

WARNING

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

This is a case under Part V of the *Child, Youth and Family Services Act, 2017*, (being Schedule 1 to the *Supporting Children, Youth and Families Act, 2017*, S.O. 2017, c. 14), and is subject to subsections 87(7), 87(8) and 87(9) of the Act. These subsections and subsection 142(3) of the Act, which deals with the consequences of failure to comply, read as follows:

87.—(7) Order excluding media representatives or prohibiting publication.— Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

. . .

(c) prohibiting the publication of a report of the hearing or a specified part of the hearing.

(8) *Prohibition re identifying child.*— 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.

(9) *Prohibition re identifying person charged.*— The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

. . .

142.—(3) Offences re publication.— A person who contravenes subsection 87(8) or 134(11) (publication of identifying information) or an order prohibiting publication made under clause 87(7)(c) or subsection 87(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

CITATION: *Children's Aid Society of Toronto v. L.R.*, 2020 ONCJ 22
DATE: January 13, 2020
COURT FILE No.: C210227/18

B E T W E E N :

CHILDREN'S AID SOCIETY OF TORONTO

Applicant,

— AND —

L.R. (mother)

T.H. (father)

Before Justice Roselyn Zisman

Heard on November 18 to 22, 25 to 29, December 2 to 5 and December 9, 2019

Reasons for Judgment released on January 13, 2020

Chithika Withanagecounsel for the applicant society
Davine D. Burtoncounsel for the respondent
(mother)
Cherry E. Isaacs-Reynolds counsel for the respondent (father)
Gary Gottlieb counsel for the Office of the Children's Lawyer,
legal representative for the child G.R.

Zisman, J.:

1. Overview

[1] This is a decision after a 15 day trial regarding G (“the child”) who is now 11 years old who has been exposed to conflict between his parents and their volatile off and on relationship since he was about 2 years old. He has been the subject of custody and access proceedings, various investigations by the Toronto Police Services (“TPS”) as a result of allegations that his father sexually abused him and he has been subjected to the involvement of the Children’s Aid Society of Toronto (“CAS” or “the society”). As

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of January 2017, he has refused to have any contact with T.H. (“the father”) and L.R. (“the mother”) has alleged that she is unable to force him to have contact.

[2] After attempting to work with the mother voluntarily, the society commenced a Protection Application seeking to place G and the mother’s new baby with the mother subject to the supervision of the society.

[3] However, after being unable to make any progress regarding G having contact with the father, on August 13, 2019 the society filed an Amended Protection Application seeking an order that the child, G be placed in interim society care for 4 months and then be placed with his father pursuant to a 6 month supervision order.

[4] The father supports the society position.

[5] The Office of the Children’s Lawyer (“OCL”) seeks an order that the child be placed in the care of the mother pursuant to strict terms of supervision that would include terms that the child exercise access to his father and that the child be engaged in counselling, if he consents to such counselling.

[6] The mother’s primary position as set out in her Answer, her counsel’s opening trial statement and in her affidavit and oral evidence was that the Amended Protection Application should be dismissed. It was not clear if this meant an order pursuant to section 101 (8) or section 102 (1) of the Child, Youth, Family Service Act (“CYFSA”). It was the position of the mother that she would, despite the absence of a court order, encourage the child to have a relationship with the father.

[7] However, after counsel for the society, the father and the OCL made their closing submissions, counsel for the mother withdrew this position and supported the position of the OCL that the child be returned to her pursuant to strict terms of supervision that included terms that the child would have access to the father. This sudden change of position deprived the father from responding and left the court with evidence from the mother that it was now being asked to disregard.

[8] The mother’s further alternate position was that the child be placed with his godmother NL.

[9] The mother’s change in her position as to the relief she was seeking was typical of various issues that arose throughout the trial as the mother raised issues then advised that she was not pursuing them or was not clear as to the relevance of these issues. In other instances, she raised issues that appeared to be attempts to delay or derail the proceedings.

[10] The mother pursued several different themes in the presentation of her case. First, that she believed her son that the father sexually and physically abused him, that her family was aware of this abuse and did nothing and that her sisters participated in the abuse. Second, that she respected her son’s wishes not to have contact with his father, his maternal grandmother, his maternal or paternal family. Third, that she and G did not have a close relationship with the maternal or paternal family prior to the

separation. Fourth, she had a falling out with her family due to disagreements about her deceased father's estate in Trinidad. Fifth, the father had been abusive to her throughout their long relationship and that he had similarly been abusive and had a child protection history with the mother of his other son who resides in Calgary. Sixth, the CAS should have transferred her file to the Native Child and Family Services ("NCFS") and that the child's cultural, religious or philosophical beliefs were not been properly addressed by the society. Seventh, she had cooperated with the society and the counsellors retained by the society to assist with a reunification process between the child and the father but that the society did not offer appropriate services to her.

[11] These many themes were thoroughly canvassed in the lengthy and comprehensive cross-examination of the society's and the father's witnesses by mother's counsel and in the presentation of the mother's case.

2. Background

[12] The mother 34 years old. She was born in Canada but is of Trinidadian descent. The father 40 years old and is of Guyanese origin. They have one son G who is the subject of these proceedings.

[13] The father has another son who lives in Calgary and is now 16 years old. The father did not have a relationship with that child until the last couple of years.

[14] The mother has another son born on [...], 2018. The father is JM. According to the mother, she and JM do not live together although they are jointly parenting their new baby and JM has a good relationship with G.

[15] The mother is a supervisor in the travel industry and resides in Toronto.

[16] The father is in the military and is stationed in Petawawa. Prior to the final separation between the parents, he had flexible and generous access and would travel to Toronto on most week-ends to spend time with the child.

[17] The parties met when they both resided in Calgary. The parties were in an off and on relationship from 2003 until January 2017. At the time of the final separation G was 8 years old.

[18] The relationship was tumultuous. There were allegations of domestic violence by both parties and both were at different times charged criminally. All the charges were subsequently withdrawn.

[19] As a result of the allegations of domestic violence the society became involved with the family in 2010 and 2011. After initial investigations, the society closed their file at intake.

[20] The parties' separated in 2011 and on consent they entered into a court order dated February 24, 2011 giving the mother custody and the father reasonable access on reasonable notice and requiring him to pay child support.

[21] The mother, the child's godmother, the maternal grandmother, the maternal aunt, the father's friend and the paternal aunt all testified that the father was a loving and involved parent and that he enjoyed a good relationship with his son.

[22] The mother and father reconciled in 2016 and the father asked the mother to marry him. They were to be married in February 2017. However, the father called off the wedding just prior to the mother making allegations that he sexually abused their son.

[23] On January 21, 2017 the mother accused the father of being sexually inappropriate with G. The mother called the police who interviewed the child that evening. The child did not make any disclosures. Subsequent investigations by both the police and the society did not verify any sexual abuse by the father.

[24] The mother commenced a domestic court application at the end of March 2017 and obtained a restraining order against the father based on her allegation that the father has sexually abused their son.

[25] In the course of the domestic proceedings, the mother obtained a final order on June 27, 2017 suspending the father's access to the child, ordering him to pay child support and his share of section 7 expenses. The order provided that the father had leave to file an early Motion to Change with materials from the children's aid society and the TPS. At the time of this proceeding the father was not represented by counsel and he testified that he naively thought that he could just attend court and advise the judge that he never hurt his son.

[26] The father commenced a Motion to Change and during the proceedings the court made several orders for access. However, the child refused to see his father, the maternal grandmother or his maternal aunts and the mother continued to maintain that she could not force the child to see them.

[27] The society continued to be involved with the mother, G., the baby and her new partner on a voluntary basis. However, the society had difficulty working with the mother and her partner.

[28] On July 13, 2018 the society commenced a Protection Application seeking an order placing both G and the new baby in the care of the mother subject to supervision of the society. The concerns outlined included the mother's lack of understanding and acknowledgement of the impact of ongoing false allegations accusing the father of sexually abusing G, the mother's volatile relationship with the father and its impact on G, the children's expose to adult conflict between the mother and the father, JM's temperament and its impact on the children and his hostile attitude towards the society and the mother and JM's unwillingness to work the society voluntarily to address the concerns of the society.

[29] On January 9, 2019 after a contested hearing, G was found to be a child in need of protection pursuant to section 74 (2) (h) of the *CYFSA*, that is, risk of emotional harm.

[30] The court did not find that the baby was at risk of harm and dismissed the society's application.

[31] Subsequent court ordered access between G and the father did not take place as the child refused to get out of the car. The society's attempts to arrange for reintegration therapy with Marcy Urbas and then with Milan & Associates was also unsuccessful in large part due to the mother's lack of cooperation.

[32] After the reunification therapy broke down, the society brought a motion to place the child with the maternal grandmother.

[33] After a contested motion heard on July 23 and 25, 2019, Justice Paulseth who was the case management judge held that the child should be placed in a neutral environment. G was ordered into the care of the society with access to the parents and the extended family at the society's discretion including when such access would commence.

[34] On August 13, 2019 the society amended its Protection Application seeking an order that the child remain in the care of the society for 4 months and then be placed in the care of his father.

[35] The father did not have access to the child from January 21, 2017, when the mother accused him of sexually abusing G until October 19, 2019 when the child was in the care of the society and the process of reunification therapy commenced with Diana Polak.

[36] The society called 11 witnesses with the most of the society witnesses' evidence in chief being by means of affidavits. The father testified and he called as his witnesses his friend and co-worker George who the mother had accused of sexually molesting G, the maternal grandmother, one of the mother's sisters and his sister.

[37] The mother testified as did her friend NL, the child's godmother, the child's teacher, a reunification therapist, the child's therapist, the child's traditional healer, the mother's counsellor, a psychiatrist who assessed the child and a worker from NCFS. The court viewed two police video interviews with the child and a video of a thwarted access exchange. Two witnesses were accommodated by video and audio testimony. All parties filed affidavit and document briefs and there were 67 additional exhibits filed.

[38] This was not only a complex factual and legal case but extremely emotional for the parties and their family members.

3. Evidentiary issues

3.1 Child's statements

[39] At the outset of the trial, counsel for the society presented a chart outlining G's statements that she wished to tender for their truth which were namely, statements the child made to the police officers and other statements that were being introduced simply

on the basis that they were made that is, for narrative or context.

[40] Initially, it was not clear if mother's counsel was agreeing to the admissibility of the child's statements made to the police officers, therefore it was agreed that a *voir dire* would be held prior to the police officers testifying.

[41] However, counsel for the mother then agreed that the statements were admissible meeting the requirements as to threshold necessity and reliability. Even if mother's counsel had not agreed, the court would have ruled the statements were admissible based on the evidence of the police officers.

[42] No submissions were made as to the ultimate reliability of the statements and there was no evidence presented that would diminish their reliability. Accordingly, I find that the statements made by G to the police officers can be relied upon by the court for their truth.

3.2 Surreptitious recording of Diana Polak

[43] Diana Polak was retained by the society to conduct reunification therapy with the mother and father and the child. She met with the mother for an initial meeting on October 4, 2019. Unbeknownst to Ms Polak and without her consent the mother recorded the meeting. Counsel for the mother, wished to play the audio recording in her cross-examination of Ms Polak. All other counsel objected to the admissibility of the audio recording.

[44] A *voir dire* was held. The mother testified that she wished to play the video as Ms Polak in her evidence had wrongly portrayed her as being unreasonable and as threatening her during the meeting.

[45] Counsel for the mother submitted that the audio tape should be admitted as it was relevant and reliable and its probative value outweighed any prejudice. She submitted that it was not a confidential meeting as the family service worker and godmother were present and the family service worker took notes. She submitted that the society was aware that the mother recorded meetings. She further submitted that there is a power imbalance in child protection cases and the mother was concerned that the court would prefer the evidence of Ms Polak and the family service worker over her version of the meeting.

[46] The audio recording was played in court and the mother had a transcript prepared that although not certified was prepared by a professional agency. There were quite a few instances of inaudible conversation. After hearing submissions and for brief oral reasons the court ruled that the audio recording was inadmissible. I will expand of those reasons.

[47] It is well accepted that the court has a general discretion to admit such recordings by balancing their prejudice against their probative value including their reliability.

[48] Counsel for the mother relied on several cases¹ where taped conversations between parents or between a parent and child were admitted showing that there was alienation and inappropriate pressure put on a child. In those cases, the probative value outweighed the trial unfairness, the court's repugnance of illegal conduct and the general need to discourage taping of private conversations between a parent and child.

[49] However, this case involves the taping of a third party professional who was to assist the parties in a reunification process. It was done without Ms Polak's knowledge or consent. The importance of parties working with professionals in an open and trusting relationship for the best interests of their children cannot be overemphasised.

[50] Counsel for the mother could not cite one case where a surreptitious recording of a professional had been admitted. In fact, she relied on an excerpt from, *Evidence in Family Law*,² where the author states, "Recordings of third parties are not admissible, regardless of the issue faced by the court."

[51] There are few reported cases of recordings made of third parties. In the case of *Fattali v. Fattali*,³ a father secretly recorded an interview with the children's paediatrician. Justice Vogelsang held the evidence inadmissible and determined that such forays into the gathering of potential evidence are to be strongly discouraged and that proceedings involving the best interests of children should not be based on the product of calculated subterfuge. He also held that it did not help the father's case to be plotting tricks or deceit to advance his case.

[52] In the case of *F. (J.) v. C. (V.)*,⁴ Justice Steinberg would not admit a recording made by the father during his session with an assessor. The father sought to record the session as he wished to expose the gender bias of the assessor. The father also refused to produce unedited copies of the recordings prior to trial. In refusing to admit the tapes, the court adopted the reasoning of Justice Vogelsang in *Fattali, supra*, and stated as follows:

In addition to Justice Vogelsang's reasons, permitting such misconduct by the applicant would discourage members of the helping professionals from providing assistance to parties who might be involved in family law proceedings arising from the problems for which they sought medical, psychological or social work help. That would not advance the administration of justice.

[53] The systematic harm to the administration of justice and to the family law system in general of permitting a party to secretly record a third party professional who is attempting to help a child and parents far outweighs any probative value that the admission of such evidence could possibly provide.

¹ *Reddick v. Reddick* [1997] O.J. No. 2497; *Fiorito v. Wiggins* 2015 ONCA 729

² Niman, Thompson Reuters Canada, Release No. 41, October 2019, pages 8-48 -53 at para. 8:80

³ (1996) 22 R.F.L. (4th) 159 (Gen. Div. Fam. Ct.)

⁴ (2008) 8 R.F.L. (5th) 45 (Ont. SCJ)

[54] In this case, godmother was present at the meeting and testified as to what the mother said and what occurred at the meeting. The court was therefore able to assess the credibility of both the mother and godmother and Ms Polak and the family service worker as to what occurred at the meeting. The audio tape would not add any more probative evidence.

[55] There is already a reluctance of professionals who will agree to be involved in high conflict or child protection proceedings knowing the likelihood of litigation or being reported to their professional organizations.

[56] Further, there is always a power imbalance in child protection proceedings as it is a proceeding between an individual and the state. But that is not a reason to permit a parent to secretly record meetings with professionals or society workers. The prejudice to the administration of justice far outweighs the little, if any probative value, of such recordings.

3.3 Violation of the Rule in *Browne and Dunn*

[57] At various stages of the trial, issues were raised by mother's counsel that should have been addressed to witnesses when they testified in violation of the rule in *Browne and Dunn*⁵⁵ which is essentially a rule of fairness.

[58] Although some of the breaches were not terribly significant, there were at least two instances where the issue raises concerns.

[59] The mother's sister Li testified that she received a series of disturbing and concerning text and Facebook posts from the mother just prior to the mother making allegations that the child was sexually abused.

[60] Mother's counsel objected to the admissibility of the texts and Facebook posts on the basis that they were not authentic and had been hacked.

[61] The court ruled that Li could be cross-examined on this issue and the mother in her testimony could address the issue, if she did not agree that these texts were sent by her. However, Li was not cross-examined on the authenticity of the texts or if the texts were hacked.

[62] However, when the mother testified, she raised issues with respect to the authenticity of the texts and Facebook posts namely, regarding the way they were sent, the lack of dates on some of the messages and the fact they were sent within minutes. However, none of these specific issues were raised with Li when she testified. Accordingly, she was not given an opportunity to explain why she attributed the texts and Facebook posts to the mother or offered an opportunity to explain the lack of date stamps or the timing.

⁵⁵ Rule in *Browne and Dunn* as explained in *R. v. Quansah* 2015 ONCA 237 at paras. 75-86

[63] The mother on the last day of trial, raised the issue of whether the child was First Nations, Inuk or Métis (“FNIM”). This issue had never been raised in any of the mother’s pleadings or in her own oral evidence. None of the society workers were cross-examined on this issue. Counsel for the child had not canvassed this issue with the child. Raising the issue in this manner at the end of the mother’s case potentially could have significantly delayed the case and required several witnesses to be recalled.

[64] The court required the mother to be recalled to testify with other counsel being given a further opportunity to cross-examine the mother on this issue.

[65] Counsel were advised that submissions could be made with respect to what weight the court should place on evidence that contravened the rule in *Browne and Dunn*.

3.4 Credibility

[66] The evidence of the society workers was clear, factual and child focused. They spoke positively of aspects of the mother’s parenting. While they were critical of her conduct, I find that they were remarkably restrained in their evidence in view of the difficulty they encountered in working with the mother and given her tendency to criticize and threaten them.

[67] I find that despite lengthy cross-examination by mother’s counsel, the evidence of the maternal grandmother and maternal aunt were not impugned.

[68] I also find that the father was honest and forthright. He took responsibility for his actions. He volunteered that he had been arrested for non-payment of support and admitted that he had less than an ideal relationship with his older son. He acknowledged that he had been immature, emotionally manipulative and emotionally abusive in his relationship with the mother. He also acknowledged that his non-payment of fees for Ms Urbas caused that counselling to fall through. Despite lengthy cross-examination by mother’s counsel attempting to impugn his credibility, he answered her questions in a straightforward manner and admitted his frailties.

[69] On the other hand, the mother was evasive, dishonest and inconsistent in her evidence. She had to be directed numerous times to answer the questions being asked. On multiple occasions when an obvious contradiction was pointed out or when she was accused of providing misleading information in court documents, she blamed her counsel. She struggled with responding to questions about her belief in the sexual abuse allegations. She tried to impeach the father’s credibility with partial text messages but when confronted with the entire text message, she denied any knowledge of the text, even the portion that she herself had introduced into evidence.

[70] I find that the mother’s evidence in general is simply not credible and where there is a contradiction between her evidence and that of the other witnesses, their evidence is preferred.

4. Summary of relevant evidence and findings of fact

4.1 Allegations of sexual and physical abuse

4.1 (1) Allegations leading up to January 21, 2017

[71] Li, the mother's sister testified that in mid January 2017, she began to receive odd and disturbing text messages and Facebook posts from her sister. She described the mother as always being a "little out there" but the messages became stranger.

[72] On January 19th, she felt something was very wrong, that the mother's messages were "progressively getting worse." She called her mother to tell her that she felt the mother needed to be medically assessed. She testified that at the time she thought that "OMG she snapped."

[73] Li identified the messages were from the mother and confirmed the mother's telephone number. She testified that the messages started a day or so prior to the first visible time stamp from January 17th and ending on January 23rd, 2017.⁶

[74] In the text messages the mother jumps from topic to topic often contradicting herself and appearing to lose touch with reality. The mother speaks of keeping her housekeepers, her nanny and her 5 bedroom house (none of which she had), she says she can't focus and doctors tell her that she could be dying, the mother speaks of slipping into depression and anxiety. The mother speaks of her debt being sky high because of the father but then a few messages later she says the father paid for all her needs and that is how she built her business.

[75] The mother then says that the father called off the wedding, but it may still happen in the future. But then the mother continued to talk about the wedding and speaks about the father asking her for a pre-nup.

[76] By January 19th the mother begins to talk about the father having affairs with other women. She accuses the father's "whore" of attacking her on Facebook and says that "all his whores are ghetto trashy skanks." The mother tells Li that the father is saying that she gave him a "blow job"

[77] The mother then accuses the father of sleeping with his co-workers, their cousin, their aunt and with her and her other sister. The mother then goes on a rampage and calls her sister vile names, accuses her and the father of having sex and making G and Li's daughter watch them. She accuses the father of putting G in the car and molesting and raping him and that Li knew about this the whole time.

[78] The mother gave some vague evidence concerning the authenticity of the texts but then she acknowledged that the telephone number shown on the text messages belonged to her. She then did not deny sending the texts. Her only evidence was that

⁶ The text messages were entered as Ex. 41

she had no recollection of these texts.

[79] The texts are quite concerning as they are disjointed, contradictory and generally make no sense.

[80] The accusations made by the mother in these texts regarding the father and her sisters are like the allegations the maternal grandmother heard the mother telling G on the early morning on January 22nd after the mother reported to the police that the father had sexually abused G and G later adopts and makes similar accusations.

[81] Li found out a few days later that the mother had reported to the police that the father of sexually abused G. The text messages Li received from the mother were part of the reason she did not believe that the father sexually abused G. as she stated, *“When you accuse every single person of doing something to the child, there is clearly a credibility issue here.”*

[82] Both Li and the maternal grandmother testified that they did not believe the accusations against the father because they knew his character and knew that the accusations against their family were false.

[83] I find that these text messages and Facebook posts were made by the mother.

[84] Although the father, maternal grandmother and maternal sister all testified about concerns about the mother’s mental health and that she was having some type of emotional breakdown perhaps triggered by the wedding being called off, no expert evidence was called. As a result, there is no medical diagnosis of the mother’s mental health but the text messages are evidence of someone who is emotionally unhinged, irrational and emotionally dysregulated.

4.1 (2) First Police investigation on January 21, 2017 regarding mother’s allegation of sexual abuse

[85] On January 21, 2017, the mother testified that the child went with the father to go grocery shopping. The father and son had brought home food from Wendy’s. The child was playing and then complained that his throat hurt and the father told him to drink some water. The father went downstairs to retrieve the groceries he left in his car. When the father returned a few minutes later, he found the door locked and the mother yelled, *“did you hurt my son what did you do”*.

[86] The mother testified that the child told her *“mommy my throat is burning and daddy choked me from the inside of my throat.”* She told him to go drink water 3 times before he made this statement. The mother testified that she was thinking about an incident in August when she saw the father pull the child’s hoodie. When the mother asked G what he was choked with, he replied with his penis. G then told her not to tell the police and that his Dad will go to jail for 25 years. The mother called 911 and said that her husband hurt their son.

[87] The mother could not recall exactly what she told 911 dispatcher. The mother

testified that she called her mother. The father also testified that he called the maternal grandmother and his sister.

[88] The mother testified that the father kept banging on the door and she finally let him in and that he kept asking what happened. The mother testified that the father looked scared, eyes wide open and panicked. She kept telling him to ask G and the father kept saying nothing happened. The father grabbed his bag and left. The mother called police again.

[89] When the police arrived, the father had left and the maternal grandmother and the paternal aunt were waiting downstairs. The paternal aunt testified that she told the father to leave and gave the police officer his contact information.

[90] The mother testified that she told the police that the father choked G from the inside of his throat and there was something “*squiggly*” in his throat. The mother then corrected her earlier testimony in which she had stated that the child only told her that the father choked him from inside his throat and stated that G had also told her that there was something squiggly in his throat.

[91] Detective Constable Catharine DeOliveira and her partner arrived on the scene at 9:22 p.m. just about 13 minutes after the call to 911.

[92] At the time DC DeOliveira was in uniform as a primary responder. She had 10 years of experience in general investigation and limited training regarding interviewing children. At that time, she had only interviewed 5 children and this was her first sexual abuse investigation.

[93] However, DC DeOliveira testified that she satisfied herself that the child knew the difference between the truth and a lie and she asked G open ended questions. She testified that initially G was upset but when she assured him that he wasn't in any trouble he calmed down.

[94] G was not hesitant and was able to provide details as to what he had been doing earlier in the day. He was able to recollect at least 13 different things he did which were later corroborated by the father when they spoke to him from their squad car.

[95] The father told the officers that he left because the mother had a history of coming after him with a knife and that he did not want to get charged by her.

[96] DC DeOliveira stated that the child said he choked on what he ate, his mother overreacted and he loves his father. DC DeOliveira was clear that G made no disclosures of a sexual nature. G did not say anything to support feeling uncomfortable with his father and he cried when he said, “*I love my Daddy.*”

[97] DC DeOliveira then spoke to the mother who told her that the child said his throat hurt and there was something “*squiggly.*” It was the mother's inference that this was something sexual although she did not directly state that she thought it was semen. The child pointed to a cup and said that his throat hurt from drinking the carbonated drink. At

no time did the mother say that she may have been mistaken.

[98] In cross examination by mother's counsel DC DeOliveira stated that the child said his throat "tingled" and he did not say "squiggly".

[99] DC DeOliveira further testified that she told the mother that she would like to take a video statement at the station but the mother declined even after she offered to bring the video equipment to the apartment. The mother stated that her priority was the child. The officer advised the mother that Child Youth Centre for Advocacy ("CYCA") would follow up. When she left the child was not fearful and was calmly playing with toys.

[100] DC DeOliveira's evidence was clear and credible. She was not shaken on cross-examination.

[101] After the police officers left the maternal grandmother who was waiting downstairs came up to the apartment.

[102] The maternal grandmother testified that the mother kept talking until 1:00 or 1:30 a.m. and made the following statements both in the child's presence and to him:

- (a) the mother said the father put his penis in G's mouth in the car and that the father had G kneeling down and doing it; the mother kept saying that the father abused G sexually;
- (b) the mother said that G said his throat hurt and that G kept saying "*nothing happened, no mommy nothing happened, Daddy didn't hurt me;*"
- (c) the mother kept saying Daddy did it and that the father and a guy name George put their penises in G's mouth at the army base; G kept saying "*no;*"
- (d) the mother told G that the father made him and Ab, his cousin, watch the father and Li, the maternal aunt have sex in his truck at work;
- (e) the mother told G that he had watched La, the mother's other sister and the father having sex and G responded "*absolutely not;*"
- (f) the mother was showing G her tongue and illustrating how a penis is put in a mouth alleging that the father did that to him; and
- (g) G said "*Mommy absolutely not,*" and that the mother replied "*you know when you say absolutely not, you are lying.*"

[103] The mother denied the evidence of the maternal grandmother. However, she did not give any alternative explanation or explain what she did say.

[104] She testified that her focus was on G but at the same time she testified that there was no discussion about the shocking disclosures that she alleges that the child made. She testified that she helped G brush his teeth, shower and she hugged and comforted

him. But the mother did not explain how she comforted the child if she did not discuss what had just happened.

[105] The mother did not dispute that the grandmother slept over that night on the couch and that G slept beside her on the floor and that he went and stayed with the grandmother in her apartment until the following Tuesday morning.

[106] However, the mother never explained why the child would have wanted to sleep near his maternal grandmother and not her on such a traumatic night especially as the maternal grandmother made it clear to the mother that she did not believe any of these accusations. If the father had sexually abused the child, why would the child not have wanted to be with his mother to comfort and protect him?

[107] The maternal grandmother testified that the mother kept calling her every 5-10 minutes asking who was there, if the father was there or if she brought anyone to do something to the child.

[108] The mother told her mother to return the child to her on the morning of Tuesday January 24th, as there was a society worker coming to the home.

[109] When the maternal grandmother took G to his mother's apartment, she kept asking what she did to G and carried on about someone being over at her place. The mother then told G that she had to check his bum and the child began to cry. The mother made the child change his clothes but did not check him and the child kept crying.

[110] When the maternal grandmother testified, she became very emotional. She was quite uncomfortable in describing the sexual acts her daughter spoke of and was visibly upset and angry as she testified about her concerns about her grandson. She asked about how a mother could do this to an innocent child putting things in his head and asking how a child could recover from this.

[111] In contrast when the mother testified about these events, she was calm and showed no change in her demeanour when describing the allegations and what allegedly took place.

[112] The maternal grandmother stayed for the meeting with society worker Miguel Torres. According to the maternal grandmother, the mother did not mention the sexual abuse allegations but instead she went on about the father having affairs. The society worker spoke to G privately. There was no verification of any sexual abuse.

[113] The maternal grandmother testified that she saw the mother and child at the Willowdale Christian Assembly Church that Sunday January 29th but the mother would not allow G to sit with her and he would not talk to her.

[114] In March 2017, the mother commenced domestic proceedings to obtain a restraining order against the father based on her allegations of sexual abuse. The mother did not advise the court that that both the police and the society had not verified

the allegations.

[115] When cross-examined about this important omission from her court documents the mother blamed her former counsel despite acknowledging that she had read and signed her own affidavit.

4.1 (3) Second police investigation on April 10, 2017

[116] The society received further information that G made a disclosure and it was decided that the society and police would conduct a joint follow-up investigation to the initial January investigation.

[117] Detective Lauren McFatridge was assigned to the case. Detective McFatridge is a experienced child abuse investigator with the CYAC. She has been assigned to the CYAC since 2013 and had previously worked in the youth bureau for 4 years. She received training at the National Advocacy Centre in the United States on how to interview children and training with the Sick Children's Hospital Suspected Child Abuse and Neglect department. Her ongoing training involves monthly peer reviews conducted at the CYAC where the officers watch each other's interviews and critique them.

[118] The video recording of her interview with G was played in the courtroom as well as the subsequent interview with the mother.⁷

[119] On consent the child's statements to Detective McFatridge were entered for the truth of their contents. Detective McFatridge confirmed that G knew the difference between the truth and a lie.

[120] Detective McFatridge reminded G that he spoke to the police a few months before about his sore throat and she was following up.

[121] When asked about the January 21st incident, G told her the same thing he told Detective DeOliveira except that he states he ate a spicy burger from KFC not Wendy's. He said that his mother overreacted and he told her that. He said that this was the craziest he had ever seen her, that she overreacts a lot and that he can't do anything about it.

[122] Detective McFatridge asked him about an allegation the mother made that he was play fighting with his mother's shadow that his father became angry at him and choked him. G did not answer or acknowledge this incident.

[123] G is asked about his mother talking about a "swirly" thing but G replied that it is just something his father does to refresh his tongue.

[124] G said that his father never told him that he and his father can do what mothers and fathers do.

⁷ Exhibit 23

[125] When asked about feeling safe with his father, G appeared to be hesitant but responded that he would feel safe if his mother was in another room.

[126] G spoke of being afraid as he was worried about his father taking him away since he could be mad at his mother for not wanting G to see him. He said that his mother is scared about him. He said that he does not really care if his parents get along but then said he wished they did.

[127] Detective McFatridge asked G is he ever felt his mother was trying to get his father in trouble. G responded that he thought so and she is getting “*thousands of restraining orders*” and going to the judge.

[128] Watching the video, it is clear that G feels comfortable with Detective McFatridge and at the end of the interview he asked her about her job and what she does. He does not appear to be afraid or distressed.

[129] However, what is also clear is that he is beginning to express some fear, some reluctance to see his father, is aware of the conflict between his parents and is being made to feel that he must take sides. He is also aware of the court proceedings.

[130] Detective McFatridge testified that once a child has disclosed to a parent, it is very uncommon for the child not to disclose in an interview as keeping secrets makes children feel sad and that in sexual abuse cases children reveal what has happened to them. She contrasted this with the situation where a child had not already disclosed and a parent or teacher notices sexualized behavior and in that situation a child is less likely to disclose.

[131] Detective McFatridge testified that generally she asks open ended questions but as G was not forthcoming, she asked him some leading questions.

[132] Detective McFatridge specifically testified that G told her that his mother forced him to say that [statements that G allegedly made to the mother] and she asked him a lot of questions. She testified that this was the only time a child has said someone forced them to say things in about a 1000 interviews she has done related to physical and sexual abuse.

[133] Detective McFatridge testified that she is concerned when there are custody and access issues and a child is being used as a pawn and she wondered if this was one of those cases.

[134] Detective McFatridge interviewed the mother and advised her that G had not made any disclosures about physical or sexual abuse. She warned the mother that there is a concerning pattern by the mother of allegations but then no disclosures were made to the society and to the police. In the interview, the mother stated that the father keeps telling the child not to say anything but does not explain how this is possible since the father had not seen the child since January 21st.

[135] Detective McFatridge explained to the mother that these allegations will be listed

as false allegations for the second time and that if this happens again the child will have no credibility in the future. She told the mother that it is traumatic for a child to be interviewed by the police and that if something else happens maybe the mother heard him wrong or she is overreacting and not to call the police again. The mother made no response and then says that she doesn't really pick up the phone.

[136] In cross-examination, Detective McFatridge explained that she did not charge the mother criminally as it was difficult to prove that the mother did not actually believe the allegations. She found it hard to believe that a mother would make this up and do this is her own child. She felt these false allegations were significant enough to warn the mother and discussed with the family service worker to support the mother and provide some options to her.

[137] Detective McFatridge was highly experienced and knowledgeable with respect to sexual abuse investigations. She was an impressive witness. The mother did not provide any evidence about this interview either in her affidavit or in oral evidence.

4.1 (4) Further allegations by the mother in July 2017

[138] In May 2017, the society's file was transferred for ongoing services on a voluntary basis to Ashley Moses, a family service worker. At the time the mother had a temporary restraining order against the father having contact with her and the child.

[139] Ms Moses met with the mother on July 5, 2017 as the mother had told her that she had found pictures of G on the father's ipad not wearing clothes, face down with his buttocks as the focal point of the picture. The mother said she was afraid of turning these photos to the police as she had been cautioned not to make false allegations.

[140] Ms Moses advised that she needed to review the photos as a referral to the police may need to be made as it was her duty to report if a crime had been committed. The mother reported that she had not asked G about the photos.

[141] The mother said that she was keeping a log of statements that G made and gave an example that in February 2017, G told her that the father was making movies of them and stated that they were at Walmart and G kept looking at the direction of the washroom when he said that they were making movies. The mother also said that in March 2017 G was looking up at the ceiling and he told her that when he was out with his father, they always are looking out for security cameras.

[142] The mother told Ms Moses about a special box G kept in his room. She looked through it and showed Ms Moses a strip of 3 photos of G and the father. In one photo they were smiling, in another G was sticking his tongue out and the father was making a silly face and in the third the father had his arms around G's chest while appearing as if he was forcefully wrinkling his face in an angry way. When Ms Moses said that she did not see anything concerning in the photos, the mother explained that she found the third photo concerning as this was the face the father made when he orgasmed.

[143] The mother then showed Ms Moses the photos she alleged were taken of the

child. Ms Moses explained that she owns an Apple computer and that she believed that the photos were a product of a photobooth application that can produce mirror images of the subject in a photo. The mother said that she could tell the photos were taken at her mother's house. Ms Moses also told the mother that she questioned if it was G's buttocks due to the appearance of hair.

[144] Ms Moses stated that she would consult with her supervisor. Ms Moses also noted that the time stamp on the photos was December 30, 2015.

[145] The mother also brought up another sign as to why she speculated sexual abuse had taken place on January 21, 2017. When G came home he wanted to take a bath and brush his teeth which she said was out of character for him. It should be noted that when the mother gave her evidence in this trial, she said the child took a shower and brushed his teeth but that occurred several hours later and she never commented that this was unusual.

[146] Ms Moses consulted with her supervisor Ms Dorian King about the photos. Ms King agreed with Ms Moses' assessment that these were obvious computer duplication effects. Ms King also noted that in one of the photos the shape of the buttocks was too emaciated for it to be a 6 year old child's buttocks.

[147] Ms Moses spoke to the father on the telephone about the photos. The father denied taking any inappropriate photos of his son. The father referred to a computer program with effects that can compress and duplicate pictures that appeared consistent with her own interpretation of the photographs.

[148] Ms Moses advised the mother that the society would not be taking any further action regarding the photos as the society did not believe that any of the photos were related to sexual activity. The mother appeared to have a flat affect as Ms Moses related this to her and was unresponsive when she asked the mother if she thought her rationale was plausible.

[149] Ms Moses also interviewed G who did not make any disclosures to her. However, when asked about not seeing his father, he said he felt "*good*" and appeared indifferent. When asked if he had any worries about not seeing his father, he said that he did not.

[150] When the mother was cross-examined about Ms Moses' information to her that the photos were not genuine photos showing sexual activity, the mother testified that she "*accepted what was said and moved on.*"

[151] However, in the mother's December 1, 2017 affidavit filed in the domestic proceedings the mother included these photos and does not mention the society's position. When cross-examined, the mother could not provide an explanation except to blame her former counsel, even though the mother acknowledged reading and signing her affidavit.

[152] I find that these further allegations by the mother were unfounded and that the

mother once again misled the court.

4.1 (5) Allegations in September and October 2017

[153] On September 29, 2017 the society received a referral from James Carpenter, a traditional healer at Anishnawbe Health Centre, stating that G disclosed to him during a therapeutic session that the father had sexually abused him.

[154] A decision was made to interview G privately at his school due to the historical unverified sexual abuse allegations, concerns related to the mother influencing G during and the suspended access between G and his father who was the alleged perpetrator.

[155] Ms Moses interviewed G at school on October 10, 2017. She spoke to a detective who declined to participate in a joint interview due to the minimal details provided and asked her to reconsult after her interview with the child.

[156] Ms Moses told G that she was there to check up on him and told him that she had spoken to his counsellor who had shared some information with her. G said it was okay to speak about it with her.

[157] The following was discussed in the interview with G:

- (a) When asked if he could remember what he told James Carpenter G said, “*T put his privates on me* [he called his father by his first name];
- (b) When asked what prompted him to tell Mr. Carpenter this he did not know and could not remember what they were talking about;
- (c) When asked when this happened, G said that it happened for about 4 years, when he was “*4, 5, 6, and 7 years old*”. He then changed his mind and said it also happened when he was 8 years old;
- (d) When asked if he could draw or indicate on his body or her body what his father did, G said that the father put his private parts all over. When asked again, G said the father would place his penis on his arms and legs and motioned like a stroking action;
- (e) When asked if the father had placed his penis anywhere else on his body, he said no;
- (f) When asked where this had taken place, G said in a public restroom but could not indicate the location. G said nothing else happened in the stall. When asked what the father would say before entering the washroom, G said his father would say, “*lets go to the bathroom*” and G would follow him. When asked if the father did anything else after placing his penis on his private parts, like what people typically do when they use the bathroom, G said that he did not;
- (g) When asked if he told his mother about this, he said he did but could not

recall when;

(h) When asked if he remembered his prior interview with the police, he recalled going but only that they spoke about things like how he was doing and what his interests were. He could not recall the police officers asking him about a spicy sandwich and he said he did not know what Ms Moses was talking about;

(i) When asked about the most recent event he could recall, G said it was in a family home during Thanksgiving and that the father took him into the bathroom and placed his penis on his limbs;

(j) G said that his paternal aunt saw the father and G. When asked how, G said that she saw them enter the bathroom. When asked if the door was open and his aunt could see what happened he said the door was closed. He also said that his mother was at the home;

(k) Ms Moses asked him if he was willing to tell this to the police and he said he was; and

(l) G then asked Ms Moses if his mother knew that she was there. She told him that his mother did not know but she would tell her later. G looked around and said that he did not like it that his mother did not know.

[158] Ms Moses then consulted with the TPS and was told that the police would not be pursuing this matter further.

[159] Ms Moses spoke to the mother the next day and advised her that neither the society nor the police would be pursuing this matter further in G's best interests.

[160] Ms Moses told the mother it was up to her if she wanted to pursue a criminal investigation. The mother stated that, "*when it comes to child abuse, suspected allegations, whatever the case may be, the decision to press charges is not up to me, it is the wellbeing of the child.*"

[161] Ms Moses stated that this was the reason that she needed to decide if it was in G's best interests to begin this process again.

[162] Ms Moses deposed that the mother argued with her that the child was being molested by the father. Ms Moses told the mother that G only disclosed that the father stroked his penis on his arms and legs. The mother continued to argue and told her that the photos she had previously shown her were being submitted to the family court. The mother stated that the last time the police investigation did not go well as G was intimidated.

[163] The mother brought up the previous allegation about the spicy sandwich and Ms Moses told the mother that those allegations were determined to be unfounded. The mother told Ms Moses that G told her that his father put his penis in his mouth. Ms Moses told the mother that G had not made that disclosure to her. She also told the

mother that when she brought up the reason G had gone to the police, he could not recall going and not even recall even when she mentioned the spicy sandwich. The mother was upset about this.

[164] Ms Moses advised both parents that the allegation was not being verified due to the historical and ambiguous nature of the information provided by the child. The mother was not relieved that sexual abuse was not verified. The mother wanted to call Ms Moses manager and appeared to be on a mission to make the society see things her way.

[165] The mother did not challenge this evidence in either her affidavit or in her own oral evidence or in the cross-examination of Ms Moses.

[166] Quite strangely, despite another false allegation by the mother, the society then closed its file. Ms Moses testified that the mother was meeting the basic needs of the child and no concerns were being reported. Despite concerns about the mother's mental health and her emotional instability, the society felt they did not have enough evidence to substantiate an order for a psychiatric assessment of the mother. Ms Moses explained that closing the file did not mean that the family was not struggling but the family did not want the voluntary involvement of the society and the family did not meet the criteria for court intervention.

[167] I agree with the submissions of the child's counsel that the society did not provide the services that were required to this child. It was clear to all of the society workers that the mother was alienating the child through the unverified allegations of abuse and the mother's unhealthy influence on the child. However, I do not agree that the society did not provide services to the mother. The society attempted to work with the mother, but she was uncooperative.

[168] In hindsight, the society should have much earlier commenced its Protection Application as there was ample evidence at that stage that there was a serious risk of harm to the child.

4.1.(6) Third police investigation and allegations made March to May 2018

[169] On February 26, 2018 approximately a month before a court date in the domestic proceedings, the mother reported to the police that the child was now ready to make a disclosure.

[170] On March 2, 2018 Moshan Attique, an intake worker with the society, attended a joint investigation at TPS 32 division with Detective Constable Elena Stepanenko. Prior to the interview commencing the mother stated that she had been told that she could be part of the interview or observe it behind a glass. It was clarified that she could not do so.

[171] As Mr. Attique, the child and Detective Constable Stepanenko sat down, another constable informed them that she was turning on the camera in the room and left the room.

[172] As soon as she stepped out, G started to cry and said that when he turned 4 it started happening. He said while crying, *“At my 4th birthday party, he told me not to tell my mom. Few weeks later, we went to a knife store. He asked them where the bathroom is, then he put his penis on my body.”*

[173] At that point the constable came back into the room and said that the camera just started rolling. According to the worker, G then stopped crying and his demeanour changed and he no longer had the same emotional intensity and just waited for instructions.

[174] The video of this interview was also played in court.⁸ The disclosures are bizarre, difficult to follow, disjointed and almost indecipherable.

[175] G made the following statements:

(a) G detailed 5 instances of being sexually abused by his father: at a Chuck-E-cheese birthday party⁹, at a knife store, at the paternal aunt’s house, at an army base and at the maternal grandmother’s home. One of those instances also involved a friend of his father’s as well as the father. Another instance involved both of his maternal aunts as well as his father;

(b) G detailed one instance of being kicked and punched by a friend of the father’s in his father’s presence and then being made to observe his father and his two maternal aunts engage in sexual activity;

(c) G spoke of one instance of his father hitting him;

(d) When asked where he learnt the word “molest” G said he learnt the word “molest” from Jim Carpenter who told him that he had also been “molested and raped.” G said that this mother was present in his sessions and that he told James about 4 or 5 months ago but did not tell him the whole thing. In his evidence, Mr. Carpenter denied that he used the words molest or rape with G;

(e) Detective Constable Stepanenko questioned G around timelines and gaps in his story. She read from the previous reports when he said that his mother was acting crazy. G agreed that he said those things but stated that he now knew what was the good and what was not because his mother told him.

[176] The father’s friend and co-worker George testified and denied all of the allegations made against him. He spoke glowingly of the father and his relationship with G. He had seen them at several military family events and other times when the father brought him to the military base. He confirmed that G had been at his home a few times with his father but as he shares the home with his wife and extended family, they were

⁸ Exhibit 12

⁹ It is unclear if the father just warned him at Chuck-E-Cheese not to tell his mother or if something happened there

never alone. Further, the maternal aunts were never at his home and had never met Li until this trial.

[177] The only question asked of him in cross-examination by mother's counsel was confirming that there were no cameras in the washroom at the military base. I infer that the basis for this question was to point out that sexual activity could have occurred in the washroom without anyone being aware of it. I find that George was a credible witness and find that there is not a shred of evidence that he ever sexually or physically abused the child.

[178] In a subsequent interview with the child by Mr. Attique, G said that "T" got access on December 5th [again using the father's first name] and now there was another court date and they were waiting for judgment. He was worried he may have to see his father again.

[179] On April 13th, 2018 the mother was advised that there would be no further police investigation and that the police had no grounds to believe that G had been physically or sexually abused by his father.

[180] The society also did not verify the allegations. It was the opinion of Mr. Attique and Dorian King, his supervisor, that the disclosures were not consistent and G gave the impression of being coached.

[181] On April 16th, 2018 Mr. Attique met with the mother and explained that the file was being transferred for ongoing services as the society had concerns about her parenting of G, the repeated allegations of sexual abuse by the father and their impact on G and concerns about the mother's mental health.

[182] In cross-examination. Ms King confirmed that she had a case note dated March 21, 2018 stating that the mother, "*also made allegations that another boyfriend might have molested G. They are looking to get more information about this.*"

[183] Ms King testified that the society should have followed up on this but did not. She assumed that the police may have followed up as this was a joint investigation. Ms King agreed that this pointed to serious concerns that G may have been molested by another man or because of further false allegations. The mother led no evidence about this allegation and did not explain her comments.

[184] The bulk of the child's disclosure made during this time period closely resemble the allegations that mother made to her sister in her text and Facebook posts prior to the mother reporting her concerns to the police on January 21, 2017. G's narrative became influenced by those around him that is, his mother and Mr. Carpenter.

[185] I find that there is overwhelming evidence that the allegations of sexual and physical abuse against the father, the maternal family and the father's friend are without any substance. As soon as the mother was given reasons why allegations of abuse were not verified, the mother made new allegations trying to address those reasons.

[186] I find that the mother has systematically and over time convinced the child that these allegations happened.

4.2 Court ordered access visits

[187] There is a pattern of the mother not co-operating with court ordered access with the father both in the domestic proceedings and then again in the child protection proceedings. The mother provided a variety of excuses none of which I find are credible. What is clear is that the mother had no intention of permitting the father's relationship with G to resume.

[188] The father explained that he had been away on a military training exercise from March 21, 2017 and received the court documents about the restraining order after he returned. The temporary without prejudice restraining order was issued on March 29, 2017 without notice to the father. The endorsement states that there were serious allegations of physical and sexual violence against the mother and the child.¹⁰

[189] On June 16th the father returned to Ontario, although the court hearing had been adjourned the father had not filed an Answer. The father testified that he naively thought he could just come to court, speak to the judge and tell his side of the story. The father's explanation is consistent with the court order of June 27, 2017 that a final order was made that included a suspension of his access as he had not responded to the Application and why he was given leave to bring an early Motion to Change with material from the society and the police.

[190] On July 17, 2017 the father filed his Motion to Change. There were several other attendances to deal with procedural issues and disclosure from the society.

[191] On December 5, 2017 an order was made for the father to have access on alternate week-ends for up to 2 hours at Access for Parents and Children Ontario ("APCO"). The mother was to have a neutral third party drop off and pick up the child. The next court date was March 22, 2018 for the court to review how the APCO visits had gone.

[192] The father testified that he immediately contacted APCO and was told that the custodial parent needed to attend for her intake appointment before he could attend for his intake. The father testified that he then started to get emails from the mother calling him a monster, a rapist of children and speak of the disgusting things he had done to their child.

[193] The father testified that he kept calling APCO begging for an appointment as he had been calling since January and was coming from out of town. He received an appointment on March 6th at which time he was told that the mother had refused to pay the application fee. The father testified that he then refused to pay the mother's fee as

¹⁰ On consent of all counsel, the Table of Contents with copies of the endorsements in the domestic proceeding was entered as Exhibit 59

he planned to tell Justice Paulseth, the case management judge, what happened when he returned to court on March 22, 2018.

[194] The mother attempted to have the March 22nd court date adjourned that was opposed by the father.

[195] The father testified that the mother only completed her application that is, paid the fee on March 18, 2018.

[196] The mother's only response to the father's version of these events, is in her affidavit where she states that she attended for her intake appointment on January 18, 2017 and encloses her intake form. However, she does not address the issue of the payment of the application fee. The mother could have easily attached proof of her payment to her affidavit. I draw a negative inference from the fact that she did not provide proof of payment earlier than March and that she did not address this issue in her oral evidence.

[197] The mother's email to the father dated March 14th¹¹ is instructive to illustrate the mother's attitude towards the father. It is titled, "*To the disgusting shit-face of a person who is no longer considered human*" and reads in part as follows:

Listen here you piece of shit who molests and rapes children, are you still molesting and raping children T? T- the child molester, you are a disgusting monster inside and out. Your darkened soul is starting to show on your outer appearance. Are you sexually molesting more children T? Are there more victims of your horrific abuse T? You are a nasty, disgusting pedophile who deserves to rot in jail. Do you friends and family know the truth that you really molest children? You need to admit what you did and are still doing and visit your local police station to turn yourself in.

With regards to APCO claims of delays you are referring to on "bad faith" (like you even know what that means with your illiterate and un-educated gimp of a creature self). The rest of the world bases information on facts. Please see list of facts below.

[198] The email continues for another page. But interestingly nowhere does the mother say she paid the application fee only that she attended at APCO on January 18th.

[199] Further the mother testified that she earns \$30,000 to \$35,000 a year and that she paid hundreds of dollars out of pocket to have G seen by counsellors of her choice. She does not explain why she was unable or unwilling to pay the \$50 application fee for 3 months.

[200] I find that the father's evidence on this issue was clear and consistent and not shaken in cross-examination. I find that the mother purposely delayed the onset of the

¹¹ Exhibit 33 pages 1 and 2

father's access at APCO.

[201] The parties returned to court on March 22, 2018, at that time Justice Paulseth ordered that the father have access every Saturday from 1:00 p.m. to 3:00 p.m. supervised by the maternal grandmother. The first visit was to occur on Saturday March 24th.

[202] Both the father and the maternal grandmother testified that the visit did not take place.

[203] On March 16th, 2018 the mother sent the father an email stating that she was aware that there was an arrest warrant out for his arrest.¹²

[204] In the mother's email to the father dated March 25th¹³ she confirmed that between 1:00 p.m. and 3:00 p.m. on March 24th she was at the police station notifying them of his whereabouts. She states that he was AWOL from the military and the OPP issued another warrant for his arrest. She states that she will never allow him to come near her or her child and that he is a fugitive and needs to turn himself into the police.

[205] The mother's email is titled, "*Access denied for T due to confirmed criminal activities/active warrants/fraud investigation/Military Police advises against dropping off child to known criminal.*"

[206] The mother was extensively cross-examined about this incident. She could not offer a cogent response for not attending for the court ordered access. She attempted to rely on the erroneous information she received from Corporeal Fenner.

[207] Corporeal Fenner filed an affidavit and in this proceeding and confirmed that the mother called on March 24th to ask questions about the father. When the call was transferred to him, he was not given the identifying information and gave her information pertaining to another member of the military with the same surname as the father. He told her that the other individual he was absent without leave and a warrant was issued for his arrest. The mother called again on March 26th and again he did not realize they were speaking about another individual. Corporeal Fenner confirmed that none of the information that he provided to the mother pertained to the father and apologized for his error.

[208] In his oral evidence Corporeal Fenner could not recall when on March 24th the mother called him. The mother also never explained why she was calling the military police about the father or why no one mentioned this issue when they were in court on March 22nd.

[209] Based on the evidence presented on this issue I find that the mother had no intention of complying with the court order for the visit on March 24th.

¹² Exhibit 33 page 3

¹³ Exhibit 52

[210] Both the father and the maternal grandmother continued to show up for the court ordered access visits. On March 31, 2018, the mother did not attend.

[211] On April 7, 2018, the father and the maternal grandmother waited for 2 hours and the mother did not show up. According to the father's affidavit the mother sent a blatantly false email stating that she was there.

[212] On April 14, 2018, the maternal grandmother and the father waited for about 20 minutes, the father left as there was a storm coming. About 5 minutes later, the mother showed up and the father was about to turn back when he was told that the mother was refusing to give G to the maternal grandmother. The father considered it in the child's best interests not to further expose him to an altercation, so he did not return.

[213] On April 21, 2018 the mother and her partner JM arrived. The father testified that he saw a white SUV abruptly stop and a male who he did not know jump out and begin to shout and scream and hurl insults at both the father and the maternal grandmother. Unbeknownst to the father, the maternal grandmother begins to video tape¹⁴ the scene on her phone.

[214] The mother is seen telling the child to use his words. She is standing outside the car, while her partner continues to scream and yell. JM is belligerent, totally out of control and trying to engage the father. The father is seen leaning into the car, telling the child he loves him while the child is saying that he is a "rapee." The father continues to tell the child that loves him and it is not true.

[215] It is chilling and shocking to watch the mother simply standing by while her child is subjected to this scene. The mother does nothing to stop her partner and does nothing to diffuse the situation. The mother does not encourage the child to see his father or even comfort the child. It is heartbreaking to see the father pleading with his son.

[216] This piece of evidence is all that is really needed for the court to see the mother's attitude towards the father's access to the child. It is disturbing to watch and hard to understand how any mother would subject her child to such a scene.

[217] On April 28th, there was another scheduled visit. JM drives up, the child is not in the car and then drives away.

[218] The mother did not deny any of these events or offer any explanations other than that the child did not want to see his father, she respected his views and could not force him.

[219] On May 4th, 2018 the parties returned to court. The father had filed a motion for access and after a contested hearing, Justice Paulseth ordered that on a temporary without prejudice basis, the father was granted access on alternate week-ends with pick

¹⁴ Exhibit 15

up at school and drop off on Monday morning by the maternal grandmother or the father. The access was to commence that day. The order provides that the maternal grandmother, maternal aunt and paternal aunt be available to support the child, if necessary.

[220] Despite the fact that the pick up was to be that day at G's school, the mother did not advise the court or the father that she had changed with child's school.

[221] The father waited for the court order to be prepared and then attended at the child's former school. The father was then told that the child was no longer attending that school and he was directed to a public school close by.

[222] The father along with the maternal grandmother, the mother's sister and the father's sister then attended at the new school. They went to the principal's office and saw the child sitting there with his head down. He did not say anything to them. The father was told by the principal that he could not release the child as school was over and the child was then in the care of the after-school program.

[223] The father and Li, the mother's sister went to the child care office and were told that the worker did not have the authority to release the child and she needed to call the supervisor. While they were waiting for the supervisor or the police to arrive, the mother went into the gym where G was and removed him. She sped away onto the grass of the school yard and nearly hit a small girl.

[224] The next court ordered visit was to take place on May 18th, the father called the school and was told that the child was not in school that day. As the father lives in Petawawa which is about 4.5 hours away he did not come.

[225] On June 1st, the father again called the school and as he was told the child was in school, he began to drive to Toronto. He asked the maternal grandmother to pick up G, but he was then told that the mother had come to the school and removed the child.

[226] No other access took place. The mother asked for a change of workers from Mr. Attiah and Marcia Duncan became the new family service worker as of June 8, 2019.

[227] On June 20th, the parties were again in court. Justice Paulseth ordered access with Braydon Supervised Access Service. If necessary, the child's godmother was to be present. Both parents were again to register for APCO.

[228] The Braydon supervised access visit was scheduled for July 15, 2018. The child's godmother testified that she offered to facilitate the visit and drove the child for the visit at Braydon. She and someone from Braydon managed to get the child out of the car and into the building. They tried to convince the child to go into the room for a visit with his father.

[229] G said he did not want to go and walked out so his godmother followed him. She drove him to get an ice cream and tried to get him to go back for the visit. She testified that she told him no one was forcing him as he said he felt forced. She told him that

someone would be in the room with him and he would be safe. He appeared upset so she advised Braydon that the child would not be returning.

[230] On July 13, 2018 the society commenced its Protection Application alleging risk of emotional harm to the child.

[231] At the first attendance of the Protection Application on July 19th, 2018 an order was made that access be in the discretion of the society. Despite this order, the mother refused to contact or cooperate with the society and the society was unable to schedule any access from mid-July to early August.

[232] On August 3, 2018 Justice Paulseth made a temporary order for access for August 9th and 10th from 10:00 a.m. to 12:00 p.m. at the society's office and for such access to continue every Thursday thereafter.

[233] Although the mother drove the child to the visits, the visits did not take place as the child would not leave the car. The workers who tried to facilitate these visits testified that the mother did not do or say anything to encourage the child to get out of the car or to participate in the visit. The workers were not prepared to physically force the child out of the car.

[234] When asked in cross-examination what she did to encourage the access visits with the father, the mother testified that she told him, "*if he wants to go he can go.*"

[235] On August 20, 2018 the parties were again before the court. With respect to G, Justice Paulseth terminated her previous order of August 3rd with respect to access to the father. An access order was made for the child to see his maternal aunt with the visit to be facilitated by the child's godmother.

[236] Although G was driven to the visit by his godmother, he would not get out of the car.

[237] When asked how his visit with his aunt went, the child indicated that he was "*disgusted*" that it was something he was asked to do. He said that his aunts and grandmother knew what happened to him and didn't do anything. He said that he did not know them. He said that he was disgusted at being asked to meet with his father and that he did not want to see his father because of "*what he did.*"

[238] The mother repeatedly told society workers and various counsellors and repeated in her evidence before the court, that she respects the child's wishes not to see his father and she told the child if he wanted to go to visits, he can go.

[239] Although at other times in her cross-examination, the mother also stated that she would respect the order of the court for access and that would override the child's wishes not to have access to his father.

[240] I find that these statements lack any credibility as there were numerous court orders for access that the mother simply did not obey. The mother did absolutely

nothing to encourage a relationship between the father and the child.

[241] The child was described by all parties as a polite, respectful, well-spoken, kind and obedient child who has a close and loving relationship with his mother.

[242] I agree with the submissions of society counsel that it strains credibility to accept the mother's evidence that since January 21, 2017 she has been unable to convince the child to go on a single visit to see his father.

[243] It was only after meeting with Ms Polak in October 2019 that the mother changed her reasons for the child not going on access visits. The mother began to say that she did not have any strategies to discipline G and make him see his father and she blamed the society for not assisting her.

[244] Again, this is simply not credible. The mother in cross-examination admitted that at times when the child did not listen, she took his Xbox away. The child's godmother testified that she had seen the mother take away G's Xbox, take away other things he likes or take away privileges, if he will not listen to her.

[245] On occasion the mother has been able to require the child to attend counselling even though he has said he did not want to go.

[246] The mother sent emails to the family service worker indicating that she supported access between the child and her sister and stating she encouraged access to the father. I find that the mother's emails are self-serving and are her attempts to present herself as being compliant and concerned about the child's relationship with his father and his extended family. I place no weight on the mother's statements in her emails.

[247] It is abundantly clear that if the mother had wanted the access visits to take place, they would have taken place. It is clear that the mother had no interest in convincing G to participate in access with his father. It is also clear that the mother had the parenting strategies to encourage the child to go on access visits with his father or her extended family, if she had wanted access to occur.

4.3. Efforts to arrange counselling

[248] As it became abundantly clear to the society that access between G and the father would not take place without a therapeutic intervention, in August 2018, the society began to explore options for reunification therapy.

4.3 (1) Mother arranges individual counselling for the child

[249] Teresa Cronin, a family service worker who was assisting the family when the primary worker Marcia Duncan was on holidays, advised the mother on August 28th that the society had contacted Mary Urbas who was available to begin reunification therapy. The mother was given the contact information.

[250] The mother informed Ms Cronin that she needed to speak to her legal

representative about therapeutic options.

[251] Despite the mother being aware that the society wished to pursue reunification therapy, the mother arranged for individual therapy for G with Yolanda Testani. This is even though the mother testified that she did not feel that G needed therapy. She said she was only taking him to see Ms Testani due to the court order but then she would not cooperate with commencing therapy with Ms Urbas.

[252] Yolanda Testani is a psychotherapist who works with children with an emphasis on art and play therapy. Her approach is child focused and she talks about what the child wishes to talk about. Ms Testani's evidence was that her goals are to work with a child and the child's goals may not coincide with a parent's goal. She works in a silo that is, that she does not take into consideration anything not uttered by a child over 7 years old.

[253] Ms Testani saw the child for about 7-8 sessions until the sessions stopped in January 2019.

[254] On August 30, 2018, the mother filled in an intake form with McDowall Counselling and Consulting Group where Ms Testani is employed. Ms Testani testified that someone else in the organization would have been involved in the intake process and then the case was assigned to her. She had no specific recollection of seeing the intake form.

[255] On the intake form that mother lists her goals for the child being "*to gain and obtain skills and strategies my child can utilize for success and to help with any issues or concerns with trauma (possible).*" The mother states that the child had previous counselling with respect to trauma from his father and fear of his father but then does not list any difficulties the child is having.

[256] Despite the mother's evidence that she researched Ms Testani's qualifications, Ms Testani had no qualifications with respect to treating G. She did not do any high conflict work, she did not even know what reunification therapy was and she had never been involved in cases involving child protection societies.

[257] Ms Testani did not have any pertinent information about the situation and confirmed that she never knew the full story. The mother told her that there were allegations against the father but until she testified, she was not aware that there were sexual abuse allegations. The child made no allegations or disclosures against the father and only told her he did not want to see the father.

[258] In cross-examination by counsel for the child, Ms Testani stated that she did not see that the child lacked strengths or skills for success. He was socially engaged in activities and communicated with her. She saw no problems and did wonder why he was seeing her. She also did not see any signs of trauma. She testified that she would look for signs of trauma such as insecurity in sessions, the child appearing to be frightened, not talking, or hiding. She did not see any of these signs and agreed that the child did not need to be seeing her for trauma counselling.

[259] The mother deposed that when she was in court on August 20th, she understood that the court wished her to pursue individual therapy for G and accordingly she researched therapists and arranged for an appointment for August 30th. However, the court order of August 20th does not specifically refer to any counselling.

[260] The mother further deposed that it was not until August 30th that Ms Cronin advised her that G should undergo reunification therapy as opposed to individual therapy. The mother further deposes that she wanted the society to compensate her for the cost of the individual counselling session that she had paid for.

[261] This is yet another example of the mother twisting the truth. The email exchange between Ms Cronin and the mother¹⁵ indicates that Ms Cronin told the mother on August 28th that the society wished to proceed with reunification therapy that would involve herself, the child and the father. The mother confirmed that she received this information and wished to consult with her counsel about the options. The mother's email then goes on to request that Ms Cronin provide her with the contact information about the therapist as it was important for her to contact the counsellor immediately. The contact information for Ms Urbas was provided to the mother on August 30th.

[262] Despite being aware of the society's plan for reunification therapy and despite being told that individual therapy for G was not appropriate, that very day on August 28th the mother submits an intake form for individual therapy and arranges an appointment for August 30th, the same day she has just received information about Ms Urbas. Then the mother continues to take the child to Ms Testani from August 30, 2018 to January 2019.

[263] The mother's evidence that she was just complying with the court order that she understood was for individual therapy for the child is simply not credible. She also testified that reunification counselling was just a recommendation made by the society and not a court order.

[264] After speaking to Ms Testani, Marcia Duncan who was the family service worker advised the mother that Ms Testani was not a suitable therapist.

[265] On October 1, 2018 Ms Duncan met the mother for a scheduled home visit, the mother advised Ms Duncan that she wished G to be seen at Skylark Youth counselling agency. Ms Duncan advised her that Skylark did not focus on high conflict separation and /or reunification counselling and was not appropriate.

[266] On October 5th, Ms Duncan received a message from Skylark that the mother was seeking a referral from their agency for their wrap-around program but that a referral from the society was required. Ms Duncan did not follow up as this was not an appropriate service.

4.3 (2) Attempted Reunification counselling with Mary Urbas

¹⁵ Exhibit 53

[267] Ms Duncan encouraged the mother to contact Ms Urbas and advised her that the father had already been in contact with her.

[268] The mother wanted confirmation that the society would pay 20% of the cost of the therapy for Ms Testani. Ms Duncan advised that she could not confirm the society would pay as the mother had not consulted with the society prior to engaging the services of Ms Testani but she would follow up.

[269] On October 20, 2018 a case conference was heard before Justice Paulseth. November 8, 2018 was set for a motion to vary the outstanding supervision order as the society advised it wished to bring a motion to place G into the care of the society due to non-cooperation by the mother regarding therapy.

[270] On October 22, 2018, the mother contacted Ms Urbas. According to Ms Urbas' case note,¹⁶ the mother told Ms Urbas that the court had wanted individual therapy for the child before any reunification therapy.

[271] The mother stated that she supported therapy and treatment and wanted her son to have a relationship with his father. She said that "*its his call to make*" and if he wants contact, she will support it but that she can't force him. She further told Ms Urbas that she gives the "*child preference on whether to see his father or not*" but she wanted Ms Urbas to try and was on board to have him meet her.

[272] Ms Urbas told the mother that there was no point in proceeding unless she could make some headway with G to come meet with her and gave the mother some ideas about strategies.

[273] Ms Urbas testified that she told the mother that it was important for the mother to be on board with the reunification. The mother advised that she wanted a consultation meeting with her.

[274] Ms Urbas advised the society and both parents about the process and that she would require a retainer fee upfront and she could not estimate the total cost until she received necessary documents.

[275] It was understood that the father's extended medical plan would cover the cost of Ms Urbas' therapy. The father met with Ms Urbas for an initial consultation and the mother decided not to meet with her as she deposed that she did not want to delay the process.

[276] However, the mother corresponded with Ms Duncan stating that she could not afford to pay the \$120 fee for the intake appointment.

[277] I find that it is more likely that either the mother would not meet with Ms Urbas as the society would not pay the cost of the initial consultation or it was just another

¹⁶ Exhibit 56

attempt by the mother to delay the process.

[278] On October 29, 2018 Ms Urbas sent an email to the parents outlining her process and indicating that she would use her discretion to determine if reunification therapy was appropriate and to determine if it was in the child's best interests to have a relationship with his father. She further stated that it was important for everyone to be engaged in the process.

[279] The father testified that Ms Urbas requested a \$1,500 retainer to complete the intake process and that he could not afford to pay that amount and wait for his insurance provider to reimburse him. The father wanted the society to pay the fee and then he would try to reimburse the society.

[280] The therapy did not proceed as there was confusion about payment and documents not being sent to Ms Urbas.

[281] Ms Urbas testified that it was her overall impression from speaking to the mother on the telephone that she was motivated to engage in therapy, that she was co-operative and open to her suggestion about how to encourage the child to come meet with her.

[282] Although it appears on reading the mother's email correspondence that the mother is open and cooperative with Ms Urbas, in fact she would not even meet for an intake appointment as she would not pay the \$120 fee. This is even though she states she was paying out of pocket for the services of Ms Testani.

[283] In the mother's affidavit she deposes that she thought "great progress" was being made with Ms Urbas and wanted that process to continue instead of commencing therapy with Millan & Associates. This is despite that fact that from August to December 2018 nothing had actually happened with Ms Urbas and the mother had not even met in person with her.

[284] Although it may have been Ms Urbas' impression based on the mother's emails and telephone calls that the mother was co-operative and motivated to engage in therapy, I find that this is not an accurate assessment of the mother.

[285] Based on the mother's overall behaviour, I find that the mother will co-operate at the outset and send emails and make statements that appear to suggest that she is co-operative and on board with the child resuming contact with his father, but as soon as she does not agree with the process she withdraws or thwarts the process.

4.3 (3) Attempted reunification counselling with Millan & Associates

[286] On December 18, 2018 in light of the father's withdrawal of financial support for the reunification counselling, the society made the decision to engage Millan & Associates as it had a contract with the agency and felt that agency would also be culturally appropriate.

[287] Sonia Mills-Minster testified that her agency is culturally sensitive and she was aware that this was a family of colour. Also, her agency tends to have a more collaborative approach than other agencies. She was aware that this was a high conflict alienation case. Both her and Heather Picart were to be involved. They both had similar roles so if they had to separate the parties in a session then they would be able to do so.

[288] The process was to include individual counselling sessions for the child, for each parent and include a focus on the parents' conflict as well as reunification with the father. Depending on how counselling proceeded, Millan & Associates were also mandated to look at reunification with the maternal family members.

[289] Both parents indicated they were agreeable to participating. When told that the mother had already agreed to the referral, the father was somewhat skeptical and said that the mother always presented that way initially but then she does not follow through.

[290] On January 11, 2019 Ms Mills-Minster and Ms Picart met with the father and the maternal grandmother. The father reported that he was not allowed access to G after he terminated his relationship with the mother and called off their wedding and then the mother began to make threats that were followed by false allegations of abuse. He expressed concerns about the reunification process and the fact that despite courts orders he had still not seen his son.

[291] Shortly after Ms Mills-Minster and Ms Picart met with the mother. The mother reported that G was sexually abused by his father when he was 8 years old and that the police, child welfare authorities and the hospital failed to verify the sexual assaults. The mother said that G's sexual assault allegations broke up the engagement. She reported that the father was violent and controlling. She also stated that she began to have issues with her mother after her father passed away. She stated that she identified as First Nations.

[292] The mother reported that the father sexually abused G over 2 years ago and that her family was aware of the sexual abuse and failed to protect G which resulted in her eliminating contact with her biological family and the father's family.

[293] The mother was told that the goal of the therapy was for the child to have access to his father. The therapists spoke to the mother about the contradiction with her taking the position that the sexual assault occurred and working to protect G and simultaneously agreeing to the reunification process that would allow the father to have sessions with his son. The mother stated that G did not want to have visits with his father, continued to maintain that the abuse occurred and said that she spoke for her son.

[294] On March 14, 2019 Ms Mills-Minster and Ms Picart met with G, the mother and her partner JM. The therapists explained the reunification process. The mother appeared to be engaged but G sat quietly and made little eye contact. The mother stated that G was afraid of his father and did not want to see him.

[295] When Ms Millan-Minster spoke to G and addressed Mr. TH as G's father, he said "no" and covered his ears, looked away and then attempted to leave the room. He began to cry and seemed to disengage in the process. She repeated that Mr. TH was his biological father.

[296] When G began to cry the mother hugged him and said, "*no one will force you to see him, it's ok.*" G escalated his behaviours. The mother said that G would only like to have sessions with the therapists and not with his father. The mother further advised that if the father attended G would not attend.

[297] The mother's partner JM then attempted to removed G from the room. When told that all communication should occur inside the session, JM nevertheless went out with the child anyways. The mother did nothing to intervene.

[298] In cross-examination, Ms Mills-Minster testified that the mother's messaging to the child was contrary to what the mother had contracted to do in the process namely, support the child having access to his father. Further, she was concerned about what messaging the child received from JM as whatever was said outside the room could have been said inside the room.

[299] When G was asked questions about how he felt about his father he said, "*I hate him.*" When asked to expand on the reasons, G looked at the mother and was not able to verbalize the reasons for hating him.

[300] The mother tried to prompt G, saying, "*tell them he touched you.*" The mother was told to let G vocalize his reasons independently. In cross-examination, Ms Mills-Minster also stated that the mother told the child that his father sexually abused him, that his grandmother knew of the allegations and failed to protect him and that his father's family also knew.

[301] As G struggled to articulate how he was feeling without being prompted by his mother, Ms Picart introduced the idea of writing a letter. G said he was unable to write anything. He was also asked to draw his feelings but was unable to do so. G started to sniffle and looked at his mother.

[302] The mother gave G a hug and made statements that validated her position around G not speaking about the alleged trauma and made statements about why G hated his father (that his father hit him, sexually assaulted him, and was abusive), and then G agreed with those statements. The mother said she was the only one who protected and loved G.

[303] Ms Millan-Minster noticed that G was finding the process difficult and asked G what he would say if his father was there and he said, "*I hate you.*" G struggled for the next 25 minutes unable to formulate the reason for hating is father and kept looking at his mother. Eventually, it was agreed that he could take the letter home and finish it.

[304] In cross-examination, Ms Mills-Minster explained that she had no expectation that the letter would be the true voice of the child, but it was being used to engage him

in the process.

[305] On March 24, 2019, Ms Mills-Minster and Ms Picart met with G and the mother. G brought the letter he had written and presented as being hesitant when asked to explain statements and identify his emotions surrounding the letter and often looked at his mother.

[306] The letter was written in G's handwriting and stated as follows:

I don't wanna see you stop trying to see me. I hope you get hurt in that way that you hurt me but more painful. Why did you molest me? You should stop lying or your lies will get bigger and bigger. Why do you wanna see me, are you trying to do it again? Why did you do it to me? Beware because karma is coming. I want answers.

If you want me to be happy then admit what you did.

[307] Ms Mills-Minster described that G whined (it sounded like crying but with no tears) when he read the letter and covered his ears. The mother sounded supportive saying things like, "you don't have to see your father" and "I'm not going to let anyone hurt you."

[308] The mother said that G was not willing to see his father until the letter was processed with the father and that the child wanted a response from the father prior to any in person meeting. However, it was not clear to Ms Mills-Minster that this was the child's or the mother's position.

[309] G presented as open to hearing his father's name during the session. He did not scream or cover his ears or leave the office when his father's name was mentioned.

[310] Ms Mills-Minster and Ms Picart explained to G that there was no supporting evidence for the claim of sexual assault by his father and that the court and the child welfare agency supported the reunification process. G looked at Ms Picart and then his mother but had no other reaction.

[311] G was calm and listened when there was a discussion about the reunification process and possible options.

[312] The mother then reported that G was acting out at home, that he was emotional, and she placed the blame on the process that was being undertaken. Ms Mills-Minster then suggested the use of a psychologist who was neutral to address the dysregulation that the child was reportedly going through.

[313] On April 14, 2019 a session was scheduled for G, the mother and the father. The father attended but the mother and G did not attend. The mother called and stated that G was not open to meeting with the father as planned.

[314] Ms Mills-Minster provided some alternatives such as, the mother coming to the office and her partner staying home with G so a telephone call could be arranged or the

child's godmother or a friend staying with G at home or herself or Ms Picart supervising the visit both in her home or in the office. The mother declined all these options and stated that her partner and close friends were not interested in assisting the reunification process between G and his father.

[315] During the telephone call, the mother asked for answers to the questions posed in G's letter. The father stated that he loved his son and would never hurt him. The mother continued to request an answer and the father said that when he meets with G then they would have an opportunity to speak in private and not through the mother. The father asked the mother if these were her questions that she wanted answered.

[316] The mother repeated that the child was being impacted by the process and the idea of meeting with his father. The mother reported that G was sad, emotional and that he was crying. Ms Mills-Minster then recommended that G be assessed by Dr. Kimmons, a specialist in child psychiatry as none of the psychologists that work in her practice wished to get involved due to the high conflict nature of the case.

[317] On April 17, 2019 a joint meeting of the father and mother took place. Ms Mills-Minster testified that the father offered an apology to the mother for the events surrounding their engagement.

[318] The mother told the father that he had "*not been erased*" from G's life and that G had "*positive memories*" of his father. The mother reported that, "*G enjoyed his time*" with the father and that he was "*a good father.*"

[319] The mother repeated that G wanted to receive a response to the letter that he wrote. The father agreed to write a response and Ms Mills-Minster suggested that the father give G his response when they met in person at the session scheduled for May 5th.

[320] The father requested a telephone call prior to the next session. The mother stated that she would discuss this option with the child. The mother maintained that G was open to meeting with the counsellors to talk about the abuse and processing it.

[321] The telephone call did not take place as the mother reported that G had not wanted to talk to his father. The mother reported that G said that the reunification process was "*going backwards.*" When asked if those were the child's exact words the mother said not exactly. The mother further reported that G had said he wanted to go see his previous therapist and that she agreed to book an appointment.

[322] The mother expressed her concerns that the sessions looked like access visits and that G was exhibiting "*major anxiety, stress and frustration.*" The mother reported that at this time G was unwilling to meet with the father in person.

[323] The next session scheduled for April 28th was also cancelled by the mother as she reported that G refused to visit the father in person or have any contact by telephone. Also, the mother wanted her partner JM to attend the session and the father was not in agreement.

[324] Ms Mills-Minster testified that at that point she felt the challenge was to distinguish the child's voice from the mother's voice as she often spoke for him in and outside the sessions.

[325] Ms Mills-Minster's request for Dr. Kimmons to be involved created much confusion and was done without the society being aware or having approved of this step. According to Ms Mills-Minster, she wanted a neutral third party professional who would have input from both parents whereas the mother was proposing that she take G to her family doctor.

[326] On May 6, 2019, Ms Mills-Minster reported to the family service worker Ms Duncan that the process could not move forward until a session with G and his father took place. The mother was stating that G no longer wished to speak to them as they were advocating for the father.

[327] It was the view of Ms Mills-Minster that the mother was manipulating the system by having G seen by professionals who only had information from the mother. This was very harmful to G and would continue to affect him long term.

[328] It was Ms Mills-Minster recommendation that in view of the entrenched position of the mother and the inability to distinguish her voice from the child's voice that G needed to be removed from the mother's care and then be allowed to engage in therapy without the influence of the mother.

[329] On May 7, 2019 the mother sent another email suggesting that Ms Mills-Minster was using a back door by suggesting she skip a doctor's referral to the psychiatrist. She also wrote that she was in the practice of recording all of her telephone calls and quoted Ms Mills-Minster back to her. But the quote attributed to Ms Mills-Minster was asking the mother to go to her own doctor to get a referral to see a psychiatrist. Therefore, the mother accusing Ms Mills-Minster of using some back door process made no sense. The mother was insisting on having her own family doctor conduct the assessment. Ms Mills-Minster replied by emphasizing the importance of a neutrality and having the input of both parents.

[330] The mother sent a series of emails during May and June speaking about what G allegedly wanted, complaining about their services, creating confusion about scheduling sessions and that the alleged re-traumatization of G was continuing.

[331] At the same time, the mother said that she continued to support the reunification process and continued to support therapy for G. She said that she would continue to schedule sessions, even though G would not be attending the sessions as he did not want to see his father. But then she would not attend the session.

[332] On August 12, 2019 the mother sent an email requesting a copy of the complete file. Ms Mills-Minster advised her that the society had a copy of the file and that she could receive a copy from them. She insisted on knowing when she could get a copy of the file, asked if she and Ms Picart were members of the College of Psychologists in Ontario and when told the cost would be \$200 she said that she would seek direction

from her “*governing body*.” Ms Mills-Minster did not hear back from the mother.

[333] In cross-examination by father’s counsel, Ms Mills-Minster stated that this was an alienation case, the issue was why the child did not want to see his father, what messaging was the child receiving and what were the underlying factors. In explaining her recommendation to remove the child from the mother, she stated that the mother was interrupting the process and other times she was not bringing the child. In her view, if the conflict impacts the child then a professional is doing harm by permitting the conflict to continue.

[334] Ms Mills-Minster stated that the mother sabotaged the process. She heard and saw it.

[335] In cross-examination by mother’s counsel attempts were made to discredit Ms Mills-Minster by showing her a partial decision in an immigration case with someone with a similar name to hers and by claiming she depended on the society for referrals. None of these accusations had any merit.

[336] Based on the evidence I accept, I find that the mother only initially co-operated with Ms Mills-Minster and Ms Picart but as soon as the idea of making contact with the father was introduced the mother failed to co-operate, made unfounded accusations, caused chaos and confusion and did not attend meetings. Ultimately, Millan & Associates were not able to continue with the reunification process.

4.3 (4) Mother’s involvement of Dr. Kimmons

[337] Ms Mills-Minster’s reason for the referral to Dr. Kimmons and the process for that referral was confusing and caused disagreements. However, the basic need for a neutral referral and input from both parents did not take place.

[338] On July 5, 2019 Dr. Laura Fung, a family doctor at the Anishnawbe Heath Centre sent Dr. Kimmons a referral letter that stated, “*Please see G, a 10 year old boy, with a history of sexual abuse from his father for psychiatric review.*”

[339] Dr. Kimmons was called as a witness by the mother. Dr. Kimmons had met with the child and mother on July 25, 2019. Counsel attempted to have him qualified as an expert in child psychiatry and have his report entered as an Expert Report.

[340] After a *voir dire* was held, I found that although Dr. Kimmons was an experienced child psychiatrist he was not an expert and as such his report was not admissible.

[341] Dr. Kimmons carried on a private practice that according to his resume specialized in young offender assessment and treatment, childhood misbehavior assessment and treatment, child and adult ADHD assessment and treatment, parenting and separated parenting including custody and access assessments and marital therapy.

[342] Dr. Kimmons had no specialized education or experience in dealing with high

conflict cases or with alienated children. He was not affiliated with any hospital, did not teach, publish or lecture. Although he had been qualified as an expert in a few family trials he testified that these were regarding section 30 *CLRA* assessments. He had been involved in a small number of children's aid society cases but never in a trial.

[343] Dr. Kimmons was permitted to testify regarding his assessment of G. Dr. Kimmons testified that had no input from the father or the society and was only aware that the children's aid society was somehow involved.

[344] Dr. Kimmons testified that he received the referral form¹⁷ and had received an email from Ms Mills-Minster¹⁸ that outlined the issues namely, that this was a high conflict alienation case and unverified allegations and asking that if he feels it necessary, he should obtain a consent so that he can speak to her, the society, the father and the extended family.

[345] Dr. Kimmons testified that he had no recollection of received the email from Ms Mills-Minster. He testified that even if he remembered the email, neither the referral form or the email would have influenced him.

[346] Dr. Kimmons agreed that the child was referred to him to conduct a psychiatric assessment to determine if the child had any psychiatric conditions and if so, to recommend treatment. He agreed that he was not requested to do an assessment regarding alienation. He further agreed that the mother told him, in the presence of the child, that they were there as the child did not want to see his father.

[347] Dr. Kimmons met with the mother and the child for about 45 minutes. He met with both the child and the mother for the first 15 minutes, with the child alone for 15 minutes and then again with both the child and mother for about another 5 – 10 minutes.

[348] Dr. Kimmons testified that when he met with G alone, he said that his wish was, "*to choose what I want*". When asked if there was any physical abuse, G said that his father hit him before the separation. When asked if there was any sexual abuse, he made no response. G said that he already told the society workers why he does not want to see his father and that Dr. Kimmons should ask them.

[349] Dr. Kimmons testified that it was not until the end of the meeting that the mother told him about the sexual abuse allegations, that reunification therapy had been attempted twice and that the society had initiated child protection proceedings.

[350] The mother told Dr. Kimmons that she supported the child having a relationship with his father and had always supported that.

¹⁷ Exhibit 27

¹⁸ Exhibit 31. This email was not presented to Ms Mills-Minster when she testified in violation of the rule in *Browne and Dunn*

[351] In cross-examination, Dr. Kimmons stated that he was not aware that the court had made a finding that there was a risk of emotional harm to the child nor was he aware of the history of the domestic court proceedings.

[352] In cross-examination, Dr. Kimmons confirmed that on a preliminary basis, he assessed the child as being an average child with no psychiatric disorders.

[353] When then asked why he wrote a letter dated July 25, 2019¹⁹ addressed to “*Whom it may concern*” opining about the relationship between the child and the mother and about the child’s access to his father, he responded that he felt it was his responsibility to provide his experience that day. This was even though the purpose of him seeing the child was only to assess the child’s psychiatric condition. He agreed that he wrote the letter for litigation purposes but would not agree that he was advocating for the mother.

[354] Dr. Kimmons did agree that when he wrote the letter, he had limited information.

[355] When the mother testified and was questioned about why she did not provide Dr. Kimmons with the complete background information, she testified that Ms Mills-Minster wanted a neutral third party to see G, so she just answered Dr. Kimmons questions.

[356] This is yet another example of the mother providing various professionals with limited information so that a more positive report is prepared to bolster the impression the mother tried to create of supporting the relationship between the child and the father.

[357] It is also concerning that Dr. Kimmons who only met with the child alone for about 15 minutes would write any letter at all that he was aware might be used for litigation purposes. I find that Dr. Kimmons became an advocate for the mother and the appropriate lines of professionalism were crossed. I put no weight whatsoever on the views and opinions expressed in the letter prepared by Dr. Kimmons.

4.3 Mother’s engagement of James Carpenter for counselling of the child

[358] The mother also took the child to see James Carpenter and she also on occasion met with Mr. Carpenter separately. Mr. Carpenter is a traditional healer and works with the Anishnawbe Health Centre. He saw the child from September to November 2017.

[359] He testified that the child came to learn about his culture and for spiritual healing. He testified that his case notes were accurate, that the notes are taken by an Oshkabevois who acts as a scribe, but he reviews the notes for accuracy and then signs them.

[360] However, during direct examination and cross-examination, it became abundantly clear that his case notes were not accurate, were disorganized and not in

¹⁹ Exhibit 32

chronological order. It was not clear when the mother was present, what she told him, what was told in the presence of the child, what the child said or what Mr. Carpenter said.

[361] Mr. Carpenter had no training as a therapist or counsellor and no experience regarding verification of sexual abuse allegations. He only had some informal training regarding crisis intervention but nothing specifically regarding children.

[362] Mr. Carpenter met with the mother alone and she advised him about the sexual abuse allegations and how no one believed them. He shared with her his own history of abuse. In cross-examination, he confirmed that he told the mother that when he meets with the child, they will be able to help him through Spirit and *“to break sick cycles of abuse and illness of spirit.”*

[363] He then met with the child on September 15, 2017. In cross-examination by counsel for the child, Mr. Carpenter agreed that his case note indicates that he told the child that he thought they had similar histories and he told G that for 9 years he was silent. But he then testified that not everything was written down, he could be referring to his own history, he did not think he was referring to his own history of abuse and then finally he testified that he was not sure what he was referencing.

[364] On the next meeting on September 29, 2017, Mr. Carpenter testified that the child said he wanted to share something with him. The child then told him that his father (the child called the father by his first name) tried to put his private parts on him. Mr. Carpenter told the child that he believed him and tried to be supportive by empowering the child to use his own voice.

[365] In cross-examination, Mr. Carpenter confirmed that he told that child , *“if you see that man again: you tell the truth the person that did that to you is sick, they’ll be sick their whole life, the only way to help them is to tell them they are sick.”*

[366] Mr. Carpenter testified that the child let out a cry after he made the disclosure, he was visibly upset, cried a little and teared up. He also told the child that he believed him and his mother believed him and that he should tell Shay Rowan, a youth counsellor, he was also seeing through Anishnawbe Heath Centre. It is noteworthy that Ms Rowan did not testify and there was no evidence that a report was made by her to the society or the police.

[367] Mr. Carpenter advised the mother that the child had made a disclosure and that he had a duty to report this to the society. After speaking to his supervisor, he called the society and felt that he was not been taken seriously.

[368] However, I note that as a result of this report the society contacted the police and was told to interview the child. Ms Moses interviewed the child at this school and reported the results to the police who determined that they would not interview the child again. Both the society and police did not verify the allegations.

[369] In subsequent sessions, Mr. Carpenter testified and confirmed the contents of his

notes that he continued to encourage the child to tell the truth and told him that he and his mother believe him, and his mother is fighting for him.

[370] However, Mr. Carpenter was vague or could not recall if discussions about giving the child a voice, a child advocate, counsel from Aboriginal Legal Services and criticisms of the society workers were made in the presence of the child. He agreed that his notes were not clear on this issue. However, in further cross-examination by counsel for the child, he eventually agreed that these comments were made in a joint session with the mother and the child.

[371] The child made no other disclosures to him.

[372] In cross-examination by counsel for the child, Mr. Carpenter could not recall if he told the child his own history namely, that he had being abused starting when he was 4 years old. He also stated that the child's disclosure was not made in the context of anything being discussed.

[373] In cross-examination by society counsel, he stated that he believed the child's disclosure because of his demeanour. However, he stated that he had no formal training regarding investigation of abuse allegations and left it to others to investigate. His role was to believe the child and support him.

[374] In further cross-examination by society counsel, Mr. Carpenter stated that he never used the words "molest" or "rape" with the child and would be surprised to learn that G said he taught those words to him.

[375] In cross-examination by father's counsel, Mr. Carpenter stated that he was unaware that in the letter the child wrote to his father as part of the therapeutic process with Millan & Associates he used the word "karma," a word that Mr. Carpenter also used in his discussion with the mother.

[376] Mr. Carpenter responded in cross-examination by counsel for the child that he had personally had a positive experience with the children's aid society. The court therefore asked him to explain his case notes regarding discussions with the mother telling her that the system is broken, they are not believing the child, talking about taking the matter further and stating that he wants her to sue the society and talking about how the society's treatment of her and her partner was not right. Despite questions from the court and other counsel, he could not explain his comments.

[377] On January 17, 2019 Mr. Carpenter met with the mother and she told him that G may have to meet with his father. He confirmed that he told her that G did not have to see anyone. He explained that his comment was based on his understanding of a child's rights. In re-examination, he stated that he learnt this from a pamphlet he had read.

[378] I find that this is another example of the mother finding therapists or counsellors that are sympathetic to her position.

[379] However, in this instance the damage done may be even more concerning as it appears that the child has adopted Mr. Carpenter's history of abuse into his own allegations. As it was not until he met with Mr. Carpenter that he said he was abused starting when he was 4 years old. His letter to his father used the word "karma" a word that would not generally be in a child's vocabulary but used by Mr. Carpenter. The child stated that he learnt the words "rape" and "molest" from Mr. Carpenter.

[380] It appears that Mr. Carpenter assisted in reinforcing and supporting the false memories of the child regarding being abused by his father. He encouraged the mother in continuing to believe those allegations without himself having all the information or without having the experience or training to determine the truth of those allegations.

[381] Mr. Carpenter also encouraged and supported the mother in a view of the society as being untrustworthy, not doing a proper investigation and encouraged the inappropriate behaviour of the mother and her partner towards the society.

4.3 (6) Reunification therapy with Diana Polak

[382] After the child was apprehended on July 25, 2018, the society began to find another therapist to begin reunification therapy.

[383] Diana Polak was retained. In 1991, Ms Polak obtained a degree from Uruguay as a psychologist. She then obtained a Bachelor of Arts degree in psychology from the University of Toronto and a Master of Social Work degree from the United States. She has extensive experience and has had ongoing training in investigation and assessment in both child protection and domestic contexts. Since 2009 she has conducted reunification therapy along with counselling, mediation, parent education and custody and access investigations.

[384] Both parents signed an Informed Consent for Intake Consultation Agreement with her. The father on August 25, 2019 and the mother on August 15, 2019. The agreement sets out that she is being retained to determine whether therapy for parent-child problem otherwise known as reintegration family therapy is suitable for the family. The agreement also states that as this is a clinical intake consultation and an open non-confidential process, disclosure may be shared with other parties, the court and counsel.

[385] Ms Polak met with counsel and received various documents and affidavits. Although the parents were invited to the counsel meeting, they were unable to attend.

[386] On September 13, 2019, Ms Polak met with the child. The child answered questions and did not highlight any concerns. He stated that his lawyer told him why he was in foster care. He understood he was in care because his mother did not take him to counselling and the society wanted him to have a relationship with his father and his maternal family.

[387] G said he did not want to go to counselling. He also said he was not scared of his maternal grandmother or his aunts. The child agreed to meet with his maternal

grandmother and told Ms Polak the foods he wanted his grandmother to bring.

[388] When asked about his mother, G said that he loves her and that she would die for him.

[389] On September 21, 2019, the maternal grandmother met with G at his foster home. The visit lasted for 2 hours, the child ate the food his grandmother brought, they sat beside each other and played games. Ms Polak testified that she did not see any fear by the child. At the end of the visit there was an agreement to meet again and go shopping.

[390] On September 27, 2019, the foster father brought the child to the shopping mall where they met the maternal grandmother and Ms Polak. The maternal grandmother brought a big bag of items for G. They spent the time shopping and then went to eat. Ms Polak testified that the visit went well, there was good interaction and she did not witness any concerning behaviour.

[391] On October 3, 2019 Ms Polak had a long telephone interview with the father. She obtained his narrative. He was logical, honest and spoke of the last time he had seen the child during an aborted visit when the mother's partner was very confrontational.

[392] On October 4, 2019 she met with the mother, Ms Duncan and NL, the child's godmother. She testified that she needed to terminate the meeting after 45 minutes. During the meeting, Ms Polak stressed the importance of the child having a relationship with both parents. The mother said that she had encouraged the relationship but when questioned about how she did this, she did not respond. The mother stated that the child had a choice to see the father and she would respect that choice.

[393] Ms Polak asked the mother if she could tell the child that maybe the abuse did not happen and that it was not verified. The mother made no response.

[394] In cross-examination by child's counsel, Ms Polak further explained that after she asked the mother this question, the mother became threatening and the mother continued to make similar threats after she told her to leave her office. The godmother who was in the meeting tried to intervene to explain to the mother what Ms Polak was saying and tried to calm her down. Even after being told to leave her office, the mother continued to rant and needed to be escorted out of the building.

[395] Ms Polak testified that she had asked the child if his mother told him that maybe the abuse had not happened would this help and he responded that it would help a bit. She did not explain why she did not tell the mother he said this.

[396] During this meeting, the mother began to question Ms Polak's experience, she told her that she had made a complaint about the last social worker she saw. Ms Polak felt intimidated and threatened and ended the meeting. She found out later that the mother had secretly taped the meeting.

[397] Ms Polak testified that she had concerns about the mother as she was allowing

the child to make decisions and not promoting a relationship with the father. She concluded that the mother was not cooperative as she threatened her and was non-responsive.

[398] In the mother's direct examination, she testified that from her perspective, the purpose of that first meeting with Ms Polak was to speak to her about what she could do to help the child and just to meet her.

[399] However, the agreement is clear that the entire purpose of the consultation with Ms Polak was for the purpose of determining if reunification therapy was appropriate. The mother's evidence with respect to her understanding of the purpose of the meeting was the mother's agenda and another example of her trying to control the process of therapy.

[400] However, if the mother honestly was mistaken about the purpose of the meeting then I agree with the submissions of society counsel, why would the mother then cause such tension, chaos and not cooperate during the meeting? Why would she be secretly taping the meeting? Why would she be threatening Ms Polak?

[401] On October 12, 2019 Ms Polak met with the child at the foster home. He had many good things to say about his mother. However, when asked about anything positive about his father he continued to say he didn't know and said he did not remember anything.

[402] He spoke about his father being mean, that his father used to fight with his mother, that "*he did bad things to me,*" and that his parents used to argue a lot, but he was never scared.

[403] Ms Polak told G that maybe the abuse never happened as there were a lot of investigations and nothing was verified. G made no answer and his demeanour did not change.

[404] On October 16, 2019 Ms Polak met again with the child. She showed him a video about social conformity that showed how a person can change their behaviour to avoid conflict and fit in. When asked if he ever did that, he said he didn't know.

[405] Ms Polak then made a contract with the child. She told him that her goal was that he sees his father and his goal was to see his mother and baby brother. The child agreed and said that he would feel comfortable meeting at the maternal grandmother's home and the plan was he wanted to play Xbox.

[406] On October 19, 2019 the child was brought to the maternal grandmother's home by the foster father. Ms Polak did not see the greeting but arrived shortly afterwards. The father showed the child old birthday cards, gave him gifts and a bible with 11 beautiful comments he inscribed. The father and child began to try to set up the Xbox. They were helping each other, were engaged and the child smiled and showed positive interaction. They then played another game as they could not setup the Xbox and ate together.

[407] Ms Polak testified that the visit was appropriate. She had no concerns. The child was not bored, never asked to leave or sought her out.

[408] On October 27, 2019 another visit was arranged between G and his father at the maternal grandmother's house. When G arrived his father was not there as he had gone to pick up some breakfast. G refused to take a plastic jar with money that his grandmother wanted to give him as he told her that his mother was saving his allowance for him.

[409] When the father arrived, G would not eat the food he brought. The father showed him a necklace he wore that the child had made when he was younger. The child was very distant.

[410] Ms Polak took the child out into the hallway and told him that he had agreed to engage.

[411] When the child returned, he said that he wanted to play a game and became very engaged with the father. The child sat beside the father and played a game. The father was talking to the child and he was responsive. The father invited him to a Raptors game but the child declined but then carried on a conversation with the father. Both the father and maternal grandmother walked him to the car.

[412] In cross-examination by child's counsel, Ms Polak explained that making a contract with the child was a common strategy and in this case it worked. The child was complaint and comfortable in the visits with his father and grandmother. She saw the child connecting with his father and grandmother.

[413] Unfortunately shortly after this meeting, Ms Polak had to leave the country on a personal matter and just returned after the trial started.

[414] Ms Polak testified that to be successful in reunification therapy there needs to be an understanding that both parties accept that the child needs a relationship with both parents and that the child is not allowed to make decisions about who he sees. Ms Polak explained that the assumption in reunification therapy is that both parents act in the child's best interests and encourage and cooperate so the child sees both parents. She concluded that this family was not suitable for such therapy.

[415] To move forward the mother needed to work with her own counsellor and a family therapist needed to work with the father and the child jointly and the father needed to work on his own on parenting. It was possible that with time the mother could join the family therapy.

[416] In cross-examination by mother's counsel, questions were asked about Ms Polak's delay in responding to the mother's emails. Ms Polak explained that she wanted to contact both parent at about the same time to schedule appointments and that she sets her own process not one that the mother wished.

[417] In further cross-examination by mother's counsel, Ms Polak confirmed that she

was aware mother had not seen the child for 3 months. But her mandate was to see if the child could reunify with the father. Her focus was on the child and not to assess if there was emotional harm to the child in not seeing his mother.

[418] If during a visit with the father, she had seen a concern she would have stopped the visit. She further testified that after the first visit with his father, she went to the foster home and the child had no physical or emotional reaction to seeing his father.

[419] Ms Polak further testified that her focus was on the mother's ability to correct the child's distortion and help the child reconsider his belief that he was abused. That was her agenda for the first meeting with the mother. Her recommendation was that the mother needed to speak to the child and get some parenting assistance.

[420] In re-examination Ms Polak, clarified that she was just in the process of assessing if the family was suitable for reunification therapy and she had not yet started the process.

[421] In answer to questions from the court, Ms Polak stated that the father should continue to have access to the child and the father and the child can still work on individual sessions as well as with the maternal grandmother.

[422] Ms Polak explained that she was only at the assessment phase that involved observations of the child and the father and the maternal grandmother to see how they react. If reunification had gone well, the next steps would have been for joint meetings with the parents and with the child and both parents and then lots of different combinations. It is a dynamic process and a therapist corrects it as it goes along.

[423] In this case, Ms Polak explained that she was stuck at the first stage since the mother was not able to tell the child that the allegations did not happen and the mother was saying that she respected the child's wishes to not see the father.

[424] When asked by mother's counsel what her view would be if the mother was now prepared to tell the child that the allegations did not happen, Ms Polak stated that she would need to reassess to determine if the mother was able to internalize and apply what she says and overcome the current obstacle.

[425] I find that despite the child being removed from her care, the mother attempted to control the therapist's process and was unwilling or unable to work cooperatively with Ms Polak in the reunification therapy. The result being that Ms Polak determined that such therapy was not suitable for this family.

4.3 Mother's access to the child after placed in foster care

[426] On October 25, 2019 a visit was arranged for the mother and child at the society's office. Prior to the visit, Ms Duncan in consultation with Ms Polak sent the

mother a list of expectations²⁰ that included not asking the child questions about his father, grandmother or other family members including any access to them and to show acceptance and encouragement of G seeing his father and not to engage in discussions about his father or the allegations. The mother was warned that if she started questioning G about access or did not abide by the guidelines that her visit would be terminated. The mother was also requested to bring the baby for the visit as G was anxious to see his baby brother.

[427] G was very happy to see his mother and was very emotional, he cried and they hugged each other. The mother did not bring the baby as she said that she wanted the entire visit to be for her and G. Ms Duncan remained in the visit room and Ms Polak observed behind the glass.

[428] The mother brought many gifts and there was a lot of discussion about the gifts. The mother brought a book and box of crystals with words of encouragement, she told him that when he holds a crystal it “gives power to the word.” She gave him a cream that she called a “*spiritual protection cream*” to put on his hand and body that she said that the cream was called a “circle of protection” and protected against his aura. She gave him a sterling silver pendant with a dragon that represents strength and power, a St. Michael’s coin and a gift card for \$50 and Tarot cards. She spoke to G about the cards and spoke to him about spirituality.

[429] The mother told G that she had met the foster mother a few times and she seemed caring and that he should tell her what he wants and that he is entitled to \$10 a week in allowance.

[430] The mother told G that she wants him to focus on himself and self-care. When he told her that he did not get a lot of rest the first week as he woke up crying, she appropriately told him that it was normal to be emotional. She encouraged him to keep up with activities and if he feels sick to drink tea. The mother told him no flu shots, no needles and no vaccinations.

[431] The mother then asked G if anyone went through his rights. He told her that his worker did but not all of them. She reviewed his rights and told him that he had the right to not be touched, not to be hurt, to have food and to feel safe. She then said that they are going back to court on November 18th, that she was trying to get him back into her custody and care and that “*we’re going to win-so stay positive.*”

[432] The mother again spoke about G’s strength. She told him that he is a year away from being 12, that he could open a bank account and go to the bank and take money out. She told him that she was proud of him and then again repeated that she wanted him to know his rights. The mother kept telling G that he needs to tell his lawyer if there is anything he doesn’t want to do. She wanted him to know his rights and that at 12 years old he can choose and make decisions.

²⁰ Exhibit 2; Exhibit 3 is the case note of the visit

[433] At this point Ms Duncan intervened and told the mother to step outside. She told the mother that she was aware that the child had counsel who will advise him of his rights. She told the mother that by telling G to tell his lawyer about anything he doesn't want to do could be interpreted as sending messages to the child given the history of the case. G could interpret what she said as meaning exactly what she told him when he was home, that he doesn't have to see his father if he doesn't want to.

[434] The mother said that she had a right as a mother to review her child's rights with him. Ms Duncan reminded the mother that G had his rights reviewed many times including by herself. The mother kept saying that she was the mother and Ms Duncan was only a social worker. Ms Duncan encouraged the mother to refocus and end the visit on a positive note as G was standing by the door looking at them.

[435] The mother returned to the access room and G asked about his baby brother. As the mother was told the visit was ending, the mother told G that he has rights to see his parents and no one can prevent him from doing so.

[436] Ms Polak testified that there was an implicit message in the mother's gifts and her statements to the child about power that she felt the child would not understand. Since the mother had not seen the child for 3 months it would have been more appropriate to ask about school, his new friends, his foster home, his activities and how he was adjusting to foster care.

[437] After the visit Ms Polak also spoke to the child and told him that when he is 12 years old, he is not qualified to make decisions and that maybe his mother did not know that.

[438] Ms Polak wanted to organize another visit with the father and G said that he did not want to see his father. Ms Polak reminded him of their discussion of goals and he agreed to the visit.

[439] Ms Polak also reminded him that during the visit, his mother said that he should see both parents. G was quick to respond and said that his mother meant his step-father. Ms Polak felt that he had been told this. She testified that the visit was hard for him and he needed to regroup.

[440] After the visit, Ms Duncan told the mother that she would be in touch about next steps. The mother told Ms Duncan that she had not seen her son for 3 months and what she and Ms Polak were doing was wrong and she kept repeating that she had rights.

[441] The same day the mother sent an email²¹ to Ms Duncan accusing Ms Duncan of being rude, interrupting her visit, insisting that G be given a copy of his basic rights that she reproduced on the email and that he be advised of the number for the Ombudsman's Office. She accused the family service worker of violating the child's basic rights by restricting her ability to review those rights with the child.

²¹ Exhibit 4

[442] In the email the mother states that,

If you continue to violate my child's basic rights while in care, you are a social worker and your organization are on a dangerous slope towards an inquest. Which already appears apparent to your agency.

[443] The mother then demanded another visit the following week so that she could go through G's basic rights.

[444] The mother accused the society of alienating her child from her and isolating him while violating his rights since he was asking to see her. She further stated that it was his right and her right to have access and not up to the therapist who seemed to have an agenda as was apparent from their meeting.

[445] The next day the mother send another email stating that she was upset about the child's weight and had never seen him so skinny. Ms Duncan arranged a medical appointment. Subsequently, counsel for the society advised the court that the child had lost 1 lb. but if this was an issue being pursued by the mother then the society would arrange for the doctor to be called as a witness. The mother then advised she was not pursuing this issue.

[446] On November 1st, Ms Duncan responded to both the mother's emails and advised her that Ms Polak directed access in conjunction with therapy and reminded her to bring the baby to the next visit as G wanted to see his brother. A visit was scheduled for November 13th. Ms Duncan reminded the mother of her expectations about the visit and told her to refrain from speaking about strength and affirmation to the child.

[447] The mother then responding asking if the visit could be changed to November 6th as that was G's birthday.

[448] On November 6th at 4:30 a.m. the mother sent an email stating that the time was too short for her to arrange to bring the baby. A decision was made to cancel the visit.

[449] The mother was permitted a telephone call that was facilitated by the foster mother. The mother told the child that she would see him soon and that he would be coming home soon. The child was teary as the mother would not be seeing him for his birthday. When the child asked where his baby brother was, the mother asked him if he has asked to see him and G said he had.

[450] The mother dropped off gifts for G at the society office. Ms Duncan told her that she needed to confirm the November 13th visit. The mother said that she would be attending with the step-father and the godmother. Ms Duncan told the mother that they were not part of the visit and reminded the mother to bring the baby. The mother said that she was not bringing the baby. The visit did not happen as the mother did not confirm the visit.

[451] Ms Duncan met with the child November 6th and he was excited about his birthday gifts. He did not want to share with her any information about his visit with his

grandmother or father. She told G that she heard the visit was successful and he told her that he felt forced to go as otherwise he would not see his mother. Ms Duncan explained that this was part of the therapy.

[452] I find that even after the child was removed from the mother's care and she had not seen him for 3 months, the mother was unwilling to abide by the expectations of the society regarding her access visit with her son. The mother chose to follow her own agenda rather than comply with the society's expectations. Further, the mother was prepared to disappoint her son and not bring the baby to the visit.

4.4 Evidence regarding the child and the child's views and preferences

[453] G is described as an intelligent and creative child who does well in school.

[454] G is closely aligned with his mother and he clearly loves and trusts her.

[455] The child biracial and is placed with a cultural matched family.

[456] The foster mother testified that he was very emotional when he was brought into care. However, he has adjusted to the foster home and is eating and sleeping well. He adjusted to his new school, made friends and generally behaves well and is respectful.

[457] With respect this views and preferences, he advised his counsel and Allison Bernatt, who is a social worker assigned to assist counsel, that he wishes to return to live with his mother and baby brother. Ms Bernatt testified that G was emotional in their meetings and had difficulty discussing his family and his relationship with his father.

[458] When asked to describe the top three things about this mother he said his mother, "is always there for me and never gives up on me" and he stated that he and his mother are "fighting for me not to see T[his father's first name]."

[459] When speaking to his counsel and Ms Bernatt about his visits with the maternal grandmother and his father, G described his visit with his grandmother as a 2.5 out of 10 and with his father as a 1.5 out of 10.

[460] As Ms Duncan was aware of his comments about the visit to his counsel, she asked if there was anything that could be done to improve the visit. G said nothing could be done. He told her if there was a choice between foster care or his grandmother, he preferred foster care. He then clarified that he only said that because he believed that if he stayed with his grandmother then he would not see his mother. Ms Duncan explained that Ms Polak was in charge of when he saw his mother.

[461] G told Ms Bernatt and his counsel that he does not want contact with his maternal grandmother, his father, or his extended family.

[462] In contrast, the foster mother testified on the first visit to see his grandmother, when his grandmother gave him a bag of gifts, she told him to say thank you and he hugged and kissed his grandmother

[463] The foster mother testified that the father had given her roti that he made for G and G asked to eat the roti every night.

[464] On September 30, 2019, the foster mother told G that she had met the father at a Plan of Care meeting and he showed her a video of him teaching G to play basketball and the child had a “big smile.”

[465] The foster mother testified that G did not show any rejection of his grandmother or his father. He did not say that he did not want to go on other visits and he had no negative reaction after the visits.

[466] In response to cross-examination by mother’s counsel, she testified that G did not tell her that he did not want to go to counselling with Ms Polak.

[467] When asked by the court what her role was in providing a clinical assist, Ms Bernatt stated that it is to assess both the child’s views and preferences and whether those views were independent.

[468] Ms Bernatt then testified that this was the first time she had done a clinical assist in a child protection case. Then when asked by the court, whether in her opinion the child’s views were independent, after taking a long pause to answer, she testified that she did not really assess if the child’s views were independent. It was unfortunate that a more thorough and critical assessment of the child’s views was not done by Ms Bernatt.

[469] Based on the evidence presented, I agree with the assessment of the society workers, that the child’s views are not independent and have been unduly influenced by the mother. His statements about the sexual allegations are inconsistent and illogical and clearly influenced by the mother and then reinforced by Mr. Carpenter.

[470] His statements about not wanting to see his maternal grandmother and his father and not enjoying the visits are not consistent with his behaviour during those visits.

4.5 Evidence of mother’s relationship with the society

[471] The mother has had a difficult and confrontational relationship with the society from the onset of their involvement. Although as pointed out by mother’s counsel, initially the society was only involved on a voluntary basis and she had no legal requirement to comply, I find that her relationship did not improve even after the society was involved through a formal court order.

[472] During the investigation by Mohsan Attique, who was an intake worker assigned to conduct the joint investigation with the police on March 2, 2018, the mother wished a worker from NCFS. However, NCFS declined to be involved as they required further information about the mother’s native status. However, when Mr. Attique tried to follow up with the mother and told her he needed more information, she told him to call back which he did and then she did not answer the phone.

[473] The mother continued to request the file be transferred and would not accept the information presented that the NCFS would not accept the file based on the information she had provided to Mr. Attique and that the file in any event could not be transferred in the midst of an investigation.

[474] Mr. Attique asked the mother the name of her new partner based on information he received about an incident during an access visit on April 21st, 2018 between herself, the father and her new partner. The mother refused to provide the information.

[475] The mother went on again to complain about the file not being transferred to NCFS and that her rights were being violated and she would be complaining to the Human Rights Commission.

[476] On April 26, 2018 Mr. Attique attended at the mother's home for an announced visit. The mother reluctantly let him come into the home. The mother asked if she could record the conversation. Despite being told that he was not consenting, the mother began to record the conversation anyways. When told that this was one of the issues the worker was having with the mother not being forthcoming, the mother picked up her phone and said she had stopped recording.

[477] During this meeting, the worker asked the mother if she would be open to parenting programs and that he would send her some suggestions. The mother then stated that she wanted culturally sensitive parenting programs and he acknowledged that he was not familiar with such programs and that she should inquire through the native community.

[478] Towards the end of the meeting, the mother's new partner came out and began to yell at the worker for an extended period of time. The mother just stood there, smirking and did nothing to intervene. Both children were present.

[479] When the worker tried to meet privately with G, G looked at his mother and asked if he had to. G then asked Mr. Attique if his native worker was there. G said that he has asked for a native worker many times. When G was asked if he had a native worker, he replied that he didn't, but his mother had asked and his mother did not want him to talk to the worker since his native worker was not there.

[480] G then said that he did not want to meet with Mr. Attique and his mother told him he didn't have to talk to him. G then told the worker that this was his room and if he told him to leave that he had to listen. G said that he, his mother and her partner did not want to see him.

[481] The mother asked for a transfer of workers. The file was then transferred to Marcia Duncan on June 8, 2019 and she has continued to be the family service worker.

[482] The mother complained to the Child and Family Service Review Board in March or April 2018.

[483] A hearing was held on February 19, 2019 and a decision released on March 21,

2019. The board dismissed the mother's complaint that society failed to transfer her file to NCFCS and failed to provide culturally appropriate or responsive supports to her and her child. The board held that the society inquired about a transfer and it could not be made due to the mother not having Canadian indigenous roots. Further, a transfer cannot be made during an investigative process.

[484] The board also dismissed the mother's complaints that the society was dismissive and failed to properly investigate complaints that the child was sexually abused.

[485] The mother's relationship with Ms. Duncan, the new family service worker, was not appreciable better than her relationship with Mr. Attique.

[486] Ms Duncan described her interactions with the mother as tense, difficult, non-productive, challenging or indicative of the mother's non co-operation.

[487] The following are some examples:

(a) From June 20, 2018 until the Protection Application was commenced, the mother refused to permit Ms Duncan to arrange a home visit as she was not consenting to the society being involved;

(b) On August 2, 2018 Ms Duncan and another worker, Teresa Cronin attended at the home, there was no answer although they could hear a television on inside the apartment. Later that day, the mother sent an email stating that she would not be meeting with the society as there was a pending CFSRB matter which outlined her reasons for not wanting to engage with the society;

(c) On October 2, 2018, the mother refused to let Ms Duncan and her colleague Stephanie Clement into the home, alleging that she did not want to introduce strangers to her children. This was even though Ms Clement had already met G in the summer. After speaking to her counsel, the mother eventually let the workers enter the home;

(d) The mother asked the society to reimburse her for 20% the cost of the child's counselling with Ms Testani. When the society declined to pay as she had arranged the counselling without consulting the society, the mother complained to the branch manager about her repeated requests for reimbursement being denied;

(e) Ms Duncan spoke to the mother about receiving a report from the police involving her partner JM being intoxicated while both children were present and eventually being arrested. The mother denied having knowledge of the incident and stated she was concerned about the allegations being made and the assumption that her children were present. However, G later confirmed that his mother, the baby and JM were present. G refused to provide details and when asked he stated that Ms Duncan should ask his mother and it was no one's business;

(f) On November 1, 2018 Ms Duncan attended at the mother's home and reiterated that she was not consenting to the mother taping their phone calls. The mother made numerous complaints to Ms Duncan about how she had been wronged by society including the society not supporting the child because it did not believe his disclosures of abuse;

(g) The mother was reluctant to provide any general information about G, about his activities or provide any medical updates. She was vague with respect to providing information about his counselling. She complained that the worker's presence was intrusive and a nuisance;

(h) The mother alleged that the society was being biased by supporting the father and the maternal family. The mother complained that the emphasis in the therapy with Millan & Associates was to have a joint session with the child and his father;

(i) In the mother's affidavit sworn July 18, 2019 she deposes that she has monitoring devices and monitors all activity during the society's visits and that she can retrieve the videos to verify the statements in her affidavit. Accordingly, it appears despite being advised by several workers that they do not consent to her recording the visits or their telephone calls, she had continued to do so.

[488] Ms Duncan testified that initially the mother presented as willing to work with the society but in practice she only followed through with tasks and goals that benefited her. The mother was evasive, combative and highly resistant to following the recommendation the society. Ms Duncan struggled to obtain consent signed in a timely manner. The mother was reticent in answering questions and not forthcoming with information about counsellors or doctors involved with both of her children.

[489] I find that the evidence supports Ms Duncan's impression of the mother and the difficulties the society experienced in attempting to work with the mother.

5. Mother's plan of care

[490] Initially, the mother sought an order dismissing the society's involvement. In her testimony, the mother stated that she would ensure that the child would see his father. She could not explain why or how she would encourage contact as when there were temporary court orders in place for access, she had not been able to support such access.

[491] The mother's plan was essentially to return the child to his home with her, for him to return to his prior school and be enrolled in various activities. The mother would continue to have the support of NL, the child's godmother and the godmother's family. The Anishnawbe Health Centre would continue to offer community and cultural supports.

[492] In her affidavit sworn August 9, 2018 the mother deposed that a supervision order was "unnecessary and unreasonable."

[493] The mother testified that she did not need the support of the society as she now had support through a program she is taking on parenting through the Jewish Child and Family Services. But then she agreed that the program offered general guidance regarding parent-teen issues and did not address any of the issues in this case.

[494] The mother also testified that she had the support of her counsellor, Catharine Brooks. However, she agreed that she was not receiving help in how to work with the society or how to encourage her son to work with the society. The counselling was directed to exploring her feelings and experiences and her past anxiety and depression.

[495] The mother then testified that her goal in counselling was to work more cooperatively with the society but Ms Duncan did not give her clear directions.

[496] In counsel's opening statement and in the mother's initial evidence she continued to take the position that there was no need for a supervision order. Although during cross-examination by counsel for the child, she appeared to agree that a supervision order was reasonable. However, her counsel objected that this was a legal issue and the mother should not have to respond. The objection was upheld.

[497] Counsel for the child then asked if a supervision order was imposed what terms would the mother think were appropriate. The mother stated that she wished "genuine care and compassion" from the society, concrete direction from the society, individual support for her, parenting education and support for the child "if and when he needed it." When asked to clarify her answer she agreed the child needs emotional support through a therapeutic process.

[498] After the closing submissions of the society, the father and counsel for the child all of whom made submissions regarding why there was a need for society intervention, counsel for the mother then submitted that the mother would agree to a supervision order with the child being placed in her care with terms essentially as outlined by counsel for the child.

[499] When asked about her partner JM's role, the mother responded that he was a support to her, they co-parented their child but did not reside together. The mother was vague about how often he slept over and then finally said about 3 times a week. She would agree that he not be present at any access visit the child had with his father.

[500] G has repeatedly referred to JM as his step-father and spoke positively of their relationship.

[501] There is evidence that JM has displayed a serious anger management issue in dealing with the society workers, the father and the maternal grandmother. The mother did not provide any evidence as to how she would ensure that his negative attitude would not be conveyed to the child. There is also evidence of him being intoxicated in a public place in the presence of the children and the mother trying to cover this up.

[502] I draw a negative inference from the fact that JM was not called as a witness as whether or not he lives with the mother full-time he is an integral part of her plan.

[503] When asked what she would do if G did not want to go to therapy, she testified that she would tell him he would be removed again from her care if he did not go.

[504] The mother repeatedly stated that she needs to learn discipline techniques as she does not know how to do this or how to give consequences to G but then agreed that she has in the past, restricted his Xbox use.

[505] She testified that if he did not want to go on a visit, she would put restrictions on his use of his Xbox or restrict his time with friends. The mother never explained why she had not tried these techniques in the past when G was refusing to see his father.

[506] When asked about whether or not the mother would agree to stop taping society workers or third party professionals, she replied “if that is preferable I will consent.” Then there was a long pause and the mother then stated that she did not think it was a yes or no answer, paused again and stated that she would need to seek legal direction as it is a tricky question.

[507] However, the mother also testified that she did not see the problem with taping or recording without the knowledge of whoever she was speaking or meeting with.

[508] It is inconceivable that any society worker or other service provider working with the mother would have any confidence that she was not recording them. The mother’s lack of insight that this would be problematic is astounding.

[509] I also have concerns about the mother’s ability to meet the child’s physical needs. The child has not been vaccinated. Although the mother testified that vaccinating a child was against her spiritual beliefs, none of her counsellors or anyone from Anishnawbe Health Centre provided any evidence about this issue.

[510] The mother changed and contradicted her evidence so many times in direct and cross-examination that it was almost impossible to understand her plan or her position.

[511] I find that the mother said whatever she felt needed to be said to bolster her claim that the child should be returned to her care with or without supervision as she would now ensure the child had access to his father and extended family. I find that the mother’s evidence was self-serving, evasive, convoluted and totally unbelievable.

[512] I find that based on the past history, the court can have no confidence that the mother would encourage a relationship between the child and the father. I find that accordingly, the mother’s plan does not meet the child’s emotional or mental needs.

6. Father’s Plan of Care

[513] The father has arranged with his employer to be transferred to Toronto if the child is placed in his care. His work hours would be 9:30 a.m. to 3:30 p.m. and he has a lot of flexibility to take the child to counselling and activities.

[514] He has the support of his sister, his father and step-mother and the maternal

grandmother and the maternal aunts.

[515] The father had a good relationship with the child since his birth even when he was not in a relationship with the mother. However, the father reported that he only parented the child on his own for about a week when the mother went to Trinidad in 2012 or 2013 for her father's funeral.

[516] Despite extensive cross-examination about historical allegations of domestic violence, I find that any domestic violence between the mother and father was mutual and has no bearing on the current issues before the court.

[517] I also find that the allegations of a child welfare or domestic violence history regarding the mother of his son in Alberta are without any foundation.

[518] The father reported that he did not blame G for anything that had happened and that his own therapy was helping him stay grounded and deal with the stress. The father has demonstrated extreme patience in this process and insight into the impact on his son of the various investigations regarding the false allegations of sexual abuse and the conflict between the parents.

[519] The father has a good working relationship with the society workers and has abided by the terms or suggestions made for his contact with G. The father agreed that it would be difficult for the child to be placed in his care but he would work with the society during their term of society care and he is hopeful as the visits so far have gone much better than he expected.

[520] The father has also worked co-operatively with Ms Polak and the expectation is that if another counsellor is assigned, he will also work co-operatively with that counsellor.

[521] I find that with the assistance of the society the father's plan is viable and that he will be able to meet the physical, mental and emotional needs of the child. He will be able to permit the child to have a relationship with his mother and baby brother when that is deemed appropriate.

7. Finding of First Nations Inuk or Métis

[522] There were many complaints made by the mother about the failure of the society to transfer the file to NCFS.

[523] On October 12, 2018 a referral letter was sent to NCFS. The letter outlines the background of their involvement and that due to the mother and her partner JM being minimally co-operative and unwilling to address the society concerns about the risk of harm, a Protection Application was initialed. The terms of the temporary supervision order made on July 19, 2018 were outlined.

[524] The society's letter then states that since the opening of the file, the mother has identified as native and that her native ancestry can be traced through her father. The

letter provides further details provided by the mother including that the child's cultural heritage can be found in his birth records which the mother states she will release to NCFS upon request.

[525] The letter requests that the NCFS respond within 10 days when it can begin to assume responsibility of the case.

[526] The last witness to be called by the mother was John Daniels who is the intake supervisor for the NCFS. Mr. Daniels was not a witness that was previously disclosed to the parties and it was submitted that his evidence was just recently discovered and was important to the mother's case.

[527] Mr. Daniels testified that the referral letter received from the society followed standard protocol. He produced his response dated December 14, 2018.²² The letter stated that the agency was not able to accept the transfer at that time. Based on the documentation forwarded the society had extensive involvement with the family and the matter is currently before the court. NCFS wished the statutory findings and protection findings to be made prior to a transfer of the file. The letter went on to say that if the family wished culturally appropriate support services, they could contact the agency directly.

[528] Although not clear, it appeared that mother's counsel wished to submit that the society did not follow through with referring the file back to NCFS after the protection and statutory finding had been made.

[529] However, upon a closer review of the endorsements and oral reasons, it became apparent that through inadvertence the statutory finding had not been made.

[530] On January 9, 2019 the finding was made that G was at risk of emotional harm. There was no statutory finding. On the same day, the statutory finding was made that the baby J as not FNIM but the application to find him in need of protection was dismissed.

[531] The transcript of the oral decision rendered on July 25, 2019 that resulted in G being placed in care was filed with the court. There is a reference to the protection finding and the requisite statutory findings having previously been made. Therefore, it is clear that the case management judge was under the impression that the statutory findings had been made.

[532] Counsel for the mother submitted that in accordance with section 90 (2) of the *CYFSA* that the statutory findings should be made as soon as practicable and in any event prior to the protection findings being made.

[533] The court agreed that this had not been done but inquired as a result of this error, what relief the mother was seeking. Counsel for the mother indicated that she

²² The letters are exhibit 62 and 67.

needed to consider the issue further. It was agreed that mother's counsel was to advise the other counsel of her position that evening and if there was no agreement then all counsel were to attend the next day to make submissions.

[534] All counsel attended court the next day as they could not agree if they agreed. Counsel for the mother submitted that she had reviewed the issue and was not asking to reopen the case as she agreed that the timing of the statutory finding would not affect the outcome of the case. Counsel further submitted that the mother agreed that G was not FNIM within the meaning of the *CYFSA*.

[535] In view of the importance of a finding of FNIM and the mother's past history of blaming her counsel for including information in her affidavits that she later disavowed, I indicated that I wished the mother to state her position under oath.

[536] Remarkably, instead of simply confirming that the child was not FNIM, the mother began to give testimony that appeared to be an attempt to support a position that the child was FNIM.

[537] The mother testified that she identified as native Caribbean and that the closest cultural identity would be with the native community in Toronto. She traced her ancestry from her father whose family settled in Trinidad. The mother claimed to be part of the Paseas tribe in Trinidad.

[538] The mother was born in Canada and resided with her mother in Canada. Her father travelled back and forth between Toronto and Trinidad.

[539] The mother testified that the child was delivered by the Seventh Generation midwives who also offered services in the first year of G's birth. She exposed G to the native community in Toronto to explore his culture and heritage. The child also attended Anishnawbe Health Centre.

[540] In her direct examination, the mother could not recall if there had been a finding that her baby J had been found not to be FNIM.

[541] In cross-examination by child's counsel, the mother denied that she had ever been a practicing Christian and testified that she only attended church occasionally.

[542] The mother agreed that the child had gone to a Christian school, that the child participated in church services and that she had been raised as Pentecostal. She further agreed that she and the father had planned to be married in the Willowdale Pentecostal Church.

[543] At some point in the cross-examination, the mother then said that she agreed she was not FNIM but then stated that she was not comfortable with the finding that her baby J had been found not to be FNIM.

[544] She agreed that she signed her Answer and that she did not claim that either of her children qualified as FNIM. She agreed that she never filed an Amended Answer,

brought no motion to amend the status of the children and then stated that she did not “officially” raise the issue in court. She then testified that “my child has status in Trinidad.”

[545] In further cross-examination by society counsel she clarified that she had status not her child.

[546] In cross-examination, the mother confirmed that she received no cultural teachings from the Seventh Generation midwives, that she was not connected to any centre or organization other than Anishnawbe Health, that she could not recall connecting the child with any spiritual organization and that she was not connected with any elder in Toronto regarding her heritage.

[547] It became obvious in the cross-examination that the mother could not identify the cultural practices, spiritual beliefs or the customs and practices of the Paseas tribe.

[548] The mother’s own spiritual beliefs were vague and non-specific.

[549] After lengthy cross-examination, the mother conceded that she did not identify as FNIM in Canada, that she was not affiliated with any band, that her children were not affiliated or registered with any band and that she or the children were not members of any identified native community. She further confirmed that none of her siblings or any other relative or any of their children identified as FNIM.

[550] She also agreed that she had not brought a motion for the file to be transferred to NCFS.

[551] In cross-examination by father’s counsel, the mother agreed that when she, the father and G had gone to Trinidad for a visit they had not attended any cultural ceremonies or events.

[552] In re-examination, the mother clarified that she had stated “N/A” to the question if the child was FNIM because she assumed this meant Canadian tribes, bands or communities. She also testified that the reason no motion was brought to transfer the case to NCFS was due to her understanding that the case did not qualify.

[553] The maternal grandmother testified that the child frequently went to church and went the same Christian school that the mother had attended. She also testified that even after January 2017, the mother and child attended at the Pentecostal church.

[554] The father testified that he and the mother were raising G as a Christian and the first time he heard that the mother wanted to expose the child to all religions and spirituality was in the courtroom.

[555] The foster mother testified that the child was excited to go to church and frequently asked her when they were going to church. He has not asked her or her husband about seeing a traditional healer.

[556] The foster mother and several of the society workers testified that the child had never spoken of his native culture or identified as native.

[557] The only time that the child mentioned any native connection was when he asked Mr. Attique for a native worker, but then told the worker that his mother had requested a native worker.

[558] In the case of *Bruce Grey Child and Family Services v. A.B.*²³ Justice Hardman held that although the definition of FNIM should not be narrowly interpreted, it should also not be made casually. She summarized the law as follows:

1. There must be an evidentiary basis for finding that a child is a First Nations, Inuk or Métis child.
2. That evidence can be
 - (a) that the child identifies as a First Nation, Inuk or Métis child or a parent identifies the child as a First Nations, Inuk or Métis child (O. Reg. 155/18 ss. 1(a)) or
 - (b) that the child is a member of or identifies with a band or community (O. Reg. 155/18 ss.(b)) or
 - (c) it cannot be determined under (a) or (b) but "there is information that demonstrates that" a relative or sibling identifies as a First Nations, Inuk Métis person or the child has a connection with a band or community (O. Reg.155/18 ss. 1(c)).
3. Evidence of an unnamed relative with a possible connection to an unspecified band or community is not in my view sufficient to support a finding that the child is a First Nations, Inuk or Métis child under O. Reg. 155, ss. 1(c)(ii) for the purposes of the Act.
4. The purpose of the finding must be taken into account in looking at the evidentiary basis for the finding. There needs to be sufficient evidence about the child's connection to allow the court to order service. That information will hopefully make it possible for the identified band or community to assess whether they wish to participate.

[559] As Justice Sherr stated in the case of *Catholic Children's Aid Society of Toronto v. S.T.*²⁴ :

The court agrees with the court in *Bruce-Grey, supra*, that there must be sufficient evidence or information to make a finding that a child is First Nations, Inuk or Metis child. To just say that anyone, no matter how

²³ [2018] O.J. No. 4073 (OCJ) at paras. 42 and 49

²⁴ [2019] O.J. No. 1783 at para. 35

incredulous their claim may be, can put their hand up and have this claim accepted without question would be an open invitation to persons to abuse the administration of justice. It could cause considerable harm to children by delaying decisions affecting them and would be disrespectful to the First Nations, Inuit and Metis persons that the Act is intended to include. The underpinning of any self-identification right is that it must be made in good faith.

[560] Based on the definition of FNIM in the legislation and case law, it is obvious that the child does not qualify as FNIM and I make that finding.

[561] This does not mean that if the mother finds comfort in utilizing the services of the native community that she is in any way precluded from doing so. The evidence of both her counsellor Ms Brooks and Mr. Carpenter was that any person can use their services.

[562] Since it was obvious that the mother was aware that the child did not qualify as FNIM, it is intriguing to understand the mother's motivation.

[563] I find this claim made at the end of the case was not made in good faith and was another example of the mother's manipulative behaviour and a possible attempt to derail or delay these proceedings or orchestrate a ground of appeal.

[564] I note that the mother has attempted this during other stages of this trial.

[565] I find that the mother's ongoing requests to have the file transferred to NCFS was an attempt to forum shop and look for an agency that she felt would be more sympathetic to her.

[566] Another incident occurred, during the mother's cross-examination, when the mother announced that she did not wish to continue as co-counsel was not present. This was despite the fact that co-counsel had not been present for most of the trial and in any event, she was in the middle of cross-examination so it was not clear what role co-counsel would have. The mother was ordered to continue.

8. Finding of risk of harm

[567] Out of an abundance of caution and to avoid any procedural arguments about irregularities, having now made the statutory findings I will briefly review the factual underpinnings for the protection finding of the risk of emotional harm.

[568] At the hearing before Justice Paulseth on January 9, 2019 she made the following findings of fact to support a finding that G was in need of protection:

- (a) there were constant sexual abuse allegations against the father that were found to be unverified and unsubstantiated. The disclosures were found to be bizarre and frightening;
- (b) As a result, the child is refusing to see his father and has completely

withdrawn from his father with whom he had a good relationship;

(c) The child has withdrawn from his father in a very aggressive way and is saying that he is disgusted to be asked to see his father or to be asked to see his paternal aunt and his maternal extended family;

(d) Efforts were made to arrange counselling on numerous occasions, but the mother was not candid or cooperative;

(e) The mother continued to believe the allegations and there is no hope for the child in counselling if that belief cannot be changed.

[569] At a subsequent contested motion on July 25, 2019 Justice Paulseth made the following findings of fact that led to G being ordered into care:

(a) A variety of access orders in the domestic proceeding were not complied with by the mother;

(b) There was pressure placed on the child to lie with repeated false allegations against his father of physical and sexual abuse;

(c) Dr. Kimmons whose letter was filed on the motion sounded like an advocate for the mother;

(d) The issue arising from the 2018 police investigation was the psychological impact on the child of the false allegations, and the mother's lack of insight about the impact on the child;

(e) The mother refused to work with the society voluntarily;

(f) The mother was completely uncooperative with the court ordered access;

(g) The mother precipitously took the child to a counsellor outside of the provided framework to follow the society recommendations, and that counsellor had no credentials for this type of work, namely reunification therapy;

(h) The mother maintained the father was a sexual abuser of the child, and the mother prompted the child to continue to make disclosures that were clearly false;

(i) The mother believed she was protecting her son by seeking her own treatment providers and not making him attend for visits with someone she really, truly believed had abused him;

(j) The child was at substantial risk while he resided with his mother;

(k) The mother will not allow the child to be involved in any course of treatment that in anyway cast doubt on the allegations;

- (l) The mother completely sabotaged the child's relationship with his father and extended family;
- (m) The child is extremely aligned with the mother's point of view, which is false, leading to the child carrying an enormous emotional burden;
- (n) All conceivable efforts undertaken to ameliorate the situation while the child was in the mother's care have failed;
- (o) The mother's refusal to support a relationship with the father meant that she was not really acting as a responsible parent, and she was continuing to place the child at emotional risk, or worse.

[570] I adopt these findings. I find that the evidence I accept confirms the findings made by Justice Paulseth.

[571] Further, I find that the mother's behaviour since the child was removed from her care supports a finding that the child continues to be at risk of emotional harm from the mother. I rely on the following:

- (a) Despite the child being removed from her care, the mother has continued her pattern on non-cooperation with the society. Since the child was removed, she has refused to permit any home visits;
- (b) The mother sabotaged the reunification intake appointment with Ms Polak by threatening her and destroyed any ongoing relationship by secretly taping the session;
- (c) Although the mother spoke about how difficult it was for her to not see her son for 3 months after he was removed from her care, she showed no insight into how difficult it was for the father to have not seen his son for almost 2 years;
- (d) In her first visit with her son, after he was removed from her care, the mother did not follow the expectations for the visit that were provided to her prior to the visit by the family service worker. She spent time speaking to G about his rights, given him presents and making comments that could be interpreted as undermining the foster placement and his relationship with the society and inappropriately talking about the trial. As a result, the mother needed to be removed from the visit;
- (e) Despite G asking to see his baby brother and the mother being asked to bring him to the visit, the mother disappointed G and did not bring him. Even if the mother's explanation is accepted that she wanted her first visit to be only with G, she had no credible excuse for not agreeing to bring the baby for the second scheduled visit. The mother testified that she thought it was just a "suggestion." She also testified that she could not arrange for anyone to return the baby to her home after the visit, but she did not explain why her partner JM or the godmother could not have done so. She did not explain why she could not have asked for

time off from her employer to arrange the visit as she stated in her Answer that her work schedule was very flexible. As a direct result of her actions, her visit with G was cancelled and G did not get an opportunity to see his baby brother;

(f) The mother has continued to maintain that G was sexually and physically abused despite the evidence that he made no disclosures after two police investigations and despite the fact that his subsequent allegations mirror the mother's allegations and Mr. Carpenter's own background of abuse. Despite the inconsistencies and the improbabilities of the allegations, the mother has not had the insight or introspection to consider that perhaps she overreacted to the child's statements and drew inferences that were not probable. The mother has therefore continued to cause confusion to the child who trusts his mother but is being shown in counselling and in the actual visits with his grandmother and his father that perhaps everything that he has come to believe may not be accurate.

[572] I find that there is an ongoing risk to the child's short term and long term emotional well-being due to the mother's unrelenting behaviour in interfering with access and failing to co-operate with any counselling that she does not agree with and that has as its objective that the child resume his relationship with the father.

9. Child's consent to counselling

[573] In closing submissions, counsel for the OCL requested that the court consider the issue of the need for the child to consent to any treatment as defined in the *Health Care Consent Act* ("HCCA").

[574] In the case of *A.M. v. C.H.*²⁵, the Ontario Court of Appeal indicated that a judge does not have to consider the HCCA when making an order that a child participate in therapy. The court concluded that in custody cases a judge may impose any terms, conditions or restrictions that the court deems appropriate such as orders respecting education, religious training, diet, vaccinations, recreation, travel and would also include orders for treatment, counselling or therapy.

[575] The court contrasted this with the specific provisions in the *CYFSA* that referenced the HCCA.

[576] *Section 22 (7)* of the *CYFSA* explicitly provides that if a service is being provided to a child under the care of a children's aid society is treatment to which HCCA applies, the consent provisions of the HCCA apply.

[577] *Section 23 (1)* of the *CYFSA* provides that a service provider may provide counselling service to a child who is 12 years or older with the child's consent, but that subsection has no application where the service is a treatment under the HCCA.

[578] The *CYFSA* applies to "treatment" administered by a "health practitioner" and

²⁵ 2019 ONCA 764

requires “consent” as these terms are defined in the *HCCA*. I find that it is not clear that a social worker, such as Ms Polak, conducting counselling meets the definition of a “health practitioner.” Although it is clear that a psychiatrist or psychologist conducting counselling does meet the definition of a “health professional.”

[579] Any professional governed by the *HCCA* would need to assess if the child is consenting to treatment.

[580] Section 11 (1) of the *HCCA* outlines the elements required to consent to treatment as:

1. The consent must relate to the treatment.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud.

[581] Accordingly, the health practitioner will have to assess if the child has the maturity and intellectual capacity to make a decision regarding the benefits of counselling. Most importantly in cases of alienation, there will need to be an assessment to determine if the views expressed by the child are independent, if they are a true reflection of the child’s values and beliefs and if the child understands the impact of such a decision.

[582] None of the provisions deprive the court when acting in the best interests of a child to make orders for the child to participate in counselling. It may be that the child will refuse to comply with an order to participate in counselling. It may also be that the health practitioner considers that the child is capable of refusing to comply and may not feel that the child’s refusal can be overridden.

[583] This is a risk that a court must take. However, I am hopeful that given the success of Ms Polak in arranging access and the child’s positive reaction to the access that Ms Polak or another therapist who may be retained will be able to encourage the child to engage in counselling.

10. Order for prohibition regarding surreptitious recording

[584] The society seeks an order that the mother be prohibited from any further surreptitious recording.

[585] There was uncontroverted evidence that the mother surreptitiously taped her meeting with Ms Polak, recorded her telephone conversations with Ms Mills-Minster and recorded several family service workers. The mother also admitted to recording the child.

[586] The mother could not see anything wrong with this practice and showed no

insight about how this might affect her relationship with the society and other professionals. As a result of the mother's actions a distrust between her and the society workers and some professionals has already been created.

[587] It was the mother's position that she needed to record so she would not be misquoted or misrepresented. If this was the reason, then she never explained why she did not simply ask if she could have permission to record the discussion.

[588] This is not the end of this case as there will ongoing involvement of the society, the court and third party professionals. Much work will be needed to be done as the goal will be not only for the child to have a relationship with his father but also to resume his relationship with his mother. The mother will have to develop an honest and trusting relationship with the society workers and therapists who will be involved with the family. Such a relationship cannot be established if there is a concern that everything being said is being secretly recorded.

[589] There are strong policy reasons to discourage surreptitious recordings in family law cases. The parties must work co-operatively with the society workers and other professionals involved with the family to rebuild trust so that they can develop a plan in the best interests of children. That cannot be achieved if one party is secretly taping the other party or secretly taping the child or secretly taping the society workers and other professionals.

[590] At times during the mother's testimony, she stated that she did not see the issue with secretly taping or recording and then at other times she agreed not to secretly tape. In view of the mother's dishonesty and misrepresentations in this trial, I find that an order prohibiting her from doing so is necessary.

11. Applicable legal principles with respect to disposition

[591] Having confirmed that the child is at risk of emotional harm, the court must then consider the appropriate disposition.

[592] The *CYFSA* mandates that the court consider a child's best interests when making any disposition order.

[593] Best interests is defined in section 74 (3) of the *CYFSA*. The factors the court must consider when determining what plan is in a child's best interests are set out as follows:

74(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,

- a. consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;
- b. in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural

identity and connection to community, in addition to the considerations under clauses (a) and (c); and

- c. consider any other circumstance of the case that the person considers relevant, including,
 - i. the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
 - ii. the child's physical, mental and emotional level of development,
 - iii. the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - iv. the child's cultural and linguistic heritage,
 - v. the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
 - vi. the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
 - vii. the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity,
 - viii. 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,
 - ix. the effects on the child of delay in the disposition of the case,
 - x. 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, and
 - xi. the degree of risk, if any, that justified the finding that the child is in need of protection

[594] It is trite law that the best interests test must be applied in the context of the overall scheme and purpose of the *CYFSA* which is found in section 1 and which is to promote the best interests, protection and well-being of children. There are additional purposes as well, which must be consistent with the best interests, protection and well-being of children.

[595] The best interests analysis must be conducted from a child centered perspective. The significance of the child-centered approach is that good intentions are not enough. The test is not whether the parents have seen the light and intend to change, but whether they have in fact changed and are now able to provide care that is in the best interests of the child. There is not to be experimentation with a child's life with the result

that in giving the parents another chance, the child would have one less chance.²⁶

[596] Section 101(3) of the *Act* requires the Court to consider less disruptive alternatives, such as a supervision order, unless these alternatives would be inadequate to protect the child.

[597] Section 101(4) of the *Act* requires the Court to look at community placements, including family members.

[598] Section 101(5) of the *Act* sets out that in cases where the child referred to in subsection (4) is FNIM, the court shall, unless there is a substantial reason for placing the child elsewhere, place the child with a member of the child's extended family if it is possible or if not possible, in the case of a First Nations child, with another First Nations family.

12. Analysis

[599] Having already found that the child is not FNIM, it is not necessary to consider sections 74 (3) (b) or 101(5) of the *CYFSA*.

[600] I have considered and applied the criteria set out in section 74 (3) of the *CYFSA* in determining what disposition is in this child's best interests.

[601] The first consideration in the best interest analysis in this case are the views and preferences of the child in accordance with his age and maturity.

[602] The views of the child are unwavering and clear, he wishes to be returned to the care of his mother.

[603] It is the position of the society and the father that G's views and preferences are not independent.

[604] Based on the evidence on behalf of the child from Ms Bernatt, she did not investigate and would offer no opinion about the independence of the child's views. Counsel for the mother did not address this issue in her closing submissions.

[605] On the evidence presented, I find that the child cannot freely express his views about his father because of the influence of his mother. On many occasions the child has mimicked the words of his mother for example, in asking for a native worker or in telling the family service workers that he does not have to meet or speak to them. Other times when asked questions, he has refused to answer and told the workers to ask his mother or looked to his mother to answer for him.

²⁶ *Catholic Children's Aid Society of Toronto v. P.N.S.* 2016 ONCJ 164, para 43 citing the case of *Children's Aid Society of Winnipeg (City) v. R.* (1980) 19 R.F.L. (2d) 2332 (Man. C.A.)

[606] The society did not seek a specific finding that the mother has alienated the child but rather simply a finding that the mother had unjustifiably interfered with and undermined the relationship between the child and his father.

[607] The Ontario Court of Appeal in the case of *A.M. v. C.H.*²⁷ has confirmed that expert evidence is not necessary to ascertain if there is alienation and the appropriate remedy. The court held at paragraphs 31 and 32 as follows:

In finding that the mother alienated the child from the father, the trial judge was not purporting to make a psychiatric diagnosis of any syndrome or condition. Rather, he was making factual findings about what happened in this family. This is the stuff of which custody trials are made, and as conceded, no expert opinion was required to enable him to do so.

Those factual findings logically led to certain remedies being appropriate or not. The trial judge did not need expert evidence before choosing the remedy that was in the best interests of the child.

[608] I have no hesitation in finding that the mother has unjustifiably alienating the child. I find that the mother has influenced the child's views and preferences. I find that the mother has poisoned the child's mind against the father and the maternal family and coached the child into adopting false allegations of physical and sexual abuse. Those views were then perpetuated by the mother and through the inappropriate counselling he received from Mr. Carpenter.

[609] The views and memories of the child of the alleged abuse contain so many inconsistencies as well as bizarre and improbable allegations which in themselves diminish any weight that the court could possibly ascribe to them.

[610] The child's refusal to have contact with his father cannot be given any weight in view of the mother's active opposition to reunification therapy and her attempts to undermine any process that she did not agree with and any process that had as its goal the child resuming contact with his father.

[611] After the January 21, 2017 allegations were made by the mother, she permitted the child to call his father by his first name. When questioned about this, she testified that the child would sometimes call her and the father by their first names. But none of the witnesses including the child's godmother had ever heard the child call either parent by their first name prior to January 21, 2017.

[612] Attached to the father's affidavit sworn July 23, 2019 is a text from the mother sent in January 2017 stating that, "*he will now call u T [the father's first name] - soul stealer.*" This is another example of the mother coaching the child, because he continued to call his father by his first name rather than Dad after this time.

²⁷ *supra*

[613] I find that this a disrespectful way to address a parent and the mother did nothing to correct the child.

[614] The mother spoke to the child about the proceedings such as telling him that he should have a native worker, that he did not need to speak to the society workers, that he did not have to see his father if he chose not to, telling the child that they were going to win the trial. The child parroted all these comments that the mother made. As recently as May 16, 2019 child told his counsel and Ms Bernatt that his mother was working towards him not seeing his father.

[615] As a result, I find that the views of the child are not independent. It is not possible to separate the child's views about his father from the negative influence of his mother. The mother has brainwashed the child with respect to his views about his father and his extended family. I put no weight on those views.

[616] Based on the evidence I accept, I find that the mother is incapable of meeting the child's mental or emotional needs and will not support the child developing a positive relationship with the father or the extended paternal and maternal family.

[617] As stated in the case of *A.P.V. and J.L.R.*,²⁸ “ *the ability of a parent to act as a parent includes their ability to support the child's relationship with the other parent.*”

[618] In the case of *Leelaratna v. Leelaratna*²⁹ Justice Audet took judicial notice of the effects of a child's estrangement or alienation from a parent. I adopt her comments wherein she states as follows:

I take judicial notice of the significant short-term and long-term negative impacts that a child's estrangement or alienation from one of his parents can have on that child's social and emotional development and adjustment, physical, psychological and mental health, as well as on his overall well-being. These negative consequences have been documented in countless court decisions in the past, including in many of those cases cited above.

[619] The court must consider whether the risk to the child can be alleviated by placing him with the mother subject to supervision. A disposition advocated by counsel for the child and the mother.

[620] I adopt the reasoning of Justice Sherr in the case of *Jewish Family and Child Services of Greater Toronto v. A.K.*³⁰ and Justice Curtis in *Catholic Children's Aid Society of Toronto v. P.N.S.*³¹ that for a supervision order to be an effective instrument of risk management the court should consider the following:

- (a) the parent must meet a minimum threshold of co-operation and reliability;

²⁸ [2012] O.J. No. 5027 (OCJ) at para. 59 and cases cited therein.

²⁹ [2018] O.J. No. 5204 at para. 65 and cases cited therein.

³⁰ [2014] O.J. No. 2157 (OCJ) at para. 59

³¹ [2016] O.J. No. 1581 (OCJ) at paras. 120, 122 and 124

- (b) there needs to be a trusting relationship;
- (c) there needs to be clear and accurate information exchanged between the parties;
- (d) there needs to be demonstrable evidence that the parent would be compliant with the terms;
- (e) there needs to be evidence that the society could monitor a parent's compliance; and
- (f) a supervision order should not be imposed if a parent is ungovernable.

[621] The evidence is overwhelming that the mother does not meet any of these preconditions. Despite being warned during the domestic proceedings of the consequences of non-compliance the mother continued to fail to comply with court ordered access or reunification therapy. This resulted in the society commencing formal child protection proceedings.

[622] Even then and despite an order with temporary terms of supervision, the mother gave lip service to the terms of supervision. She would not comply with the direction of the society. She testified that the reunification therapy was only a "recommendation" of the society and not an order.

[623] Most telling is that even when her son was removed from her care, she continued to undermine the reunification process and could not even abide by the expectations of the society with respect to a visit with her son.

[624] The mother has shown herself to be untrustworthy and not credible. She has no insight into the damage she has caused her son. Accordingly, if the child was returned to her care, it is not possible to believe that the mother would now encourage a relationship with the father and the extended family members and that she would now co-operate with the society and ensure that child participate in counselling to repair his relationship with his father. The risk of emotional harm to this child would only be perpetuated.

[625] Despite the mother's words that she will now encourage and support the child's relationship with his father, her actions contradict those words. She has been given every opportunity to show that she has changed, that she can admit that she was wrong about the father abusing the child and to apologize to the child and father for the harm she has caused. She is simply unwilling or unable at this time to change.

[626] The job of a parent is to parent. The mother in the last 2 years has shown that she is incapable or unwilling use her parental authority to ensure that the child complies with the access orders.

[627] The job of a parent is to instill in the child a respect for the law and the importance of the court process and court orders. She has failed to do her job.

[628] It is clear that the child believes that his father sexually abused him and that his maternal grandmother and maternal aunts were aware of the abuse and did nothing to stop it.

[629] However, it is not clear if the mother actually even believes the allegations. During a probing cross-examination by society counsel, the mother was asked about each and every allegation. For many of the allegations she either said she did not believe the allegation or was not sure it happened.

[630] For example, she testified that she did not know if the father had put his penis in the child's mouth on more than one occasion. Yet she admitted to believing numerous specific instances of the father sexually assaulting the child. When asked if she believed that the father took the child into the bathroom of a knife store and sexually assaulted him, she said, "*I don't know, I wasn't there.*" But she was not present at any of the incidents. Later on, she changed her testimony and said she believed the incident happened. It was as if she recognized that her evidence made no sense, so she changed it.

[631] During this line of questioning, the mother took a great deal of time to answer as if this was the first time she had ever even examined her beliefs.

[632] When asked if she believed that the father molested the child, why would she now facilitate access if the child was returned to her care. The mother had difficulty answering and finally stated that, "*if I am directed to do something then my belief system would be secondary to the child's needs.*" The mother then couldn't explain why she did not previously comply with the court orders for access.

[633] There is nothing in the mother's plan of care or in her evidence that leads the court to accept that the mother would now be able to facilitate a relationship between the child and the father.

[634] As a further alternative, the mother proposed that the child be placed in the care of NL, the child's godmother. When NL testified, she stated that she had emailed Ms Duncan her desire to be considered as a placement that day. In re-examination, Ms Duncan testified that she had checked her email and she had not received an email from the godmother.

[635] NL testified that she had not put forward a plan earlier as she never thought it would go this far. Even if the plan had been received, I find that although NL has good intentions, she is too closely aligned with the mother to be seen by the child as a neutral caregiver.

[636] NL testified that she would be able to prevent the mother having access that was not court ordered and would be able to encourage access by the child to his father. Unfortunately, given the passage of time, the child's strong views about his father and the allegations of abuse, a neutral environment with a skilled caregiver and therapeutic intervention is required.

[637] There is unfortunately a plethora of case law in both domestic and child protection proceedings where despite the wishes to a child and due to the alienation behaviour of a parent, a change of custody is ordered.³²

[638] In many of these cases, the comments of Justice Trussler in the case of *Tremblay v. Tremblay*³³ are cited as follows:

I start with the premise that a parent has the right to see his or her children and is only to be deprived of that right if he or she has abused or neglected the children. Likewise, and more important, a child has a right to the love, care and guidance of a parent. To be denied that right by the other parent without sufficient justification, such as abuse or neglect, is, in itself, a form of child abuse.

Having heard the viva voce evidence of both the parties and having considered the various affidavits that were filed, I came to the conclusion that Mr. Tremblay was being wrongfully denied the right to establish a relationship with his children and his children were being denied the benefits of a loving father. I also concluded as a result of the January 14th hearing that the children were essentially being brainwashed by their mother with respect to their father and she was attempting to instill in them an unwanted fear of the father.

[639] These comments are aptly applicable to this case. I also echo Justice Trussler's comments that many non-custodial parents would give up trying to establish a relationship with their child and be disheartened by the difficulties in establishing a relationship despite the intervention of the court or do not have the financial resources to persevere through the court process.

[640] In this case, despite the vile allegations made by the mother and repeated by the child against the father, he has persevered throughout this process in attempting to re-establish his relationship with his son. This is despite his limited financial resources. He has shown remarkable restraint and never blamed his son for the present situation.

[641] At the present time, the society's plan for a brief period of society care meets the child's needs. During this time, counselling can occur to repair the relationship between the child and his father. Counselling can also help the child accept that the father did not sexually or physically abuse him and that his maternal grandmother and maternal aunts were not involved. The time will also allow for the transition of the child to the full-time care of his father.

[642] It is hoped that the mother will use the time to begin counselling to address the issues that resulted in her perpetuating false allegations and mending the damage she has done to her son and to her own relationship with her family. Any access to the

³² See for example, *Children's Aid Society of the Region of Waterloo v. K.A.L.* [2010] O.J. No. 4157 (OCJ); *A.M. v. C.H.*, *supra*; *Fiorito v. Wiggins* 2015 ONCA 729; *L. (A.G.) v. D. (K.B.)* 2009 93 O.R. (3d) 409; *J.K.L. v. N.C.S.* [2008] O.J. No. 2115 (SCJ); *Children and Family Services for York Region v. A.S.* [2009] O.J. No. 5866 (SCJ)

³³ (1997) 10 R.F.L. (3d) 166 (Alb. Q.B., at paras. 9, 15 and 16)

mother will be dependent on her ability to make progress with her own therapy and based on the recommendations of the child's therapist.

13. Order

[643] There will be an order as follows:

1. The child GR born [...], 2008 is found not to be First, Nations, Inuk or Métis.
2. The child GR is found to be in need of protection pursuant to section 74 (2) (h) of the Child, Youth, Family and Service Act.
3. The child GR shall be placed in the interim society care of the Children's Aid Society of Toronto for a period of 4 months and then placed in the care of the Respondent father for a period of 6 months, subject to the supervision of the Children's Aid Society of Toronto on the following terms:
 - a) The Respondent father shall work co-operatively with the society;
 - b) The Respondent father shall allow the society to conduct announced and unannounced home visits at his residence;
 - c) The Respondent father shall notify the society of any change in his family constellation, address, telephone number and other contact information at least 48 hours in advance of such change, and where advance notice is not possible, within 24 hours of such change;
 - d) The Respondent father shall sign consents for the release of information pertaining to himself and GR as requested by the society;
 - e) The Respondent father shall ensure that GR attends school daily and continues to receive counselling services as recommended by the society;
 - f) The Respondent father shall ensure that GR's physical, emotional and medical needs are met;
 - g) The Respondent father shall follow through with recommendations made by the society;
 - h) The Respondent father shall co-operate with organizing access visits between the child and the Respondent mother and the maternal extended family, as recommended by the society in consultation with the child's counsellor;
 - i) Access to the child by the Respondent mother while he is in the interim care of the society shall be at the discretion of the society in

consultation with the child's counsellor;

j) Access to the child by the Respondent father while he is in the interim care of the society shall be at the discretion of the society in consultation with the child's counsellor;

k) While the child is in the interim care of the society, inquiries shall be made with a medical doctor if the child, with his consent, should be vaccinated;

l) While the child is in the interim care of the society, counselling shall be immediately arrange for the child and the Respondent father to focus on the reunification of the child with the Respondent father and to ensure a smooth transition of the child into the father's care.

4. The Respondent mother shall not audio or video record the child, the Respondent father, any children's aid society worker or third party professional working with the family without the express prior consent of that party.

Released: January 13, 2020

Signed: Justice Roselyn Zisman