

WARNING

The court hearing this matter directs that the following notice should be attached to the file:

This is a case under Part III of the *Child and Family Services Act* and is subject to subsections 45(8) of the Act. This subsection and subsection 85(3) of the *Child and Family Services Act*, which deals with the consequences of failure to comply with subsection 45(8), read as follows:

45.—(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

. . .

85.—(3) A person who contravenes subsection 45(8) (publication of identifying information) or an order prohibiting publication made under clause 45(7)(c) or subsection 45(9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

ONTARIO COURT OF JUSTICE

B E T W E E N :

CATHOLIC CHILDREN'S AID SOCIETY OF TORONTO,
Applicant,

— AND —

M. DE S. and I.B.,
Respondents.

Before Justice Brian M. Scully

Heard on 7-12 June 2004; 7-10 and 21 September 2004;

1-2 and 29 November 2004; 31 January 2005; 2 and 11 February 2005

Reasons for Judgment released on 14 June 2005

CHILD PROTECTION — Child in need of protection — Physical harm — Infliction of physical harm — Hospital discovered that, by 7 weeks of age, child had suffered multiple fractures, many of which would be extremely uncommon from accidental occurrence for infant with limited mobility — Tests ruled out mother's suggestion of genetic bone frailty — During relevant time, child had been under exclusive care of mother (who was never to left alone with child), father and maternal grandmother, none of whom could offer plausible explanation for child's injuries — Court found that fractures occurred while child was subject to their exclusive care and that child was therefore in need of protection under [subclause 37\(2\)\(a\)\(i\)](#) and [subclause 37\(2\)\(b\)\(i\)](#) of [Child and Family Services Act](#).

CHILD PROTECTION — Form of order — Crown wardship — Least restrictive option to protect child — Court had only 2 competing plans of care: (1) from mother urging young infant's return to her care under society supervision and (2) society's plan for Crown wardship with view to adoption — Child had suffered multiple non-accidental fractures inflicted while under exclusive care of mother, father and maternal grandmother, none of whom could offer plausible explanation for child's injuries — Court-ordered assessment of mother concluded that she was incapable of parenting child and that her intellectual limitations were so severe that she was unlikely ever be able to address needs of any child — Society also adduced evidence of high likelihood of child's adoptability — Mother lead no evidence to challenge either of these conclusions — Court found that mother's plan was not viable and would place child at high risk of further harm — Child's best interests required that she be made Crown ward with view to adoption.

STATUTES AND REGULATIONS CITED

Child and Family Services Act, R.S.O. 1990, c. C-11 [as amended], [subclause 37\(2\)\(a\)\(i\)](#), [subclause 37\(2\)\(b\)\(i\)](#), [section 57](#), [subsection 59\(2\)](#) and [section 70](#).

J. Alexander Duncan for the applicant society
Gary Gottlieb for the respondent mother M. De S.
No appearance by or on behalf of the respondent father, I.B., who, even though served with notice, failed to file pleadings and was thus disentitled from further participation in case

JUSTICE B.M. SCULLY:—

1: INTRODUCTION

[1] On 18 August 2003, the Catholic Children’s Aid Society of Toronto (the “society”) commenced an application seeking:

- A: A finding that the child [E.C. De S.B.] (born on [...] 2003) is a child in need of protection pursuant to subclause 37(2)(a)(i) and subclause 37(2)(b)(i) of Part III of the *Child and Family Services Act*.
- B: An order that the child [E.C. De S.B.] (born on [...] 2003) be made a ward of the Crown and placed in the care of the Catholic Children’s Aid Society of Toronto.
- C: An order that there be no access to the child [E.C. De S.B.] (born on [...] 2003) for the purpose of placing the child for adoption.

[2] On 18 August 2003, Justice Brian Weagant placed the child, E.C. De S.B. in the temporary care and custody of the society, on a “without prejudice” basis. Temporary access to the child was granted with frequency and level of supervision of that access to be determined by the society.

[3] On 14 January 2004, following a contested care-and-custody hearing, Justice Marion L. Cohen ordered that the child remain in the temporary care and custody of the society. The mother, Ms. M. De S., was granted temporary fully supervised access twice a week, each visit to last three hours. One of the two weekly visits was to be in Orangeville, where the child resided in foster care, with the provision that the Catholic Children’s Aid Society of Toronto was to arrange for the transit of Ms. M. De S. to Orangeville. Access, on a temporary basis, was allowed to the father, Mr. I.B., for a period of one hour at each visit.

[4] On 16 March 2004, on consent, Justice Weagant ordered a cognitive assessment of Ms. M. De S. by an assessor agreeable to the society and to Mr. Gary Gottlieb, counsel for Ms. M. De S. The society agreed to pay the costs of the assessment.

[5] The trial commenced before me on 7 June 2003. As Mr. I.B. had not filed an answer and plan of care with regard to his daughter, E.C. De S.B., I found him in default and disentitled to further participation in the proceedings.

2: BACKGROUND FACTS

[6] The child, E.C. De S.B. was born in Toronto on [...] 2003. The mother of the child is Ms. M. De S., age fifteen years at the time of birth, now age seventeen. The father of the child is Mr. I.B., age twenty at the time of E.C. De S.B.'s birth, now age twenty-two. Ms. M. De S. and Mr. I.B. are first cousins.

[7] Ms. M. De S. and Mr. I.B. met in July 2001 when Ms. M. De S., then age thirteen years, visited for a period of seven weeks with Mr. I.B.'s family in Portugal. Mr. I.B., desirous of a relationship with Ms. M. De S., came to Canada in September 2001 to live with Ms. M. De S.'s family. Except for a brief period, Mr. I.B. has lived with the De S. family since his arrival in Toronto. Ms. M. De S. and Mr. I.B. became intimate in 2002 when she was approaching her fifteen birthday and he was nineteen.

[8] Mr. I.B. is a citizen of Portugal. His visitor permit expired on September 2003. He was subsequently arrested on a charge of theft. The criminal matter had not been resolved at the time of his testimony in November 2004. Mr. I.B. has no legal status in Canada and is subject to deportation. Upon his return to Portugal, he will have to remain there for a one year before he could apply to return to Canada.

[9] Following E.C. De S.B.'s birth, Ms. M. De S. and Mr. I.B. continued to live with Ms. M. De S.'s family. They reside with the maternal grandparents, Mrs. Ne. De S. and Mr. Jo. De S., as well as Ms. M. De S.'s younger siblings, Je. De S. (born on [...] 1988), Ja. De S. (born [...] 1990) and Ni. De S. (born on [...] 1992).

[10] In July 1997, Mrs. Ne. De S. was charged, and subsequently convicted, of assault with a weapon, after she hit her son Je. De S. with a belt resulting in marks to his body. All four children were apprehended and placed in foster care. Both Mrs. Ne. De S. and her husband Mr. Jo. De S. were placed on the child abuse register. Eight months later, the children were returned to their parents subject to a supervision order. On the basis of their co-operation with the society and their attendance at parenting courses, the file was closed in January 2000.

[11] Just prior to E.C. De S.B.'s birth, a public health nurse, who had been meeting with Ms. M. De S., made a referral to the Children's Aid Society of Toronto. In the course of its investigation, that society reviewed a psychological report regarding Ms. M. De S., written by Dr. Phyllis Nemers for the Toronto District School Board and dated 27 March 2002. The report revealed that Ms. M. De S. is intellectually challenged. After meeting with the family, the Children's Aid Society of Toronto entered into a three-month voluntary agreement with Ms. M. De S. and Mr. I.B. on 24 June 2003. That agreement stipulated that Ms. M. De S. was not to be left alone with the child E.C. De S.B. and that Mr. I.B. was to be the primary caregiver. As well, the parents committed to ensuring that all of the child's medical and care-giving needs were met and to continuing to co-operate with the society's recommended services, including the High Risk Infant Program.

[12] The file was transferred to the Catholic Children's Aid Society of Toronto on 9 July

2003. Ms. Carmella Diano, a family service worker with that society met with Mrs. Ne. De S., Ms. M. De S. and Mr. I.B. on that date. Ms. Diano advised that she would prepare a new voluntary agreement. In the interim, it was agreed that Ms. M. De S. was not to be left alone with the child, E.C. De S.B. Mrs. Ne. De S. and Mr. I.B. were to be the primary caregivers and the family was to co-operate with the society.

[13] On 18 July 2003 when the child developed a fever, the parents took her initially to Toronto Western Hospital and then to the Hospital for Sick Children, where E.C. De S.B. was admitted and remained until 20 July 2003. The child was given blood transfusions for a blood disorder, known as hereditary spherocytosis. Neither of the parents nor Mrs. Ne. De S. advised the society of the child's illness or her hospitalization.

[14] To support and to assist the De S. family in its plan to care for E.C. De S.B., a new three-month voluntary agreement was entered into on 29 July 2003. It stipulated that Ms. M. De S. was not to be left alone with the child but was to be encouraged to participate in the parenting of E.C. De S.B. under the direct supervision of Mr. I.B. and Mrs. Ne. De S., who continued to be designated as the primary caregivers. The society was to be told of all medical appointments and was authorized to contact the medical professionals attending on E.C. De S.B. to monitor her care.

[15] On 2 and 6 August 2003, the child was taken to a medical laboratory to have blood drawn pursuant to the requisition of Dr. S. Rodrigues, the child's family physician. On each occasion droplets of blood were extracted from the heel of the child by trained lab technicians. Mr. I.B. was with the child throughout the procedure.

[16] On 11 August 2003, the parents and maternal grandmother, Mrs. Ne. De S., brought E.C. De S.B. to a scheduled appointment at the Young Families Program Clinic at the Hospital for Sick Children. Upon a physical examination at the clinic, E.C. De S.B. was noted to have a bruise on her inner thigh. As a result of this finding, x-rays of the entire body skeleton were performed. Mrs. Ne. De S. was with E.C. De S.B. throughout the x-ray procedure. A review of the diagnostic imaging revealed that, at age seven weeks, E.C. De S.B. had suffered four fractures to the long bones of her right foot, one fracture to the long bone of her left foot and as many as sixteen fractures, some fresh and some healing, to the ribs on the left and right side of her body. Dr. Amy Ornstein, a paediatrician with the Suspected Child Abuse and Neglect (SCAN) Program at the Hospital for Sick Children concluded that these injuries sustained by a non-mobile infant without a history of significant trauma or injury, were highly suspicious for non-accidental injury. E.C. De S.B. was apprehended by the Catholic Children's Aid Society of Toronto and placed in foster care where she remains to this date.

[17] Ms. M. De S. filed an answer to the society's application on 5 September 2003 in which she sought the return of her child to the care of Mr. I.B., Mrs. Ne. De S. and herself. She stated that the child had always been well cared for under the care of her family and denied that E.C. De S.B. had been abused. She suggested that the fractures were the result of E.C. De S.B.'s suffering from a bone disorder.

[18] By 11 September 2003, as a result of a court referral for the appointment of counsel for Ms. M. De S. from the Office of the Children’s Lawyer, Mr. Gary Gottlieb was retained to represent her.

[19] On 19 December 2003, E.C. De S.B., now six months of age, was examined by Dr. Sheila Unger, a clinical geneticist at the Hospital for Sick Children. Dr. Unger concluded that the rib and feet fractures that E.C. De S.B. suffered, to the age of seven weeks, were not consistent with inherited bone disease. She noted that, since apprehension and placement in foster care, E.C. De S.B. had suffered no further fractures. Despite this conclusion, Dr. Unger did a skin biopsy at the request of the Catholic Children’s Aid Society of Toronto and forwarded the sample to Dr. Peter Byers, a professor at the Department of Pathology and Genetics, University of Washington, for further testing on the issue of bone disease at his laboratory in Seattle.

[20] On 9 January 2004, Ms. M. De S. filed with the court a second answer and plan of care. Ms. M. De S. stated that the injuries suffered by E.C. De S.B. were:

- (a) sustained at the hands of one or more caregivers in the home, other than herself;
- (b) the result of genetic bone disease; or
- (c) the result of an incorrect diagnosis by the Hospital for Sick Children.

In her plan of care, Ms. M. De S. acknowledged her need for support in rearing her daughter and stated that, as a result of her concerns that E.C. De S.B. might have been hurt by someone in her family, she had decided to live at the Massey Centre, a housing resource for pregnant and young mothers. Ms. M. De S. did not follow through with this plan in 2004, with the result that she lost her placement at the Massey Centre. At the conclusion of the trial, she re-applied for admission but had not begun to reside there when she completed her testimony on 2 February 2005.

[21] On 27 April 2004, Dr. Peter Byers reported to Dr. Sheila Unger that, having analysed the biopsy sent to him by her, he found no abnormalities supporting a diagnosis of bone disease in the child, E.C. De S.B.

[22] In April 2004, Ms. Dina MacPhail, an adoption specialist with the Catholic Children’s Aid Society of Toronto, completed an adoptability report with regard to the child. She concluded that, should E.C. De S.B. be made a ward of the Crown without access, it would be very easy to find an appropriate warm and loving Portuguese family for her.

[23] On the recommendation of Mr. Gottlieb, Dr. Howard Waiser, a psychologist, was chosen as the assessor pursuant to Justice Weagant’s order of 16 March 2004. It was agreed by counsel that Dr. Waiser would conduct an assessment of Ms. M. De S.’s parenting abilities and, specifically, her capability of caring for a young child. On the basis of his interviews and testing of Ms. M. De S., he concluded that she was incapable of parenting E.C. De S.B. and that the severity of her limitations is so great that Dr. Waiser did not anticipate a time when she would ever be able to address the needs of a child.

[24] As a result of the findings of the SCAN unit of the Hospital for Sick Children on 11 August 2003, the Toronto Police Service began a criminal investigation. Ms. M. De S., Mrs. Ne. De S. and Mr. I.B. were interviewed by the police. To date, no one has been charged with an offence arising out of the injuries sustained by the child.

3: THE LAW

3.1: Child in Need of Protection

[25] To find that E.C. De S.B. is in need of protection under [subclause 37\(2\)\(a\)\(i\)](#) of the *Child and Family Services Act*, R.S.O. 1990, c. C-11, as amended (the “Act”), I must be satisfied that the child suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person’s failure to adequately care for, provide for, supervise or protect the child.

[26] To find that E.C. De S.B. is in need of protection under [subclause 37\(2\)\(b\)\(i\)](#), I must be satisfied that there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person’s failure to adequately care for, provide for, supervise or protect the child.

3.2: Order Where Child in Need of Protection

[27] Given the time limit imposed by [section 70](#) of the Act, for a child under six years of age, should I find that E.C. De S.B. is in need of protection, I must make an order under [section 57](#) in the child’s best interest:

- (1) that she be placed with or returned to a parent or another person, subject to the supervision of the society for a period of at least three months and not more than twelve months; or
- (2) that she be made a ward of the Crown and be placed in the care of the society.

[28] Prior to making one of those two orders, I am required to:

- (a) inquire into the society efforts to assist the child before intervening;
- (b) be satisfied that less restrictive options have failed, been refused, or would not adequately protect the child; and
- (c) consider placement with a relative neighbour or other member of the child’s extended family or community.

3.3: Access to Crown Ward

[29] Should I be satisfied that E.C. De S.B. be made a ward of the Crown, I must not, under [subsection 59\(2\)](#) of the Act, make an order of access unless 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.

4: ANALYSIS

4.1: The Medical Evidence

[30] In her report, filed as part of the trial brief, Dr. Amy Ornstein, as noted previously, documented that, by age seven weeks, E.C. De S.B. had suffered multiple bilateral rib fractures, multiple metatarsal fractures and a bruise on her left inner thigh.

[31] Dr. Ornstein noted that metatarsal fractures, in an infant with limited mobility, would be extremely uncommon from an accidental occurrence. Fractures of these long bones of the feet can occur from forceful hyperextension, twisting, impaction or bending of the feet or could be caused by a direct blow. Dr. Ornstein reported that the family suggested these fractures occurred while blood samples were being drawn from E.C. De S.B. when the child was hospitalized for three days in July. Dr. Ornstein described how, during the procedure, the foot or hand is “milked” to encourage blood flow and is typically, at her hospital, performed by skilled nurses in teams of two. Dr. Ornstein further stated that this is a routine technique used to take blood from children and is not consistent with fracture production in a child with normal bones.

[32] In reviewing the multiple fractures to E.C. De S.B.’s ribs, Dr. Ornstein reported that such fractures typically occur when indirect force is generated from anterior posterior compression of the rib cage. Such an action occurs when infants are violently squeezed while being held by an adult’s hand spanning the chest and may occur during violent shaking of a child. Dr. Ornstein noted further that rib fractures are rarely seen in infants unless a history of significant trauma is provided, such as a motor vehicle accident or fall from a significant height. There is no such evidence in this case leading to the conclusion that the rib fractures were caused by non-accidental application of force.

[33] In both of her answers filed with the court, Ms. M. De S. suggested that these fractures might have been caused by a genetic bone disorder. Medical testing at the Hospital for Sick Children in August 2003 to evaluate possible underlying bone fragility revealed no such condition. This finding was later confirmed in the tests performed by Dr. Sheila Unger and Dr. Peter Byers. No evidence was presented to refute these findings. Indeed, Ms. M. De S. in her testimony acknowledged that she no longer believes that E.C. De S.B. suffers from a bone disorder.

[34] In her answer and plan of care dated 9 January 2004, Ms. M. De S. stated that E.C. De S.B. was seen by doctors and apparently diagnosed as having suffered fractures. She further stated that such a diagnosis might be incorrect. At trial, however, Ms. M. De S. acknowledged that she believes E.C. De S.B. did suffer the fractures noted on 11 August 2003.

[35] In her testimony, which followed that of Mrs. Ne. De S. and Mr. I.B., Ms. M. De S. suggested that the fractures might have occurred when blood samples were taken from E.C. De S.B., by the lab technicians on 2 and 6 August 2003. This was the first time that this possible cause of the injuries had been mentioned. To address this suggestion, Mr. Alec Duncan, in reply, called the technicians who had performed the blood procedure on 2 and 6

August. In their evidence, they confirmed the “milking” procedure that Dr. Ornstein stated in her report of August 2003. No restraints were used to secure E.C. De S.B. to the table during the procedure. The child was held by Mr. I.B. who was present throughout the procedure.

[36] In her report of August 2003, Dr. Ornstein stated that fractures to the feet or ribs, as experienced by E.C. De S.B., would have caused the child to cry out or scream. Mr. I.B. did not testify to any such expression of extreme discomfort of the child. Indeed, although he, not Ms. M. De S. or Mrs. Ne. De S., was present during the procedures on 2 and 6 August, he did not suggest, in his testimony, that the fractures might have been occasioned by those procedures. I do not accept this hypothesis as a possible cause of the injuries to the long bones or E.C. De S.B.’s feet.

[37] In her testimony, Mrs. Ne. De S. initially stated that she did not believe that the child suffered any fractures. When confronted with the medical evidence, she stated that, as the child never cried and as she had not been shown the x-rays revealing the fractures, she did not believe the injuries had occurred. Mrs. Ne. De S. subsequently altered her evidence by suggesting that, if any fractures occurred, they must have been occasioned during the course of the x-rays.

[38] Mrs. Ne. De S. was with E.C. De S.B. while the x-rays were taken on 11 August 2003. Prior to the latter part of her testimony at trial, she had never offered this theory as an explanation for the injuries. Not only is such a suggestion implausible, but the medical evidence reveals that some of E.C. De S.B.’s fractures were healing as of 11 August 2003.

[39] The bruise noted in E.C. De S.B.’s inner thigh upon her examination of 11 August 2003 was described in Dr. Ornstein’s report as suspicious of inflicted trauma. She noted that, in an infant with limited mobility, accidental bruising is highly unusual. As no explanation was provided by the family on August 2003, Dr. Ornstein concluded that the bruise was possibly caused by a forceful pinch or direct blow to the thigh area.

[40] Ms. M. De S. acknowledged that the bruise to E.C. De S.B.’s thigh was present before the blood work was done. It would have been obvious, then, to anyone changing or bathing the child. Yet in his testimony, Mr. I.B. said that the first time that he saw the bruise was on 11 August 2003. He stated that it looked like a needle puncture. I reject this explanation as I have rejected the other theories offered by the De S. family with regard to the injuries sustained by E.C. De S.B.

[41] With regard to Mr. I.B., it is of import to note a conversation that took place on the telephone between Ms. Carmella Diano, the family service worker, and him on 25 July 2003. Upon hearing Ms. M. De S.’s screaming in the background, Ms. Diano commented that this was not appropriate for E.C. De S.B. Mr. I.B. responded by stating that he did not hit the baby and the society could take him to court. Ms. Diano had not made any suggestion that anyone was hitting E.C. De S.B.

[42] While with the De S. family, E.C. De S.B. was cared for exclusively by Ms. M. De

S., Mrs. Ne. De S. and Mr. I.B. Ms. M. De S. was never left alone with E.C. De S.B. and the child was alone with Mrs. Ne. De S. and Mr. I.B. on only a few occasions. No plausible explanation was provided by any of these caregivers as to how E.C. De S.B. sustained her injuries and I find that the fractures occurred while the child was subject to their exclusive care.

4.2: Psychological and Assessment Reports

[43] In February 2002, Dr. Phyllis Nemers, a psychologist, was asked by the Toronto School Board to assess Ms. M. De S.'s adaptive and functional skills. Dr. Nemers completed her report on 27 March 2002. The report was filed with the court as part of the trial brief.

[44] In her report, Dr. Nemers stated that Ms. M. De S. had a psychological assessment in 1998, which placed her overall functioning within the very limited range (first percentile). On the basis of the reporting of Ms. M. De S.'s teachers in 2002, Dr. Nemers made a number of recommendations. In noting that Ms. M. De S.'s exposure and functioning within the community was limited, she stated that Ms. M. De S. would benefit from supervised experience and familiarization within venues outside of the home and direct instructions in the areas of eating and meal preparation. Dr. Nemers suggested that Ms. M. De S.'s parents might wish to consult with the guidance department or the school's social worker for direction on appropriate sheltered training or work settings for Ms. M. De S.

[45] In the course of her assessment by Dr. Howard Waiser, Ms. M. De S. completed a number of psychological tests. The testing of her intellectual abilities confirmed that her overall I.Q. level is at the first percentile. Persons with scores at this level are considered to have special needs and can only function within a sheltered environment and are incapable of attending to their needs because of their limited abilities. Testing of her academic abilities reveal scores at the elementary school level. Ms. M. De S.'s demeanour and testimony during the trial supported these findings. While chronologically seventeen years of age, she behaved as a girl of eight or nine years.

[46] Testing of Ms. M. De S.'s parenting abilities and observations of her interaction with E.C. De S.B. resulted in Dr. Waiser's conclusion that Ms. M. De S. has limited parenting skills and does not know how to deal with a child.

[47] In her testimony, Ms. M. De S. stated that she could cook eggs, soup and spaghetti. In the twenty months since E.C. De S.B. was born, however, Ms. M. De S. had prepared the child's formula only once.

[48] A number of professionals — including a public health nurse, social workers with the society and parent support workers, provided to Ms. M. De S. by the society — observed Ms. M. De S. interact with E.C. De S.B. Although they all remarked that clearly Ms. M. De S. loved her daughter, they were consistent in their observations that Ms. M. De S. was largely incapable of reading E.C. De S.B.'s cues, that she needed to be told when and how to feed the child and that they prompted her on how to interact with a baby.

[49] Ms. Izzy Jones of the Jessie Centre, a service to which Ms. M. De S. had been referred by the society, provided the most positive evidence about Ms. M. De S. She noted that, although she (Ms. Jones) remained concerned about the mother's knowledge of child development, Ms. M. De S. had been committed and punctual in her attendance at the centre. Ms. Jones testified that Ms. M. De S. had become more comfortable with E.C. De S.B. while attending at Jessies. However, Ms. Jones did not feel qualified to assess or to comment on Ms. M. De S.'s parenting abilities.

[50] Ms. Jones arranged for a video to be made of one of the access visits between Ms. M. De S. and E.C. De S.B. The video continued when Mr. I.B. joined them for the last hour. The video was edited and prepared, obviously, as a keepsake for the parents. Ms. M. De S. was observed to be tender and loving to her daughter but was rather passive. At one point, when E.C. De S.B. began to fuss, the tape was stopped not allowing for any opportunity to observe Ms. M. De S.'s interaction with E.C. De S.B. in an adverse situation. Although the tape would serve as a memento of E.C. De S.B. at a certain stage in her development, it was of little value in assessing the parenting capabilities of Ms. M. De S.

[51] Ms. M. De S. missed her first two appointments scheduled with Dr. Waiser. To ensure her attendance, the society was required to escort her to Dr. Waiser's office. In her testimony, Ms. M. De S. revealed that she never took public transit by herself until she was sixteen years of age and, then, only to travel to the Jessie Centre or to her lawyer's office.

[52] Dr. Waiser testified at trial. His findings were not contradicted, in any meaningful fashion, by cross-examination or the evidence called by Ms. M. De S. He concluded Ms. M. De S. was incapable of parenting E.C. De S.B. on her own and would continue to require support and supervision for her own care. Ms. M. De S. testified, in this regard, that her own father thought that she could not live on her own.

4.3: Efforts of the Children's Aid Society to Assist

[53] Both the Children's Aid Society of Toronto and the Catholic Children's Aid Society of Toronto made significant efforts to support the placement of E.C. De S.B. with her mother under the supervision of Mrs. Ne. De S. and Mr. I.B. Health professionals, social workers and parent support workers were made available. A referral, as noted, was made for Ms. M. De S. to attend at the Jessie Centre.

[54] Prior to Justice M. Cohen's order of January 2004, efforts had been made by the Catholic Children's Aid Society of Toronto to arrange for Ms. M. De S. to have access visits in Orangeville.

[55] The efforts of both societies to support the placement of E.C. De S.B. with her mother prior to 11 August 2003 are remarkable, given the abuse history that Mrs. Ne. De S. and her husband had with the Catholic Children's Aid Society of Toronto and the lack of information available with regard to Mr. I.B.

4.4: Adoptability of E.C. De S.B.

[56] There is no evidence to challenge the assertion of Ms. Dina MacPhail that E.C. De S.B. would be easily placed for adoption with an appropriate home. Nor is there any evidence to challenge Ms. MacPhail's assertion that adoption is much preferable, as a long-term plan for a Crown ward, to the option of foster care.

4.5: Placement

[57] Only two plans have been presented to the court — Ms. M. De S.'s request for the return of the child to her care under supervision and the society's plan for Crown wardship allowing for adoption.

[58] In January 2004, Ms. M. De S. had determined to live at the Massey Centre as she recognized that she required help in caring for E.C. De S.B. and she was concerned that one of her family may have injured her child. She sought the return of her child on that basis. When she was unsuccessful in her motion before Justice Cohen on 14 January 2004, she forfeited her placement at the Massey Centre despite the fact that she could have resided at the centre and availed herself of the educational and child care training at the centre. When asked at trial why she abandoned her plan, Ms. M. De S. stated that she had been concerned about Mr. I.B.'s immigration status. When Mr. Duncan asked what relevance Mr. I.B.'s immigration status had to her plan to live at the Massey Centre, Ms. M. De S. was incapable of answering the question.

[59] Three months later, when interviewed by Dr. Waiser, Ms. M. De S. told him that, should E.C. De S.B. be returned to her care, she would live in her family home or move into an apartment with Mr. I.B.

[60] Prior to completing her testimony on 31 January 2005, Ms. M. De S. resurrected her plan to live at the Massey Centre with E.C. De S.B. In my view, this was a plan rooted in desperation, as by then it was obvious that any explanation of E.C. De S.B.'s injuries, other than at the hands of the mother, her family or Mr. I.B., would be pure speculation without any evidentiary foundation.

[61] Even if I were to accept that some safeguards might be in place while E.C. De S.B. lived with her mother at the Massey Centre, no evidence was called to establish how E.C. De S.B. would be protected. Moreover, the plan would be time-limited with the spectre of the child's exposure to a very significant and totally unacceptable risk of harm upon the discharge of the mother and E.C. De S.B. from the Massey Centre.

[62] Ms. M. De S.'s plan for E.C. De S.B. is not viable and would place the child at a high risk of further harm. In the child's best interests and for her protection, E.C. De S.B. must be made a ward of the Crown.

4.6: Access

[63] Although I recognize that there is an attachment between E.C. De S.B. and her

parents, I am satisfied that the risk inherent in exposure to the parents renders the possibility of unsupervised access unlikely at any time in the future. To award access in these circumstances would deprive E.C. De S.B. of the benefit of a permanent stable loving family placement as contemplated by Ms. MacPhail's plan for her adoption. It is in this child's best interest that she be adopted.

[64] With the withdrawal of access for the purpose of adoption, Ms. M. De S. will be consulted as to prospective adopting parents and will be afforded the opportunity to make a video addressing her love for her daughter.

5: FINDINGS AND DISPOSITION

5.1: Statutory Findings

[65] The child's name is E.C. De S.B. She was born in Toronto on [...] 2003. Her mother is Ms. M. De S. Her father is Mr. I.B. She is of the Roman Catholic faith. She is not native.

5.2: Protection Finding

[66] I find that the child E.C. De S.B. is in need of protection under to [subclause 37\(2\)\(a\)\(i\)](#) and [subclause 37\(2\)\(b\)\(i\)](#).

5.3: Order of Crown Wardship

[67] E.C. De S.B. shall be made a ward of the Crown and placed in the care and custody of the Catholic Children's Aid Society of Toronto.

5.4: Access

[68] There shall be no access to the child so as to allow the child to be placed for adoption.

[69] Thanks to both Mr. Duncan and Mr. Gottlieb for the manner with which they conducted themselves throughout this trial and particularly for the sensitivity that they demonstrated to Ms. M. De S.