Her only personal experience, she said, of placing siblings was one placement of two siblings. She was aware of three other sibling placements by colleagues, one of which she said was rocky at first. This is sparse information with which to determine the adoptability of children. In the future, it would be useful in

cases like this, for the court to be provided with concise statistical data that would include the following information:

a) How many children have been made crown wards without access in the past three years in Toronto, broken down by age, race, cultural background and special needs, and whether or not they are part of a sibling group.
b) The number of these children who have been placed for adoption in each of the previous three years, in the categories set out above. This should not include children who were made crown wards without access more than three years ago.
c) The length of time it has taken to place these children for adoption, in the categories set out above.
d) The number of children who were made crown wards without access over one year ago who have not yet been placed for adoption, in the categories set out above. There should also be an explanation as to why the adoption has not taken place (e.g. an appeal).
e) A breakdown of the number of children who have been able to be placed in a culturally compatible adoptive home over the prior three years.
f) A breakdown of the success in placing siblings together over the prior three years.
g) A breakdown of the ability to maintain sibling access in cases where siblings have not been able to be placed together over the prior three years.
h) A record of adoption placements that have broken down, or required significant society support in the past three years, in the categories set out above.
i) A breakdown over the past three years of how many children seven years of age and over have consented and refused to consent to adoption. It would also be useful to have a breakdown of the characteristics of these children. This would include, the level of contact the child had with his or her parent before the request to consent to adoption was made, any special needs of the child, the child's race, cultural background and whether they are part of a sibling group that will be divided by the adoption.

82 T.D. and Tra.D. are at the end of the spectrum, described by Justice Spence in *Children's Aid Society of Toronto v. C.T.*, where the evidence the society needs to prove adoptability is much greater. The society needed to produce far better evidence than it did to satisfy me on a balance of probabilities that T.D. and Tra.D. are adoptable.

83 T.D. would need to consent to any adoption. Tra.D. would also be required to give his consent to an adoption by the time any placement for him is made. Given how important their relationship with their mother is to their sense of self, security and well-being (especially for Tra.D.), it is unlikely that either T.D. or Tra.D. would consent to an adoption if it meant they might not be able to see J.D. again (or rarely see her if some contact is permitted by the adoptive family). I fail to see the benefit to T.D. and Tra.D. in terminating their access to a meaningful and beneficial person in their life in order to provide them with the opportunity of consenting to an adoption in the future, as suggested by the society. That is a speculative possibility at this point, and if either child wants to

be adopted in the future, a status review application can be brought to terminate the access order so that he can be freed up for adoption.

84 I also considered the possibility of the V. family adopting T.D. However, the evidence I received at trial was that A.V. would want the blessing of J.D. and T.D.'s consent before she did this. A.V. testified that she would have to think about it very hard if J.D. did not give her blessing. At this point, I have not received evidence that the V. family is prepared to adopt T.D. without these pre-conditions being met. If there is a change in these circumstances, the society can bring a status review application for the court to consider the issue.

85 Even if I had found that T.D. was adoptable at this point, I would have followed the line of cases where long-term foster placement was found to be the most permanent and stable placement for the child. This case is not dissimilar to the case decided by Justice Fedak in *Catholic Children's Aid Society of Hamilton v. M.W.*, referred to above. In both cases, the children have beneficial and meaningful relationships with their mothers and would suffer grief if that relationship was curtailed or denied. In both cases, the children are in stable foster homes where they have done well and formed attachments. In both cases, the children would suffer disruption by being moved from the foster family, the community, school and friends they have become secure with. And in both cases, the foster families are prepared to care for the children on a long-term basis. Although adoption should not be denied to preserve a specific foster placement, the value of that foster placement as it pertains to the best interests of the child can be an important factor in the court making its determination. I take seriously the evidence of T.D.'s foster mother when she said that if T.D. had to be moved again, it could "tip the scales." This would be exacerbated by the loss of his relationship with his mother. I find that the second part of the test in subsection 59(2) of the Act is met by the long-term placement of T.D. with his current foster parents and that access would not impair this. In fact, the evidence satisfied me that T.D. is more likely to have a secure, stable and permanent placement if he knows that he will continue to have access with his mother.

86 Tra.D.'s situation is different from T.D.'s as he does not have a foster family that is available to care for him on a long-term basis at this time. This court is well aware of the problems that can occur with long-term foster care: children are frequently moved and often are unable to become part of a permanent family. However, I feel that the alternative of terminating access to J.D. to allow a speculative opportunity of adoption would be more detrimental to Tra.D. The evidence convinced me that Tra.D. will have a far better chance of maintaining a stable and permanent foster home placement if he has the opportunity to continue to maintain significant contact with his mother. To move him from his current foster home and to terminate his relationship with his mother would likely devastate Tra.D. and crush the fragile gains that he has made in care. The evidence convinced me that this would likely cause serious damage to Tra.D. and negatively impact on his mental and emotional development. I find, based on the evidence, that continued access to his mother will enhance, rather than impair, Tra.D.'s future opportunity for a permanent and stable placement.

87 Although this court cannot dictate where the society places children, it seems reasonable to suggest that the society explore placing Tra.D. in the V. foster home with T.D. It appears that M.D. will have to be moved shortly; T.D. and Tra.D. are very close, and A.V. appeared to be a warm and highly competent parent. A.V. testified that she would seriously consider this possibility.

88 In considering the above, I have kept in mind that the onus is on J.D. to establish that she has met the second part of the test for access to crown wards; the onus is not on the society. For the

reasons set out above, I find that J.D. has satisfied this onus and T.D. and Tra.D. will be made crown wards with access. The form of access will be discussed below.

5.3.2 Je.D. and M.D.

89 Ms. McNally gave evidence that both Je.D. and M.D. were highly adoptable. She attributed this to their young age and the fact that they are beautiful and intelligent children. She testified that Je.D. has few special needs and there are no impediments to her adoption. She said that she has adapted well to her foster placement and should have little difficulty adapting to a new and permanent placement. She testified that while M.D. has special needs, the society has been very successful in placing children with these special needs for adoption. She indicated that every effort will be made to place the children in a mixed-race family. She said that although they currently have none of these families on their list, there is one family that meets this profile that she expects to be approved shortly. She also said that if this family is not suitable, she would explore lists of families outside of Toronto who meet this profile, as agencies across Ontario meet regularly to share this information. She indicated that the society already has received four community inquiries about adopting these children.

90 My concerns about the quality of the society evidence about adoption apply as well to Je.D. and M.D., but to a far lesser extent. The evidence required to convince the court that children of this age are adoptable is not as onerous on the society. The circumstances of Je.D. and M.D. are far different from those of T.D. and Tra.D. Neither Je.D. nor M.D. are required to consent to their adoption. Dr. Vallance testified that both Je.D. and M.D. have their primary connection with their foster parents and not their mother. This is understandable as both children have spent much of their life in care and do not have the same connection to J.D. as their older brothers. Both children will likely be able to adjust to an adoptive home and adjust to the loss of contact to J.D. The evidence is clear that it is in their best interests to provide a permanent placement as soon as possible. J.D. did not lead any evidence to rebut the society's evidence on this issue and I accept Ms. McNally's evidence that both Je.D. and M.D. are adoptable.

91 The evidence did not satisfy me that long-term foster care would provide Je.D. and M.D. with a stable and permanent home. This is not a case where they are already secure in foster homes prepared to care for them on a long-term basis, such as in the cases referred to above. M.D. and Je.D. are also younger than the children in those cases. The evidence is that both children will have to move in the near future. The opportunity for adoption is clearly their best chance for a stable and long-term placement and an order for access would impair this. Both children deserve the opportunity for a fresh start and to be able to become part of a stable and secure family who can meet their needs. J.D. has not rebutted the presumption against access to crown wards with respect to M.D. and Je.D. and there will be an order for no access with respect to them.

5.4 The specifics of access with T.D. and Tra.D.

5.4.1 The Test

92 If the evidence establishes that adoption can provide the most stable and permanent placement for a child, the court cannot order access to preserve a possible reintegration with the parent. Once crown wardship is ordered, the parent cannot be considered as the most stable and permanent placement. The parent must meet the onus of rebutting the presumption against access set out in subsection 59(2) of the Act before access can be ordered. *Children's Aid Society of Toronto v. M.W.* [2005] O.J. No. 931 (Ont. S.C.). I followed that principle in this case. However, once the parent has

satisfied the onus set out in subsection 59(2), as J.D. did in this case, the court is to consider all factors that would impact on the child's best interests when making an order for access. At this stage, the court can consider the possibility of reintegration of a child with a parent, provided that this is consistent with the child's best interests.

93 The test for access, at this stage, is set out in subsection 58(1) of the Act, which reads:

> **Access order**
>
> **58**(1) The court may, in the child's best interests,
>
> (a) when making an order under this Part; or
> (b) upon an application under subsection (2),
>
> make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

5.4.2 Tra.D.

94 Although I have found that it is not in the best interests of the children to be returned to J.D.'s care at this time, the evidence indicated to me that there exists a real possibility that J.D. and J.R. may be able to care for one child at some point in the future. If they were to care for one child, it should be Tra.D. He has the closest connection of the children to his mother and has expressed a strong preference to live with her, which needs to be seriously considered. Tra.D. has made significant gains in care, although there appears to be a recent regression. There is evidence as well that suggests J.R. will be a positive factor for him. He and Tra.D. share a love of sports and might be compatible. T.D., on the other hand, is happy and secure in the V. home and it is unlikely that this placement will be moved. Further, T.D. is not expressing a clear desire to return to live with J.D. at this time.

95 It is in Tra.D.'s best interests to actively explore if he can be successfully returned to J.D. for the following reasons:

(a) The positive factors and evidence that I detailed above in support of J.D.'s plan for the children.
(b) The potential benefits of Tra.D. returning home set out above.
(c) The unusual circumstance of J.R. being introduced as a primary focus of J.D.'s plan just one month before the trial and the society not having the opportunity to properly evaluate this plan.
(d) The fact that J.R. has made a positive first impression and there exists a real possibility that it is in Tra.D.'s long-term best interests to be placed in the care of J.D. and J.R.
(e) The society was placed in an awkward position by the late presentation of J.D.'s plan. Like this court, they had to balance exploring what could be a beneficial plan with their statutory responsibility to provide permanent planning for the children. The society should use this time to properly

assess this plan. I expect that if their assessment is positive, an agreement can be reached between the parties concerning Tra.D.

(f) The evidence suggests that J.D. parents better when she can individually focus on one child. She has difficulty multi-tasking. The chances for her to parent a child positively are far greater if all of her attention can be focused on that child. She would be under far less stress and possibly be able to obtain and follow through with services if she only had to care for one child.

(g) I recognize that the society has been challenged by dealing with J.D. However, I feel that the society showed a lack of creativity in exploring different access alternatives with J.D. I don't understand why she had to have access with all four children at all times, especially when she consistently struggled with this challenge. Why not schedule access for only one or two children and see how she did? Why not arrange some unsupervised access with one child and see how that went? It is in Tra.D.'s best interests to implement an access schedule that will allow the society, and if necessary, the court, to evaluate this evidence.

(h) If I do decide to return Tra.D. to J.D. in the future, my access order will ensure that he will have had the benefit of a responsible transition into the home. I take seriously Dr. Amin's evidence that it could be damaging to Tra.D. if he were returned home after making gains and then regressed again. I want to take every reasonable precaution to reduce the risk of this occurring.

96 I have considered that the greater the restriction sought in access, the greater the evidence will be needed to justify this. *Margaret A. v. John D.*, [2003] O.J. No. 2946, 2003 CanLii 52807 (O.C.J. -- Spence J.). This principle was stated in a custody/access case, but is equally applicable in child protection cases. The evidence does not support a determination that access to either T.D. or Tra.D. needs to be supervised at this time. Supervised access, while often necessary, is not an environment that facilitates the best access between a parent and a child, especially children of this age. In many ways, it is an artificial setting. The visits are often in small, cramped rooms, without windows. It is often difficult for a parent to relax knowing that they are constantly being watched and evaluated. This, in turn, impacts on the visits with the child. This is especially so with a parent with J.D.'s personality. Both T.D. and Tra.D. are active children. They will benefit by having longer visits where they can participate in activities with J.D. and J.R. The many concerns that I have set out about J.D. pertain far more to her ability to meet T.D. and Tra.D.'s needs on a long-term basis, rather than her ability to care for them on shorter visits. Further, in Tra.D.'s case a gradually increased schedule of unsupervised access is required to assess if he can be returned home.

97 J.D. cannot bring a status review application of a crown wardship order for six months from the making of this order (subsection 64(7) of the Act). I expect either the society or J.D. to bring a status review application at that time concerning whether Tra.D. should be returned to J.D. This application should be returnable before me for a case conference. If not resolved, I would likely fix an early date for a hearing before me. The court would expect to receive the following information to make this decision:

1. Does J.D. have appropriate housing for Tra.D.?

2. Does J.R. have a criminal record in addition to what he admitted to in court?
3. To what extent are J.D. and J.R. cooperating with the society?
4. What steps is J.R. taking to familiarize himself with Tra.D.'s needs?
5. Is J.R. exercising access with Tra.D. in a constructive and consistent manner?
6. How is Tra.D. responding to the access that I will order?
7. How is Tra.D. interacting with J.R.?
8. I will want further evidence about J.R.'s parenting with his son. Has he been a responsible parent? Does he have a positive relationship with this child?
9. I expect this decision will be very difficult for J.D. It is reasonable to expect that she will grieve this loss for a period of time. I am concerned about how this will impact upon her ability to function with Tra.D. and J.R. and will want to receive evidence on this issue.
10. What is J.R.'s level of commitment to planning for Tra.D.?
11. Is J.R. prepared to have Tra.D. placed in the joint care of both him and J.D.? Due to J.D.'s deficient decision-making abilities, I may want to give J.R. greater responsibility if I decide to return Tra.D. at some point in the future.

98 At this point, I find that it is in T.D.'s best interests to have access with J.D. on alternate Saturdays for the day plus whatever other access can be agreed upon. In making my access order, I considered that T.D. is part of his foster family and the order should be constructed to so as to not unduly interfere with his being part of that family. I also want J.D.'s focus in the near future to be on consolidating her relationship with Tra.D. in anticipation of his possible return to her home.

99 The access order for Tra.D. has been constructed to gradually increase his contact with J.D. and J.R. in a manner which will permit Tra.D. to adjust to increased contact with them and to permit the society and the court to be able to properly assess if it is realistic to place Tra.D. with J.D. and J.R.

100 I will also provide for some flexibility in the access order to permit the society to increase the access for either T.D. or Tra.D. if they feel that this is warranted.

101 If new circumstances arise that indicate that it is not in the best interests of either child to maintain the ordered access, the society should bring an early status review application before me.

102 E.T. has shown little interest in his children since they were apprehended. The evidence established that he has little, if anything, to offer to them. It is in the best interests of the children that an order be made that he have no access to them.

5.5 Sibling Access/Contact with mother

103 The society has acknowledged that there is a bond between these children and they recognize the importance of maintaining sibling access. I accept that they are committed to preserving this. I am content to take the approach taken in *Children's Aid Society of London and Middlesex v. S.M.* (2000) [2000] O.J. No. 2064, 97 A.C.W.S. 472 (Ont. Family Court), which is to make no order with respect to sibling access, but to encourage the society to promote it. I believe this meets the dual objective of ensuring that there is no impediment to the children's adoption and communicating the court's message that the society should promote access between the siblings, both before and after adoption.

104 This order does not preclude the society, in its capacity as custodial parent of crown wards, from permitting the family to visit with J.D. and M.D. prior to an adoption. *Children's Aid Society of Toronto v. D.P.* (supra). They will have control over who sees them and when. This order also does not preclude the society from permitting contact between E.T. and T.D. and Tra.D. They will have full control over any contact that he may have with them.

105 The recent amendments to the Act have introduced the concept of adoption orders with openness. If both the society and the adoptive parents agree, the biological parents can maintain contact with adopted children. This can range from pictures and letters to direct contact. If handled properly, a child can obtain the benefits of adoption and of continued contact with their biological parents. Except perhaps at the beginning of the access visits, J.D. has not been a parent who has undermined the children's placement with their foster families. Given this, and the children's connection with J.D., it is hoped that the society will actively explore foster homes that are receptive to such an arrangement.

Part Six -- Conclusion

106 I recognize that this decision will be very painful for J.D. There was absolutely no question in my mind that she loves her children very much and wants what is best for them. Her challenges are in large part due to the poor upbringing that she had. I truly regret having to make this decision, but having seriously weighed the evidence, I am certain that the orders being made are in the children's best interests.

107 It is very important that J.D. realize that T.D., and especially Tra.D., will need her now more than ever. It is important that J.D. can show the court that she can work with the society in a constructive manner and demonstrate her commitment to provide a good home for Tra.D. This will require the very best that she has to offer.

108 It is important that all reports concerning Tra.D. and T.D. be shared with J.R. He will also have a challenging role in the future. He will need to support J.D. in her grief and take a far more assertive role in planning for a possible return of Tra.D. He will need to be available for access visits and to meet with society workers. He will need to show a serious commitment to this plan.

109 The society will also have an important part to play. I heard from several society witnesses during the trial. It quickly became apparent to me which personalities were more likely than others to be successful in working well with J.D. I cannot direct the society to change their family service worker, but I can certainly suggest that it would have been better if they had done this a long time ago. J.D. will have a better chance of success with a worker who can communicate clearly with her, be supportive and emphasize her positive qualities (while not ignoring her problems). J.D. will be at her best if she perceives that the worker wants her to succeed. Although she was a children's service worker and not the family service worker who has to work directly with the parent, Ms. Levantis was one society worker who was able to demonstrate the possible benefits of this approach. A "one-size fits all" philosophy for a society to take in assigning workers is often a recipe for disaster. It contributed, in some part, to how this case developed.

110 There will be an order that Je.D. and M.D. be made crown wards with no access.

111 T.D. and Tra.D. will be made crown wards with access to J.D. E.T. shall have no access to them.

112 T.D. will have access with J.D. on alternate Saturdays from 10 a.m. to 5 p.m. commencing on August 11, 2007 plus whatever other access is agreed upon by the society.

113 Tra.D. will have access with J.D. at the following times:

a) For the first 8 visits, commencing on August 4, 2007, every Saturday from 10 a.m. until 5 p.m.
b) Provided that the society is satisfied that J.D. has suitable accommodation for Tra.D., the next eight visits will be every Saturday from 10 a.m. until Sunday at 5 p.m.
c) Thereafter, access will take place every Friday from 6 p.m. until Sunday at 5 p.m.
d) Such further and other access as the society agrees to.

114 The following will be the conditions of access for both Tra.D. and T.D.:

(a) J.D. and J.R. are to be flexible in rearranging access visits with T.D. and Tra.D. if either child has a special activity or occasion to attend.
(b) J.D. and J.R. are to permit the society to make announced and unannounced visits to the home.
(c) J.D. and J.R. are to permit the society to speak to T.D. and Tra.D. privately in their home.
(d) J.D. and J.R., if asked by the society, are to advise them where they took the children on visits and what persons they had contact with.
(e) J.D. and J.R. are to notify the society at the earliest opportunity if either T.D. or Tra.D. suffer an injury or become ill during a visit.
(f) J.D. and J.R. are to sign all releases required by the society, in order that the society can communicate directly with service providers for J.D. and J.R.

115 Any future status review application is to be brought before me.

116 I wish to thank counsel for their excellent and thorough presentation of this case. They treated all participants with a great deal of consideration and respect and recognized the difficult circumstances they faced. They brought considerable credit to this process.

S.B. SHERR J.

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