

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: *Catholic Children's Aid Society of Toronto v. R.H.*, 2018 ONCJ 854
DATE: November 29, 2018
COURT FILE No.: Toronto C91695/16

B E T W E E N :

Catholic Children's Aid Society of Toronto

Applicant,

— AND —

R.H. (mother)

Respondent

Before Justice Paulseth
Heard on November 19, and 20, 2018
Reasons for Judgment released on November 29, 2018

R. Buehlercounsel for the applicant society
M. Pilch..... counsel for the respondent

Paulseth J.:

Overview:

[1] This is a Status Review Application pursuant to section 113 of the *Child, Youth and Family Services Act* (the Act). The child was found to be in need of protection under subsection 37(2)(l) of the previous legislation (the consent section). The Catholic Children's Aid Society of Toronto (the society) is seeking a final order of extended society care without access to the Respondent (the mother) in order to place the child for adoption. The child is C, a little boy, born on [...]. The mother was born on [...]. The biological father of the child has never come forward or participated in any of the proceedings. Service on him has been dispensed with on the original Protection Application and every subsequent status review.

[2] Mother seeks to have the child returned to her custody under a supervision order. In the alternative, she seeks access.

[3] The child has been in the care of the society from October 13, 2016 until

NOTE: This judgment is under a publication ban described in the WARNING page(s) at the start of this document. If the WARNING page(s) is (are) missing, please contact the court office.

September 19, 2017, and again since August 23, 2018. Mother is not seeking an extension of the statutory time limitation for young children in care.

[4] Previous orders in this matter were:

- (1) March 30, 2017: Finding in need of protection and four months society wardship with access in discretion of society;
- (2) September 19, 2017: six months supervision order, child placed with mother, with conditions; and
- (3) July 25, 2018: extension of supervision order for further six months, child remains with mother, with conditions.

The Legal Principles:

Extended society care orders – formerly crown wardship orders

[5] The Act requires a careful balancing of the paramount objective to promote the best interests, protection and wellbeing of children, with the value of maintaining the family unit. The legislation does not emphasize parental rights but rather recognizes the importance of maintaining the family unit as a means of fostering the best interests of children. The values and purposes outlined under section 1(2) must be always be evaluated in contemplation of what is best for the child.

[6] In a status review application, the court may vary, terminate, or make further orders under the Act, based on the child's best interests. When making an order in a child's best interests, the court must consider the child's views if they can be determined and with proportionate weight based on the child's age and level of maturity, and other relevant factors, including:

- (1) the child's physical, mental, and emotional needs and level of development,
- (2) the child's racial and cultural background,
- (3) the importance of a positive relationship with a parent and of being a secure member of a family,
- (4) the importance of continuity in the child's care and the impact of disruption,
- (5) the merits of the proposed plans for the child,
- (6) the effect of delay,
- (7) the risk of harm related to the child being kept in or kept away from family, and
- (8) the degree of risk that justified the finding in need of protection.

[7] Further guiding principles can be found in the case law:

(1) An extended society care order is probably the most profound order that a court can make. The judge must exercise this only with the highest degree of caution, only on the basis of compelling evidence and only after a careful examination of possible alternative remedies. *CAS Hamilton v. M.*, 2003 O.J. No. 1274 (UFC).

(2) In determining the best interests of the child, the court must assess the degree to which the risk concerns which existed at the time of the apprehension still exist today. They must be examined from the child's perspective. *CAS Toronto v. C.M.*, [1994] 2 S.C.R. 165.

(3) Consideration should be given as to whether the Society has given the parent an opportunity to parent. *Children and Family Services for York Region v. A.W. and M.M.*, [2003] O.J. No. 996 (Sup. Ct.); *CCAS v. P.A.M.*, [1998] O.J. No. 3766 (OCJ); *CAS of the United Counties of Stormount, Dundas and Glengarry v. C.K.*, [2001] O.J. No. 128 (Sup. Ct.).

(4) The issue is not whether the children will be better off with parents other than the natural parents. If that was the criterion for a protection order, not many children would remain with their natural parents. The issue, however, really is whether the children concerned are receiving a level of parenting care that is below the minimum standard tolerated in our community. *Sask. Minister of Social Services v. E.(S.)* [1992] 5 WWR 289 (Sask. QB); *Family & Children's Services of St. Thomas and Elgin v. A.C.*, 2013 ONCJ 453 (CanLII).

(5) A comprehensive best interests' analysis requires consideration of the strengths and weaknesses of every option.

a. The court must consider the risk each child may suffer by remaining or being placed in a parent or other person's care.

b. The court must also consider the risk of emotional harm each child may suffer by being kept away from a parent or other significant person in their life. *CAS of Toronto v. S. (G.)*, 2012 ONCA 783 (CanLII), 2012 ONCA 783 (Ont CA); *CAS of Hamilton v. C. (K.)*, 2016 ONSC 2751 (CanLII), 2016 ONSC 2751 (SCJ).

(6) A lack of parental insight with respect to fundamental problems like physical and emotional harm may justify an extended care order (formerly crown wardship) even if there are other positive aspects to a parenting plan. *Catholic Children's Aid Society of Hamilton v. V.C.*, 2017 ONSC 5557; *CCAS of Toronto v. M. (M.)*, 2012 ONCJ 369 (CanLII), 2012 ONCJ 369 (OCJ); *CAS of Hamilton v. S. (A.)*, 2017 ONSC 2226 (CanLII), 2017 ONSC 2226 (SCJ).

[8] A child-centred focus must not be lost at any stage of a protection hearing, see *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, 1994 CanLII 83 (SCC), [1994] 2 S.C.R. 165. In *CFSA v. K.L.W.*, [2002] 2 S.C.R. 519, the Supreme Court of Canada again affirmed that child protection legislation is about protecting children from harm and commented at para. 80: "It is a child welfare statute and not a parents' rights status."

[9] Extended society care orders (formerly crown wardship orders) are the court's last resort. The court is required to inquire into the efforts made by the society and other community services to provide services to the child and the parent-an inquiry that is not limited to the timeframe prior to the litigation, but also includes an inquiry into the society's efforts after the removal of the child. It is a particularly careful scrutiny when the society shifts its position to recommend permanent removal. *Children and Family Services for York Region v. H.C.*, 2008 CanLII 64678 (SCJ); *Frontenac CAS v. C.T.*, 2010 ONSC 3054.

[10] Under subsection 101(4) of the Act (formerly 57 (4) of the CFSA), the court must first consider a family or community plan. A plan of extended care or interim care of the society with a kin placement does not qualify as a family or community plan and should only be considered after the former.

Events Relating to Previous Proceedings:

[11] The following paragraphs are taken from the Statements of Agreed Facts filed in previous proceedings, as supplemented by undisputed evidence in this hearing.

[12] Mother was adopted as an infant to a family in Windsor, Ontario.

[13] Mother's biological father, the maternal grandfather, is a convicted pedophile with 40 prior criminal code convictions. He has criminal court restrictions which prohibit his contact with children under 14 years of age. He is flagged as high risk to re-offend against female children between the ages of 7 and 15 years and has a history of grooming children.

[14] Mother's first child was born when she was only 15 years of age. That child has been settled with his father in Windsor, who now has full custody of him. Mother does not have access to that child.

[15] Mother re-connected with her biological father periodically throughout the years. When notified of this contact, the Catholic Children's Aid Society of Toronto (the society) has investigated and expressed serious concerns. This occurred in August of 2014, April of 2015, and again in April of 2016.

[16] In April of 2015, mother was arrested on outstanding warrants at a hotel where she was staying with maternal grandfather. The warrants related to the activities of the mother and the maternal grandfather in posting notices in the mother's adoptive father's neighbourhood accusing him of molesting her. Police officers noted that the room had two beds, one covered with luggage and the other unkempt. Mother denied sharing a bed with the father.

[17] In April of 2016, mother was under a probation order for a conviction related to those activities she and maternal grandfather had engaged in against her adoptive father. She and maternal grandfather were living together and she was pregnant. She acknowledged that he was a sexual offender and should not be alone with children. She advised the society that the biological father of the unborn child was JB whom she said was now looking for work in Alberta.

[18] In August of 2016, the society received a referral from the Windsor-Essex local

society expressing concerns about the mother and the maternal grandfather's relationship. Another referral was received on October 7, 2016 for the same reason.

[19] In September of 2016, mother acknowledged concerns about her father, but said she had had no contact with him since July 1, 2016.

[20] On October 13, 2016, the society received an anonymous package containing a usb stick with hundreds of Facebook messages between mother and maternal grandfather, dated between December of 2015 and April of 2016, many of which were of a romantic or sexual nature. In them, mother states she is carrying her father's child and there is a picture of her older son with maternal grandfather. Mother denied the authenticity of all of these messages.

[21] The child was apprehended on October 13, 2016. A Protection Application was filed with the court seeking a finding in need of protection and an order for four months society wardship. This application proceeded on consent for both a finding in need of protection pursuant to subsection 37(2)(l)(the consent subsection) and a period of society wardship for four months with access at the discretion of the society on March 30, 2017.

[22] Additional agreed upon facts to support the orders on March 30, 2017 included:

(1) In November and December of 2016, mother began to cancel her visits for various reasons

(2) By the time of the final order on March 30, 2017, mother had attended only 11 out of 44 visits since December of 2016;

(3) Family members anonymously reported concerns about the mother's relationship with maternal grandfather. They were afraid of him based on his past. Mother maintained the reports were out of spite.

(4) In December of 2016, the police reported that mother bought a puppy on Kijiji, advising it was for her father's birthday but refused to pay for it. Police believed mother and maternal grandfather were living together.

[23] The child remained in the care and custody of the society in the same foster home. He was doing very well and meeting all of his milestones.

[24] In April of 2017, mother began to attend for monthly counselling with Scarborough Women's Centre. The stated plan was to work on judgment, decision-making, a safety plan regarding her father, and past trauma.

[25] Anonymous concerns were expressed to the society about ongoing contact between mother and the maternal grandfather.

[26] Mother's access to the child was going very well and was ultimately expanded to community visits.

[27] On September 19, 2017, the child was returned to mother under a supervision order for a period of six months. The attached conditions included:

- (1) No contact direct or indirect by the maternal grandfather with mother or the child;
- (2) Mother to sign releases for information relating to her and the child;
- (3) Mother to follow through with counselling or parenting programs; and
- (4) Mother to apply for and enroll child in daycare.

[28] On July 25, 2018, the parties agreed to extend the supervision order for six months, for these reasons:

- (1) The child was seen with mother on a bi-weekly basis and was observed to be doing well.
- (2) Mother and child were subletting an apartment. Mother had to file income tax returns and prove her apartment stability with a lease agreement before she could be considered for subsidized day care. The society gave her a letter of support. Pending the daycare becoming available, mother was asked to take the child to the local Early Years program. This only happened a few times and without her secure housing, no daycare materialized.
- (3) Another anonymous caller reported concern about regular contact between the mother and maternal grandfather. Mother denied this.

[29] The conditions attached to this Supervision Order included:

- (1) Mother and child to have no direct or indirect contact with the maternal grandfather;
- (2) Mother to sign releases; and to permit society workers and the health nurse to have direct access to the child;
- (3) Mother to follow through with recommended counselling or parenting programs;
- (4) Mother to apply for subsidized daycare and, in the meantime, to take the child at least once a week to the Early Years program.

The Early Status Review on August 28, 2018:

Part 1 – The Police Version:

[30] Police Officer Christopher Pierre testified that he and his partner arrived at the mother's apartment building about 11:45 p.m. on the evening of August 22, 2018. The maternal grandfather, mother, and the child met them on the main floor or just outside the building. Maternal grandfather had phoned the police earlier that afternoon on behalf of his daughter because they were concerned about threats made by a 21 year old, WT, who was visiting mother.

[31] Maternal grandfather told the police officer that he had met WT while they were

both serving intermittent sentences on weekends at the Toronto South Detention Centre. Maternal grandfather said that he and mother had been driving WT to his home in Waterloo but he had also visited their apartment.

[32] Mother told the police officer that she was told by WT that he was serving time for abusing his younger brother. Mother said they had been spending time together at the apartment.

[33] Having observed a series of threatening Facebook messages directed at the mother and the conduct of WT, both mother and maternal grandfather had concluded that he was the one actually sending these anonymous threatening messages. Some of these messages also included photos of women's vaginas. Mother showed the officer a series of photos she had taken of WT with her and her son. The previous Sunday, WT had stayed at mother's apartment until 5:00 a.m. Monday morning.

[34] Maternal grandfather told this officer that he was living with the mother and her young child. The officers knew from information that they had researched before arriving at the address that the maternal grandfather was a convicted sex offender. Mother said that WT was a sex offender. The police officer was very clear that he had not told her that information about WT.

[35] This officer observed the maternal grandfather to give the child juice or milk.

[36] The officers advised the society by phoning the emergency after hours contact. The Sex Offender Registration Enforcement Units for Toronto and Waterloo were also advised.

[37] WT was advised to cease all contact and mother/maternal grandfather were advised to block any future messages from WT.

Place of Safety August 23, 2018:

[38] The society took the child to a place of safety the next day, on August 23, 2018. The child has remained in the care of the society since then.

[39] Mother told her family service worker in September of 2018 that maternal grandfather had originally asked WT to befriend mother on Facebook. Mother believed that maternal grandfather called the police because he thought WT was spending too much time with mother.

Part 2: Mother's Version:

[40] Mother testified that on August 22, 2018, maternal grandfather called her on her cell phone about noon. She is not sure how he got her number.

[41] Mother said she had been seeing WT since mutual friends introduced them on Facebook a few weeks before. She said they are "only friends as he is gay". The first time they met in person, he met her and C in the park in front of their building for one to three hours. The second time, he came to their apartment for about four or five hours. He said he had been accused of beating his younger brother. The third time she saw him she wasn't sure how long he was there at her apartment. The last time she saw him

was on the previous Sunday. The Facebook messages were disturbing in their threatening nature. When she figured out the source was from WT, she asked him to leave but didn't say why. Because she never told him to stop messaging her, the police could not charge him.

[42] Mother said that maternal grandfather sounded angry on the phone and admitted that he had asked WT to message her. It was a very short telephone call. Later that afternoon, her father texted her that he had called the police. That same afternoon, he texted to say he was at her place with the police downstairs. When she and C went downstairs, maternal grandfather was inside the security door and the police were outside the security door. They all went upstairs together in the elevator. This was the first time she said that she had seen him since July of 2016. She did not mention this in the presence of the police. She recalled the police saying to her that they had no concerns but gave her a safety tip regarding letting strangers in her apartment with her child there. She said her father asked her about C: when he was born and how old he was. This conversation does not appear in any of the police notes. The police told her that any child in the presence of her father or WT had to be reported, because of their sexual offender registry status.

[43] Mother described her apartment as a one bedroom unit but she did not have access to the bedroom. She and C lived in the living room as if it was a studio apartment.

[44] It is unlikely that mother's version is the more factually correct one because:

- The officer's evidence and occurrence report are consistent.
- The apartment space, and presumably the elevator, are small areas and any conversation between mother and maternal grandfather would have been overheard by the officer.
- It is unlikely the maternal grandfather would have her number and address after two years and then contact her out of the blue.
- There is no explanation by mother for the police version about mother and grandfather driving WT to Waterloo after his weekend sentences.
- Would a complete stranger find juice and milk and feed a two year old at midnight without any fuss or discussion with the mother whatsoever?
- The police were in the apartment for about 45 to 60 minutes, speaking to mother, maternal grandfather, and a neighbour who came by.
- In the police version, mother admits asking WT if he was a sex offender and he admitted it to her. The police say very clearly they did not tell her. She told them.

The Case for the Society:

[45] The child has been in the care of society for over a year, which is the statutory

limit for children under 6 years of age. Mother is not seeking any extension of that limit, pursuant to section 74 of the Act.

[46] The original family service worker was C.C.Li who worked with mother from September of 2016 until September of 2018. She describes the concerns that led to the first apprehension on October 13, 2016 and how these concerns were addressed in the Statement of Agreed Facts, referred to above.

[47] During the first period of society care, mother addressed some of the concerns:

- (1) her consistency in attending access visits improved;
- (2) the quality of the visits was very good;
- (3) she demonstrated an attachment to C and an ability to meet his needs;
- (4) C also showed a growing attachment to his mother;
- (5) mother attended 5 counselling sessions at Scarborough Women's Centre; and
- (6) Mother moved to a basement apartment and obtained Ontario Works.

[48] Ms Li had many conversations with mother about the seriousness of exposing C to the maternal grandfather because of his lengthy criminal history and his designation on the Sex Offender Registry. Mother maintained her denial of any contact with her father and indicated she understood the concerns. Mother indicated that she would abide by any conditions of supervision.

[49] After C was returned to Mother under the supervision order of September 19, 2017, Ms Li continued to monitor the situation. She made mostly pre-scheduled home visits on a bi-weekly basis. Ms Li was concerned that the child was not enrolled in daycare and Ms Li continued to receive anonymous complaints that mother was in contact with the maternal grandfather. There was no way to verify these reports. The family doctor reported no concerns.

[50] Ms Li and the mother did not have a great relationship and mother was requesting a new worker by the spring of 2018. At about that time, mother also asked for the child's Lifebook, which had been created when C was in the care of the society.

[51] By early August of 2018, mother had still not obtained daycare, because she said the city needed her to provide a secure housing lease. Mother said she was subletting her apartment from a Ms Brown. Meanwhile, she said her current landlord had moved all of her belongings to the bedroom of the apartment and locked the door. Ms Li contacted the city and obtained different information about the status of mother's daycare application. Mother again requested a change of worker.

[52] On August 22, 2018, mother, with her friend Ms CC, met with this worker and her supervisor. Mother wanted a new worker but was happy to continue working with the society. The supervisor agreed to transfer the family to a new worker. Mother said she would be happy to meet with them the next week as she was busy that week.

[53] Later that same day, the police were called to the home and the next day C was taken to a place of safety.

[54] Ms D. became the next family service worker in September, 2018. Mother described the maternal grandfather as the person who had asked WT to befriend her on Facebook and then thought she was spending too much time with him. Mother was also very sympathetic to the maternal grandfather as she said he had a hard life in foster care and was abused. To Ms D., mother appeared to be very frustrated with the no contact order to her father and said to her "he's my dad". In a later conversation, mother indicated that her father was going to take her to court to get access to C, as he was C's biological father. Mother quickly corrected herself to say he was the "grandfather".

[55] In a meeting on September 18, 2018, Ms D. expressed the importance of daycare for C and clinical counselling for mother, due to her childhood trauma and relationship with her father. Ms D recommended a psychiatrist from Women's College Hospital and suggested the family doctor could make the referral. Mother said she was still subletting her apartment from Ms Brown and paying \$100 a month for rent. Ms D. suggested a change of apartments.

[56] On at least two occasions, this worker was able to confirm through surveillance video that the maternal grandfather dropped food at the society's reception for mother to have in the visit with C. Mother denied this. The video also showed maternal grandfather dropping mother off for a visit. Ms D reported this to the police as maternal grandfather is under an indefinite condition to have no contact with children under the age of 14 or to attend at public places where children might be present. Ms D also learned from the Sex Offender Registry Enforcement Unit that the maternal grandfather's most current address, as of August of 2018, was the same as mother's address. Maternal grandfather also reported that he was subletting from Ms Brown.

[57] In a meeting with mother on October 23, 2018, mother asked for a new worker as Ms D had caused her father to be arrested, by reporting his presence at the society. The maternal grandfather's criminal lawyer was asking mother to testify. Despite the worker's clear identification of the maternal grandfather in the surveillance videos, the mother continued to deny his presence at the society.

[58] Ms D supervised three of the visits between mother and C. Of a possible 31 scheduled visits from August 27th until the end of October, mother only attended 21. The visits went well. Mother brought snacks, read books, and interacted well with C. C was sad to leave mother and mother responded well through food and accompanying him to the car. C is angry with mother and was observed to slap her and throw things at her. Mother used her cell phone during the visits and would be secretive about whom she is talking with. Mother would ask C to also talk on the cell but he has refused.

[59] This worker organized several family centred conferences in order to find kin or community caregivers. Four were cancelled by mother and a fifth was cancelled by a prospective caregiver who withdrew her plan. Ms D also contacted, without success, the maternal grandmother and the father of mother's first child. Mother's friend, of more than five years, Ms CC has just now come forward and will be assessed.

Mother's Evidence:

[60] Mother's history is a very sad story. She doesn't know where she was born but knows she was taken from her mother at an early age and placed for adoption with a couple in Windsor. She had an older adopted "sister", not biologically related, in the same home. She described her adoptive home as "lacking in love" and it may have been much worse, as she later accused her adoptive father of abusing her for many years. Mother and maternal grandfather were arrested for placing notices around the neighbourhood accusing the adoptive father of molesting her.

[61] Mother got pregnant in grade nine and did not finish the school year. Windsor Children's Aid Society was involved. This child, B, was born on [...]. She moved in with the baby's father but separated when he cheated on her with her girlfriend. Initially they shared custody but the father over held the child. She first met her biological father and sister when they came to Windsor to see her. She has now met all four of her siblings. She has no ongoing relationship with her mother. Eventually she moved to Toronto and said that she does not see B at all now.

[62] When she moved to Toronto, she lived with her biological father, the maternal grandfather, on O'Connor. She met a boyfriend who lived a few doors down the street.

[63] In April of 2015, she was arrested while staying in the Kenora Hotel with her father.

[64] The maternal grandfather told her he had been in prison for multiple offences: criminal negligence, robberies, and one sex assault, which he maintained was consensual sex with his wife's younger sister.

[65] Mother then moved in with her boyfriend for about six months, followed by a few months back in Windsor. When she returned to Toronto, she lived with her Aunt B and Uncle M, her father's brother. The maternal grandfather also lived there in the basement.

[66] On a brief visit to Windsor she had a "one time thing" with C's father, whom she had known from grade school. She has not seen him since then.

[67] When she was pregnant, the society told her that her father was not allowed to see the child. She therefore had no contact with maternal grandfather. Her plan was to live with Aunt B's sister, SCC in an apartment on the Danforth. When the society received over 3000 documents electronically about her and her father, she said none of the allegations were true. She denied being in a sexual relationship with her father.

[68] In mother's view she worked hard to have C home again. She said she was very busy. She attended counselling – but only 5 sessions. She gave consent for the society to ascertain she was attending but not the content. From the counselling, she said that she learned tips on good decision-making. She moved from the Danforth to Canoe Crescent by herself. She attended access and Plan of Care meetings. Her friend Tanya came with her to visits on the last Friday of the month. Mother has known Tanya since mother lived with the SCCs and Tanya was a neighbour. At the visits, mother always filled in the communication book. The biggest challenge for mother was to not have

contact with maternal grandfather.

[69] The evidence about her access with the child is consistently positive. In both periods of care and custody with the society, mother's access progressed to less supervision. There is no real explanation for the large number of visits that she missed recently in September and October of 2018.

[70] When C was returned to her in the summer of 2017, she described it as "awesome". The family service worker came every two weeks. Mother got along well with the first foster mother and even used her for an overnight when mother needed dental surgery. The family service worker suggested she take the child to the Early Years programs at least twice a week and mother could attend a parenting program there, called "Nobody's Perfect". Mother did not do that but took the child to the well-attended family program where there were lots of children and parents. The worker also suggested the library programs, but mother did not do that either.

[71] Mother described her routine with the child at home as: wake up between 7:30 and 8 a.m.; C liked an egg for breakfast; play, lunch, nap time from noon to 1:30 p.m., maybe on a Friday or weekend go to the Early Years, play, dinner, bath and bed by 7:30 or 8:00 p.m.

[72] Mother had several challenges with the subsidized daycare application. The society gave her a support letter. She needed her income tax assessments but she hadn't filed them so that took some time. Then, as she was subletting, she did not have a firm housing commitment.

[73] After C was admitted to care again, she resumed her relationship with her father, because she needed someone and felt lost. He did drive her to visits twice and offered to help her and "he was the only person there". She appreciates now the mistake she made and will work with the society on any conditions of a supervision order.

[74] Mother admits the visits have been challenging until recently, as C is angry with her and also very sad.

[75] If she cannot have the child home, she just wants to know he is ok. She doesn't want to spend "the rest of my life, thinking he is in the same situation I was." She says that C "deserves the world", and she knows he needs stability and structure.

The Child:

[76] The foster mother, family service workers and mother describe C as a sweet little boy. He is developing well and meeting his milestones. On his last admission to care there was a concern about his lack of speech but now he can say single words and use gestures. There was also a concern about his aggressive behaviour and a referral was made to a health specialist. He struggles with transitions, responding in an aggressive manner. He is easily redirected in the foster home.

Continued Risk:

[77] As mother is proposing a further supervision order, she is not opposing the finding of continued risk. Mother acknowledges that maternal grandfather was at her

home on August 22, 2018 but at no other recent time. Her counsel described this as a limited breach of the supervision order. Mother also finally admitted that maternal grandfather drove her to visits at the society offices and brought her snacks for the visit.

Mother's Credibility:

[78] Mother has repeatedly acknowledged the risk her father poses to children and repeatedly and secretly has permitted her father such access to her child. She was caught in this subterfuge shortly after the child's birth, which led to the first apprehension.

[79] Mother recently permitted maternal grandfather to introduce further risky elements to her home from a man he met in prison on the weekends. Mother originally denied her father's involvement prior to August 22, 2018. She also denied knowing the Sex Offender Register status of WT. The police officer's version of events is more logical and consistent.

[80] Mother denied that her father was involved in driving her to visits recently and bringing food to the reception desk of the society offices for her to have in the visits. She admitted in the witness stand that it was her father.

[81] Mother has consistently avoided any transparency in her care of the child; such as daycare and parenting programs.

[82] During the visits with C, mother is secretive about her cell phone conversations.

[83] Mother may be able to acknowledge the risk but she cannot follow through on avoiding that risk. Any commitment she makes to do that is not credible.

[84] Mother's credibility is poor. Her pattern of lying, covering up, being secretive, and breaching court orders supports this finding. A childhood without love will produce this form of survival behaviour.

Best Interests of C:

[85] C is a growing little boy with an easy and happy personality. He does show some signs of either normal two year old defiance or simply anger at his mother for leaving him and/or for not attending regularly for visits. He has struck out at her. Mother has used some good techniques to manage him in the visits when this occurs, but she has also repeatedly used food which may not be effective or constructive for long.

[86] C has been in care for the cumulative maximum permitted by the Act. No one is suggesting that this period should be extended.

[87] C needs stability and structure, as mother testified. He deserves to be a member of a committed long term permanent family. He needs to be safe and secure.

[88] C is already suffering from mother's lack of consistency and continuity, as shown by his response to her in the visits.

[89] Mother can and has shown that she can meet some of his needs. She just cannot meet all of them and the weaknesses cannot be managed through conditions as she will not abide by them.

[90] The predominant risk factor in this case is the safety of the child which is compromised by mother's judgment and her inability to detach from maternal grandfather. She has no insight into the reasons she cannot separate from him and will not follow through with clinical support to gain that appreciation. Without that change, no risk can be alleviated while the child is in the care and control of the mother. The child would never be safe.

[91] Mother has had two clear opportunities to parent by avoiding this risk and she cannot do it.

[92] C will have to be moved out of his second and current foster home for a permanent adoption placement.

Efforts to Assist

[93] The society has been involved since prior to C's birth. A local society was also involved with respect to mother's first child. Mother has been consistently advised about the risk that her biological father poses to all young people.

[94] Over the years, mother has been given supports and referrals for daycare and counselling. She has consistently declined to be involved in therapy. She has also refused any public daycare. Mother has preferred to be isolated in the community.

Less Disruptive Alternative:

[95] I find that mother does not comply with conditions that would give her support and minimize the risk and instability to a young child. Instead, mother chose not to take advantage of the supports through daycare, counselling, and programs, and to increase the risk by permitting maternal grandfather to introduce men he meets in prison on the weekends to her and her son. Mother denies this, but is inconsistent in her narratives. I do not find mother credible.

[96] Mother has few supports in her life. For that reason, she has reached out again to the maternal grandfather or at least has been unable to resist him.

Other plans:

[97] The society has sought both kin and community plans. Mother cancelled four family centred conferences designed to identify possible alternative plans. Relatives were contacted and community plans explored. Nothing has been forthcoming.

Conclusion on Care and Custody:

[98] Based on C's best interests and taking into account all of the evidence and, in particular, the concerns above, C should remain in the extended care of the society.

Post Extended Care Access

[99] As set out by Justice Sullivan in *Children's Aid Society of the Region of Peel v J.F.*, 2018 ONCJ 628, the onus is on mother to satisfy the court regarding the new statutory requirements for access to a child in extended society care. This onus has not changed but the legal test has been varied in the new Act. Section 105 of the Act now imbeds the test within a best interests' analysis as defined by section 74. Additionally, the court must consider as part of the best interests determination whether the relationship between the mother and the child is beneficial and meaningful to the child and, if relevant, whether the access would impair adoption opportunities.

[100] In *Jewish Family and Child Service of Greater Toronto v. K.B.*, 2018 ONCJ 659, Justice Sager stated that the new access test should be given a liberal and flexible interpretation, writing as follows:

138 The starting point of this analysis must be an acknowledgment that the CYFSA provides that an existing access order is automatically terminated if the final disposition is an order placing the child in extended society care unless the party seeking access can demonstrate that ongoing contact is in the child's best interests.

139 The presumption against access to a child who is placed in extended care must be considered in light of the paramount purpose of the CYFSA, "to promote the best interests, protection and well-being of children." It therefore must be presumed under the CYFSA that in order to promote the best interests, protection and well-being of children placed in extended society care, outstanding access orders must be terminated -- unless the person seeking access can rebut that presumption. A determination of whether access is in a child's best interest includes a consideration of whether the child enjoys a relationship with the access parent that is beneficial and meaningful to the child.

140 With the enactment of the CYFSA on April 30, 2018, came a new test for the court to apply when a party requests access to a child placed in extended society care. The test under the predecessor legislation was quite rigid and difficult for a parent to meet as they were required to demonstrate that their relationship with the child is beneficial and meaningful to the child, and that an order for access will not impair the child's future opportunities for adoption. Under the CYFSA, the court must consider as part of the best interests analysis whether the relationship between the person seeking access and the child is beneficial and meaningful. The court is no longer required to find that the relationship is beneficial and meaningful before granting an order for access to a child placed in extended society care. The court must also consider, if relevant, whether an order for access may impair the child's future opportunities to be adopted. These are additional mandatory considerations to the best interest test.

141 The introduction of the best interests test in the CYFSA brings a less rigid and more flexible approach to deciding whether to order access to a child placed in the extended care of the society, as a court is now permitted to give consideration to any factor it considers relevant, one can assume, on the well accepted principle in cases involving children that one size does not fit all.

142 As the best interest analysis involves a consideration of what could be numerous factors, there cannot be a hard and fast rule as to how much weight a court must give any one factor including whether the relationship between the party seeking access and the child is beneficial and meaningful to the child. That must be determined on a case by case basis, by weighing all the relevant factors against the particular needs of the child before the court. This is a significant departure from the rigid test in the predecessor legislation.

143 For some children who are the subject of an order of extended society care, a relationship with a parent may be in their best interests for a myriad of reasons. Some of those reasons would not have been sufficient to demonstrate a beneficial and meaningful relationship under the predecessor legislation to the CYFSA. The court ought not be confined to a one-dimensional definition of beneficial and meaningful under the CYFSA, as to do so would be to potentially

ignore the variety of needs children have as a result of being removed from their parents' care, both at the date of the order and in the future. For this reason, the test was altered in a significant way to one of best interests.

[101] I would also note the additional emphasis placed in the new Act on the child's views. This was pointed out by counsel for mother and I agree. The fact that the child is so young does not detract from considering that he speaks through his attachment to his mother.

[102] The existence of an access order does not preclude the society from placing a child for adoption. A Society may place a crown ward with access for adoption, and once that child is placed for adoption, the access order is terminated under section 195 of the *CYFSA* (formerly section 143 of the *CFSA*), subject to notice and a possible application for an openness order being commenced by either the subject of the access order or by the person or persons (including the child depending on the wording of the order) who has/have the benefit of the access order.

[103] The distinction between who has been granted an access order (the access holder) and who is the person with respect to whom an access order has been granted (the access recipient) has now become a critical consideration because only the access holder has the right to bring an openness application if served with a Notice of Intent to place a child for adoption. The access recipient only has the right to be given notice of the society's Notice of Intent to place a child for adoption. *Children's Aid Society of Toronto v. K.A.*, 2014 ONCJ 304 (CanLII).

[104] In considering whether access would impair adoption opportunities, the court in *Children's Aid Society of Toronto v. A.F.*, 2015 ONCJ 678, set out the following factors:

[166] The first attribute is a difficulty with aggression, anger or impulse control. Persons with this attribute are often confrontational. This attribute may threaten the physical or emotional security of the adoptive parents and their family.

[167] The second attribute is a lack of support for an alternate caregiver of the child. This might manifest itself in an undermining of the adoptive placement and the child's sense of security with the adoptive family. Persons with this attribute may be relentlessly critical of the adoptive parents and make their lives very difficult. They are usually unable to accept their reduced role in the child's life.

[168] The third attribute is dishonesty and secrecy. Persons with this attribute can often not be trusted to comply with the terms of court orders or to accurately report any important issues about the child.

[169] The fourth attribute is a propensity to be litigious. Persons with this attribute are usually unable to accept a reduced role in the child's life and are likely to engage in openness litigation.

[105] Certainly, mother falls into the third example given. She cannot be trusted to comply with court orders.

Evidence about Mother's Access:

[106] The first foster mother testified that she had cared for C for about 10 months from October 13, 2016 until his return to mother. She is a very experienced foster mother of

20 years. The pick-ups and drop-offs were done by a driver for the society. She prepared a communication book with information about the baby and mother would respond with information about the child in the visits, which were usually about 3 times a week.

[107] As the visits transitioned to mother's home, foster mother gave mother her home phone number for emergencies. Mother only called her once and very appropriately asked about flu symptoms. Mother was always respectful. On one occasion, mother needed an overnight babysitter after dental surgery and the foster mother took C. She described C as a happy child. This past Mother's Day, mother came to her home with flowers for her and pictures of C.

[108] Mother does not like the current foster home and has asked to have the child moved. Mother has asked for a change of family service workers on more than one occasion. Mother generally accuses the society of lying about her and her father and then later, when caught in the lie, admits only what she has actually been caught in.

[109] The evidence of the family service workers and one of the access supervisors was consistent:

- Both mother and child enjoy the visits.
- Mother is generally on time.
- Mother focuses on the child's needs.
- Mother creates a good structure for the visits.
- Mother is secretive and has lied about who brings her to the visits.
- Mother has missed a number of visits.
- Mother is secretive and has lied about who drops off the snacks and food for the visits.
- Mother is secretive about who she calls and receives calls from on her cell phone during the visits.
- When asked to not use her cell phone during the visits, mother became belligerent and refused.

[110] Mother cannot be trusted as an access holder to the child. She does not have any insight into her weaknesses with respect to her past and her traumas. Mother had the opportunity to pursue and really try to get a clinical handle on these weaknesses but she chose not to. Mother's decision-making is not always in her or her child's best interests. The results have been and would continue to be detrimental to the child.

[111] Because the child has enjoyed the visits and developed an attachment to mother, I have considered whether the child could be the access holder; particularly, if the access is restricted to some form of minimal contact like cards and later maybe letters. The weaknesses in mother's plan would be eliminated and the benefits would remain. He will know his mother's love and that she has not abandoned him and she will know that he is safe.

[112] Based on the criteria in the new Act, I am persuaded that such an access plan would be in the child's best interests, taking into account both the meaningful and beneficial test and the adoption security test, because:

- The child enjoys the visits.
- The visits are positive.
- Mother has been relatively focused on the child.
- The child is attached to mother.
- The child is young and able to attach to a permanent home.
- Mother's poor decision-making cannot impact the limited contact I am suggesting.
- Discretion would remain with the society and then the adoptive parents to adjust, postpone, or cancel such a scheme.
- Secrecy would be eliminated.

Final Orders:

Child is not First Nations, Inuk, or Metis

Child is to be placed in extended care of the society

With access by the child as the access holder to contact with mother through cards and letters, the specific type and frequency to be in the complete discretion of the society.

November 29, 2018

Justice Debra Paulseth