W A R N I N G

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

This is a case under Part III of the *Child and Family Services Act* and is subject to subsections 48(7), 45(8) and 45(9) of the Act. These subsections and subsection 85(3) of the *Child and Family Services Act*, which deals with the consequences of failure to comply, read as follows:

> **45.**—(7) *Order excluding media representatives or prohibiting publication.*— The court may make an order,
>
> . . .
>
> (*c*) prohibiting the publication of a report of the hearing or a specified part of the hearing,
>
> where the court is of the opinion that . . . the publication of the report, . . ., 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.
>
> (8) *Prohibition: 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) *Idem: order re adult.*— 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.
>
> . . .
>
> **85.**—(3) *Idem.*— A person who contravenes subsection 45(8) (publication of identifying information) or an order prohibiting publication made under clause 45(7)(*c*) or subsection 45(9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than three years, or to both.

Toronto (North York) Registry No. C42577/06
DATE: 2008·III·31
CITATION: *Jewish Family and Child Service v. K.(R.)*, 2008 ONCJ 774

ONTARIO COURT OF JUSTICE

IN THE MATTER OF an amended protection application under Part III of the *Child and Family Services Act*, R.S.O. 1990, c. C.11, for the Crown Wardship of K.J.K., born on 5 July 2006;

B E T W E E N :

JEWISH FAMILY AND CHILD SERVICE OF TORONTO,
Applicant,

— AND —

R.K., T.K. and E.K.T.,
Respondents.

Before Justice Stanley B. Sherr
Heard on 30-31 January 2008; 1, 4-5 and 7-8 February 2008;
and 10-13 and 20 March 2008
Reasons for Judgment released on 31 March 2008

CHILD PROTECTION — Form of order — Crown wardship — Grounds — Least restrictive option to protect child — Mother of child (now 20 months old) had, during much of her own childhood, been under care of Local children's aid society in which she wore out more than 20 foster placements, none of which had any beneficial effect on her — Now that she was parent, society was troubled by her association with abusive partner (child's father) and frequent instances of domestic violence to which child was being exposed — As result of her anger management problems, mother was also target of assaults from other people (another boyfriend, her partner's former girlfriend, *etc.*, even grandmother) — There was even evidence that mother did not even tell society or police about many of her partner's assaults on her — She had explosive and unstable relationship with grandmother who had thrown mother out of her home several times — Grandmother's quick temper and her attraction to alcohol scarcely made her better caregiver, to say nothing of her historic inability to parent mother — Despite society's efforts to keep mother-and-child bond alive, mother took no steps to deal with her domestic violence issues, which showed every sign of continuing — She lied about having dissociated herself from father, showed up late for access visits, missed important meetings and not

only failed to engage in programs offered by service providers but resisted those offers — Local children's aid society had applied for Crown wardship of child (now 20 months old), without access, for purposes of adoption — Court readily found that child was in need of protection and there were simply no less disruptive option to Crown wardship — Child was perfectly adoptable and any access order would merely impair child's future chances for permanent and stable placement — Crown wardship without access for purposes of adoption.

STATUTES AND REGULATIONS CITED

Child and Family Services Act, R.S.O. 1990, c. C.11 [as amended], subclause 37(2)(*b*)(i), clause 37(2)(*g*), subsection 37(3), subsection 51(3), section 54, subsection 57(1), subsection 57(2), subsection 57(3), subsection 57(4), subsection 59(2), section 70, subsection 70(4) and section 141.1.

Evidence Act, R.S.O. 1990, c. E-23 [as amended], section 35.

CASES CITED

Catholic Children's Aid Society of Hamilton v. I.(J.), M.(I.) and O.(V.I.), 2006 CanLII 19432, 150 A.C.W.S. (3d) 406, [2006] O.J. No. 2299, 2006 CarswellOnt 3510 (Ont. Fam. Ct.).

Catholic Children's Aid Society of Hamilton-Wentworth v. G.-T. (Jill) (1996), 90 O.A.C. 5, 23 R.F.L. (4th) 79, [1996] O.J. No. 1394, 1996 CarswellOnt 1428 (Ont. Div. Ct.).

Catholic Children's Aid Society of Metropolitan Toronto v. M. (Cidalia), [1994] 2 S.C.R. 165, 165 N.R. 161, 71 O.A.C. 81, 113 D.L.R. (4th) 321, 2 R.F.L. (4th) 313, 1994 CanLII 83, [1994] S.C.J. No. 37, 1994 CarswellOnt 376.

Catholic Children's Aid Society of Toronto v. L. (Jean) and R. (Willard) (No. 3), 2003 CanLII 57514, 39 R.F.L. (5th) 54, [2003] O.J. No. 1722, 2003 CarswellOnt 1685 (Ont. C.J.).

Children's Aid Society of Brockville Leeds and Grenville v. C. and J. (2001), 104 A.C.W.S. (3d) 892, [2001] O.J. No. 1579, [2001] O.T.C. 287, 2001 CarswellOnt 1504 (Ont. Fam. Ct.).

Children's Aid Society of Hamilton-Wentworth v. R.(K.) and W.(C.) (2001), 114 A.C.W.S. (3d) 71, [2001] O.J. No. 5754, 2001 CarswellOnt 5006 (Ont. Fam. Ct.).

Children's Aid Society of Niagara Region v. P.(T.) and G.(R.), 2003 CanLII 2397, 35 R.F.L. (5th) 290, [2003] O.J. No. 412, 2003 CarswellOnt 403 (Ont. Fam. Ct.).

Children's Aid Society of Ottawa v. L.(R.) and B.(S.), 2004 CanLII 4334, 2004 CanLII 4401, 132 A.C.W.S. (3d) 718, [2004] O.J. No. 3112, [2004] O.T.C. 665, 2004 CarswellOnt 3080 (Ont. Fam. Ct.).

Children's Aid Society of Ottawa-Carlton v. T. and T., 2000 CanLII 21157, 97 A.C.W.S. (3d) 939, [2000] O.J. No. 2273, 2000 CarswellOnt 2156 (Ont. Fam. Ct.).

Children's Aid Society of Toronto v. B.-H (Rebecca) and W. (Sheldon), 2006 ONCJ 515, [2006] O.J. No. 5281, 2006 CarswellOnt 8484 (Ont. C.J.).

Children's Aid Society of Toronto v. C. (Sheila Ann), [2005] O.J. No. 2154, 143 A.C.W.S. (3d) 869, [2005] W.D.F.L. 3688, 2005 ONCJ 274, 2005 CarswellOnt 2424 (Ont. C.J.); affirmed at *Children's Aid Society of Toronto v. C. (Sheila Ann)*, 2005 CanLII 43289, 143 A.C.W.S. 3d 510, [2005] O.J. No. 4718, 2005 CarswellOnt 5932 (Ont. S.C.); further affirmed at *Children's Aid Society of Toronto v. C. (Sheila Ann)*, 2007 ONCA 474, 158 A.C.W.S. (3d) 610, [2007] W.D.F.L. 2844, [2007] O.J. No. 2609, 2007 CarswellOnt

4267 (Ont. C.A.); permission to appeal to the Supreme Court of Canada refused at *C. (Sheila Ann) v. Children's Aid Society of Toronto*, [2007] 3 S.C.R. *xiv*, 2007 CanLII 66780, [2007] S.C.C.A. No. 462, 2007 CarswellOnt 7859.

Children's Aid Society of Toronto v. P. (Dora) and L. (Raymond) (2005), 202 O.A.C. 7, 19 R.F.L. (6th) 267, 2005 CanLII 34560, [2005] O.J. No. 4075, 2005 CarswellOnt 4579 (Ont. C.A.).

Children's Aid Society of Winnipeg v. Redwood (1980), 19 R.F.L. (2d) 232, [1980] M.J. No. 245, 1980 CarswellMan 44 (Man. C.A.).

Charlotte L. Murray ..... counsel for the applicant society

Gary Gottlieb ..... counsel for the respondent mother R.K.

Thomas G. Sosa ..... counsel for the respondent maternal grandmother, T. K.

No appearance by or on behalf of the respondent natural father, E.K.T., on whom Justice Sherr (by order dated 30 January 2008) had dispensed with service

NOTE:— This decision was affirmed at *Jewish Family and Child Service v. R.K.*, 2009 ONCA 903, [2009] O.J. No. 5422, 2009 CarswellOnt 7908 (Ont. C.A.), *per* Appeal Justices Jean L. MacFarland, Paul S. Rouleau and J. David Watt.

JUSTICE S.B. SHERR:—

1: INTRODUCTION

[1] This is an amended protection application brought by the Jewish Family and Child Service of Toronto (the "society") for a finding that K.J.K. ("K.", born on 5 July 2006) is a child in need of protection pursuant to subclause 37(2)(*b*)(i) and clause 37(2)(*g*) of the *Child and Family Services Act*, R.S.O. 1990, c. C-11, as amended (the "Act"). The society seeks an order that K. be made a crown ward, without access, for the purpose of adoption.

[2] Counsel referred to the K. family members by their first names throughout the trial as there are several members of the family involved in the case and it would have been confusing to identify them otherwise. I will continue to do this in this judgment.

[3] The respondent, Ms. R.K. ("R."), is K.'s mother. She gave birth when she was 15 years old and is now 17 years old. She opposes a finding that K. is a child in need of protection and seeks a dismissal of the society's application. In the event that K. is found to be a child in need of protection, she seeks an order placing K. in her care and custody, subject to terms of society supervision.

[4] The respondent, Ms. T. K. ("T."), is R.'s mother. T. is 37 years old and has never married. She testified that she separated from R.'s father after he violently assaulted her. R. was two months old at the time and R. has not had any contact with him since then. T. also seeks an order dismissing the society's protection application. In the event that K. is found to be a child in need of protection, she seeks an order placing K. in her care and custody, subject to terms of society supervision.

[5] In the alternative, both R. and T. are prepared to parent K. jointly, or as a last alternative, support the placement of K. with the other person alone.

[6] The respondent, Mr. E.K.T., is K.'s biological father. He did not file an answer and plan of care to the original protection application and was noted in default by Justice Marvin A. Zuker on 4 December 2006. He has not had any involvement in K.'s life since October of 2006. He has not placed a plan before the court or sought access to K. I dispensed with service of the amended protection application upon him on 30 January 2008.

[7] The primary issues for me to decide are:

(a) Is K. a child in need of protection under subclause 37(2)(*b*)(i) or clause 37(2)(*g*) of the Act?

(b) If a finding is made that K. is a child in need of protection, is it in his best interests to be made a Crown ward, or can some less intrusive protection order be made?

(c) If K. is made a Crown ward, should the court make an order for access?

2: HISTORY OF COURT PROCEEDINGS

2.1: 2000 to January of 2006 — R. as the Subject of Child Protection Proceedings

[8] R. and T. have had a long and troubled history with the society. R. was the subject of child protection proceedings from 2000 to 2006. The society became involved in 2000 because of its concerns about T.'s supervision of R. (who was then 9 years old), suspected drug abuse by T. and R.'s exposure to domestic violence. R. was placed in the care of her maternal grandparents, Mrs. P.K. and Mr. C.K. (P. and C.), pursuant to a temporary agreement dated 11 February 2000 that included terms that T. was to undergo drug testing for a two-week period, register for a parenting course and obtain a restraining order against a former partner who T. testified had assaulted and stalked her.

[9] P. and C. subsequently decided that R. could not stay with them and as a result, the society commenced a protection application on 4 April 2000. On 5 April 2000, Justice Marvin A. Zuker made a temporary order placing R. in the care of the society with access to T. to be in the discretion of the society.

[10] T. consented to a final order dated 6 November 2000 by Justice James P. Nevins finding R. to be a child in need of protection pursuant to clauses 37(2)(*b*) and (*g*) of the Act. R. was made a society ward for three months. T.'s access was ordered to be in the discretion of the society with the understanding that she was to have no access until she complied with preconditions, including drug testing, attending a parenting course for a troubled child and attending a meeting at the society to show that she could maintain a safe environment for R. P. and C. were granted liberal access to R.

[11] T. consented to extend the society wardship order for a further five months on 27 February 2001. Again, she was to have no access to R. until she met the preconditions set out in the prior protection order. T. only had telephone access with R. from November 2000

until July 2001.

[12] In the subsequent status review proceeding, T. consented to a temporary order dated 17 July 2001 permitting her some supervised access with R. if she attended for drug testing and produced negative drug screens. The order provided that P. and C. have access to R. each weekend. T. finally began to see R. after providing negative drug screens.

[13] On 5 November 2001, on consent, Justice Nevins made a final order placing R. with C. and P. for 4 months, subject to society supervision. An order was made that T.'s access increase gradually from being supervised to unsupervised for two hours a week in the community. On 27 March 2002, on consent, T.'s access to R. was increased to overnights.

[14] On 18 June 2002, on consent, Justice Nevins made a final order placing R. with T. subject to society supervision for three months. This order was extended for a further three months by Justice Nevins on 21 October 2002.

[15] On 23 January 2003, there was a physical altercation between T.'s boyfriend and R. R. stayed briefly with P. and C. and then with an aunt before returning to her mother's home. On 18 February 2003, T. brought R. back into society care because of difficulties with her behaviour. R. stayed in society care and on consent, was made a Crown ward with access on 3 December 2003. T.'s access to R. was in the discretion of the society.

[16] The evidence established that R. did not do well in foster care. In total, she had over 20 placements from 2000-2005. R. testified that she was mistreated or neglected in many of these homes. The society evidence was that these placements would break down because of R.'s behaviour. The relationship between R. and T. was observed by the society to be constantly in conflict.

[17] By the summer of 2005, the society was having difficulty sustaining a placement for R., who made it clear that she wanted nothing to do with the society or their services. In an agreed statement of facts dated 12 January 2006 filed in R.'s child protection case, the parties agreed that:

> [R.'s] last placement was at Turning Point Youth Services in Toronto. [R.] was not able to meet the program's expectations, did not benefit from its structure or learn its routines. [R.] was not interested in engaging with the staff on a therapeutic level and frequently left without permission.

[18] R. also had involvement in the youth criminal justice system. In 2004, she was sentenced to 15 days of pre-trial custody and probation for threatening bodily harm and in 2005, she was charged and eventually convicted (in 2006), of criminal harassment. She received a conditional discharge for this offence.

[19] In 2005, R.'s relationship with T. was improving and T. was working more co-operatively with the society. In September of 2005, R. was placed in T.'s care. On 18 January 2006, on consent, the Crown wardship order was terminated.

2.2: July of 2006 to Present

[20] Following K.'s birth, R. lived with the baby at T.'s home. On 25 July 2006, the society entered into a voluntary services agreement with R. The society felt that it needed to remain involved, because of R.'s age, her prior behaviour and her history of conflict with T. It wanted to ensure that proper services were in place to support R. and K.

[21] Several concerns quickly developed. The society's major concern was that R. was involved in many incidents of domestic violence that were exposing K. to risk of harm. It did not believe that R. was providing a safe environment for K. and apprehended him with a warrant on 17 October 2006.

[22] K. was briefly placed in the society's care and then placed in the care of P. and C., physically on 27 October 2006 and by virtue of the temporary order of Justice Zuker on 31 October 2006. Justice Zuker also added T. as a party to this action. She and R. were granted access to be supervised by P. and C. On 12 December 2006, Justice Zuker amended the temporary access order and ordered that access be in the discretion of the society.

[23] P. and C. decided to place K. in the care of the society on 22 December 2006 and he has remained in society care since that date.

[24] The access arrangements have varied since December of 2006. R. started with supervised access visits at the society offices. This continued until March of 2007, when R. participated in the society's Therapeutic Access Program. This is a program where the parent has longer visits with the child with direct parenting instruction. It has a strong educational component. It is also used to assess a parent's parenting strengths and weaknesses. Unfortunately, R.'s participation in this program broke down in April of 2007 because of conflict between R. and the program supervisor. In May of 2007, the parties agreed to have the visits changed to take place at Jessie's (a centre for teenage mothers). These visits went well and R. was then able to obtain visits in the community until September of 2007, when the society learned of additional domestic violence incidents involving her. The access since then has taken place at the Jewish Community Centre twice each week for five hours each visit. R. is just required to check in with staff at the beginning and at the end of these visits.

[25] T. currently has unsupervised access to K. once each week in the community for six hours. Until the summer of 2007, K. frequently spent weekends with P. and C. They asked to stop having these visits at that time. They now often see K. when either T. or R. are visiting with him.

[26] On 20 June 2007, on consent, Justice Zuker made an order pursuant to section 54 of the Act, appointing Dr. Howard Waiser, a clinical psychologist, to conduct a psychological assessment of R. This was completed in October of 2007. Dr. Waiser's report was filed in evidence and he testified. Amongst his conclusions that will be discussed in detail below, Dr. Waiser found that R. does not have the ability to provide a safe and secure home for K. The society amended its protection application on 25 October 2007 to seek a disposition of Crown wardship without access for the purpose of adoption planning.

3: FINDING IN NEED OF PROTECTION

3.1: Legal Principles

[27] The society seeks a finding that K. is a child in need of protection pursuant to subclause 37(2)(*b*)(i) and clause 37(2)(*g*) of the Act, which read as follows:

> (2) *Child in need of protection.*— A child is in need of protection where,
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> . . .
>
> (*b*) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
>
> (i) failure to adequately care for, provide for, supervise or protect the child, or
>
> (ii) . . .
>
> . . .
>
> (*g*) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (*f*)(i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
>
> . . .

[28] Risk of harm must be real and not speculative: *Children's Aid Society of Ottawa-Carlton v. T. and T.*, 2000 CanLII 21157, 97 A.C.W.S. (3d) 939, [2000] O.J. No. 2273, 2000 CarswellOnt 2156 (Ont. Fam. Ct.). It is not necessary for the society to prove an intention to cause the child harm before finding that a child is in need of protection. A pervasive pattern of exposing a child to domestic abuse is sufficient: *Children's Aid Society of Niagara Region v. T.P. and R.G.*, 2003 CanLII 2397, 35 R.F.L. (5th) 290, [2003] O.J. No. 412, 2003 CarswellOnt 403 (Ont. Fam. Ct.).

[29] Domestic violence places children at risk on a number of levels. Witnessing violence perpetrated against the mother may have an abusive and detrimental impact on a child's development. Children may feel guilty, blame themselves and feel depressed. They can develop fears, insecurity and low self-esteem as a result of witnessing domestic violence. They can suffer emotional confusion that can result in bedwetting, nightmares, sleeping or eating disturbances, self-harm and weight loss: See *Children's Aid Society of Toronto v. Sheila Ann C.*, [2005] O.J. No. 2154, 143 A.C.W.S. (3d) 869, [2005] W.D.F.L. 3688, 2005 ONCJ 274, 2005 CarswellOnt 2424 (Ont. C.J.); affirmed at *Children's Aid Society of Toronto v. Sheila Ann C.*, 2005 CanLII 43289, 143 A.C.W.S. 3d 510, [2005] O.J. No. 4718, 2005 CarswellOnt 5932 (Ont. S.C.); further affirmed at *Children's Aid Society of Toronto v. Sheila Ann C.*, 2007 ONCA 474, 158 A.C.W.S. (3d) 610, [2007] W.D.F.L. 2844, [2007] O.J. No. 2609, 2007 CarswellOnt 4267 (Ont. C.A.); permission to appeal to the Supreme Court of Canada refused at *Sheila Ann C. v. Children's Aid Society of Toronto*, [2007] 3 S.C.R. *xiv*, 2007 CanLII 66780, [2007] S.C.C.A. No. 462, 2007 CarswellOnt 7859.

3.2: Preliminary Comments and Assessment of Credibility

[30] On consent of the parties, this trial was conducted as a blended proceeding. I did not consider evidence that went solely to the issue of disposition in determining if K. was a child in need of protection.

[31] The evidence was presented over eleven days. The society called many professional witnesses, including their workers, police officers and R.'s service providers. R. called two community witnesses in support of her plan; T. called C. in support of her plan. R. gave evidence for two full days and T. for almost one full day. Their evidence was frequently in conflict with the evidence of the professionals and even each other. This required the court to make assessments of credibility. I found neither R. nor T. to be credible witnesses.

[32] R. admitted to having a poor memory. From my observations, her memory became worse when she was faced with uncomfortable questions or contradictions in her testimony. R. constantly minimized her responsibility for incidents in which she was involved. She frequently contradicted herself. Her evidence was often in opposition to the evidence of professional witnesses (some who even supported her) who had recorded her comments at the time that she had made them. This included records from the society, Jessie's, Toronto Social Services, Humewood House (a service provider for teenage mothers) and the police.

[33] An example of this was when R. gave evidence about being assaulted by a taxi driver in April of 2007 while with her friend, Ms. A.L. The evidence that R. and Ms. A.L. gave at trial was significantly different from the statements that they gave to the police on the night of the incident. Those statements were videotaped and introduced at trial in reply evidence. R. and Ms. A.L. testified that they had only met the taxi driver once before, when they had previously called for a cab. Ms. A.L. denied having the driver's home telephone number. They both said that it was a coincidence that he had picked them up that evening. On the videotape, they described how they had actually known the driver for several months. He had their telephone numbers and they had his. They would call each other frequently and arranged free or reduced-fare taxi rides. They both admitted that arrangements were made for him to pick them up that evening. They both admitted on the videotape to stringing the driver along (in his hope that either of them would have sexual relations with him) in order to get the free rides. Both told the police that the driver constantly called them with sexual propositions. I wish to emphasize that this was just one example of R.'s inconsistent evidence and not in and of itself the reason that I did not find her to be a credible witness.

[34] T., like R., had a very poor memory, especially when the questions were uncomfortable for her or she was faced with the many contradictions in her evidence. She was frequently evasive and had to be redirected to answer questions. T. was so intent on not conceding any point to the society that she would often not admit to facts that were obvious on their face, such as whether she was in court on a particular day. Her evidence was often contradicted by professional workers who had recorded her statements when made. T. would constantly deny facts she had admitted to in prior proceedings and blame other persons for these admissions. Examples of this were:

(a) In 2004, she pleaded guilty to assault and assault with a weapon. Despite this plea, she claimed that she was forced into this by her lawyer and had never committed the alleged offences.

(b) She claimed that she was not in court for the guilty plea when submissions were made on her behalf, although the transcript clearly showed that she was present.

(c) She accused her lawyer of making up many of the submissions on sentencing without her knowledge or consent.

(d) She claimed that she complied with the society's expectations to obtain access to R., including that she obtain drug tests from November of 2000 to July of 2001. She claimed to have given these tests to a society worker and was unsure what the worker did with them. This made no sense. It was clear from the series of court orders described above that T. was being denied all access to R. since she had not complied with any of their expectations, in particular the drug testing. When it was pointed out that she had a lawyer during this period, she deflected blame to the lawyer.

(e) She claimed that the society improperly took and kept R. from her, yet she consented to almost every protection order concerning R., including the finding that she was in need of protection. When confronted with the written consents, she insisted that she was forced into them.

(f) She claimed never to have seen a psychiatric report completed for R. when she was in care even though she had attached it as an exhibit to her own affidavit in R.'s child protection case. She felt the fact that she did not sign the report was proof that she had not read it.

(g) T. minimized her responsibility for almost every incident discussed at trial and would usually cast blame on someone other than herself, whether it was R., her parents, the society, the police or her own lawyers.

[35] I heard evidence from the following society workers who worked with T. and R.: Sascha Gurwitz, Jeffrey Mintz and Ricardo Theoloduz. I found their evidence to be very credible. I felt that they did their best to answer questions in a fair, thoughtful and balanced fashion. They recorded events in their notes contemporaneously, fairly and accurately (although I felt that they should have included more positive comments about R. and T. in their affidavits filed at trial). They were willing to admit to mistakes made and point out positive attributes of the K. family members. When their evidence was different than that of T. or R., I had no difficulty preferring their evidence.

[36] I received voluminous police records concerning R. and T. (primarily about R.). These were admitted as business records; events and statements were recorded contemporaneously and pursuant to a professional responsibility. R. was the victim in almost all of these reports. There was no reason for the evidence to be misrepresented by the police. I found the contents of these records to be far more reliable than the evidence of R. and T. Although no objection was made to the admission of the complete content of the police records, I placed no weight on statements made to the police by persons other than T. and R., as this was hearsay evidence not saved by the business record exception set out in section 35

of the *Evidence Act*, R.S.O. 1990, c. E-23, as amended. See *Catholic Children's Aid Society of Toronto v. Jean L. and Willard R. (No. 3)*, 2003 CanLII 57514, 39 R.F.L. (5th) 54, [2003] O.J. No. 1722, 2003 CarswellOnt 1685 (Ont. C.J.).

[37] For similar reasons, I also found the evidence of the professional witnesses (including the business records from Jessie's, the public health nurses, Humewood House and the City of Toronto Social Services) to be more reliable than the evidence of T. and R. Both R. and T., in their evidence, contradicted, tried to re-interpret or minimized many of the statements attributed to them in these business records, certainly aware that many of their recorded statements were damaging to their prospects of K.'s being placed with either of them.

3.3: The Evidence

[38] The evidence clearly satisfied me on a balance of probabilities that K. should be found to be a child in need of protection under both subclause 37(2)(*b*)(i) and clause 37(2)(*g*) of the Act. It established that, at the time of K.'s apprehension:

(a) R. was exercising very poor judgment, often putting herself into dangerous situations and exposing K. to risk of physical and emotional harm.

(b) R.'s relationship with her mother was volatile and unstable. K. was being exposed to this and at risk of emotional harm.

(c) R. was not taking appropriate steps to address these issues and not co-operating with the society.

(d) The risk of harm to K. was very real and not just speculative.

[39] The evidence supporting these findings is set out in the following paragraphs.

3.3(a): Incidents of Violence

[40] On 1 March 2006, R. testified that she was assaulted by several people at a subway station and beaten up badly. The police records indicate that Ms. N.E., a former girlfriend of the respondent, Mr. E.K.T., was responsible for the assault and was convicted. The police records indicate that this was the culmination of a conflict between R. and Ms. N.E., with both women accusing the other of making harassing telephone calls. It should be noted that R. was six months pregnant at this time.

[41] On 11 July 2006 (6 days after K.'s birth), Mr. E.K.T. was charged by the police with assault and forcible confinement. R. was the victim. The police records indicate that independent witnesses advised them that Mr. E.K.T. and R. had a confrontation on the street where the following happened: they argued loudly, he refused to let R. out of the car, grabbed R. by the hair, pushed her head into the window several times and then punched her in the head several times (this evidence not going in for the truth of its contents, but to explain why the police acted in the manner they did). K. was in the car at the time. The police reported that R. was unco-operative with them and would not provide a statement. They observed that R. had injuries and laid the charges. Mr. E.K.T. was convicted of aggravated assault and

placed on probation for two years. At trial, R. minimized the incident. She testified that she and Mr. E.K.T. argued and that Mr. E.K.T. might have accidentally "brushed" against her. She denied the police contention that she had injuries (although I see no reason why they would make this up). R. felt that the bail condition restricting Mr. E.K.T.'s contact with her was not fair. The society was notified of this incident by the police.

[42] The police records set out that, on 30 July 2006, the police were called as a result of another domestic altercation between Mr. E.K.T. and R. R. reported that the week before, Mr. E.K.T. came to her home to demand money, picked up a shoe and hit her in the face with it. He then grabbed her by the hair and drove her face into the apartment stairs outside the building. K. was inside the home at the time. R. did not call the police or the society about this incident when it happened. She told the police that she did not want to get Mr. E.K.T. in any more trouble. R. also reported that she was assaulted twice by Mr. E.K.T. the night before and showed them minor bruises and scratches. She had brought K. to see Mr. E.K.T. and his parents. One of the assaults took place on their front lawn, when Mr. E.K.T. pushed her onto the ground, began to kick her and stuff grass in her face. K. was inside the house at the time. R. did not report these incidents to the police when they happened. She did not report them at all to the society. Mr. E.K.T. was charged for these incidents and his bail conditions were changed to prevent any direct or indirect contact with R.

[43] The police records indicate that T. was interviewed about the incident with Mr. E.K.T. that took place on either 24 or 25 July 2006 and she told them that he had been back to see R. two or three times since the incident of 11 July 2006. T. told the police that she wanted nothing to do with her daughter's personal business, would not give a formal statement and would not attend any court proceedings. She expressed doubt to them about R.'s claims.

[44] The police records indicate that on 20 August 2006, R. reported to them that Mr. E.K.T. had confronted her outside of a convenience store on 17 August 2006, where he grabbed her arm. She also reported to the police that Mr. E.K.T. accosted her on 13 August 2006. R. testified that, during this time period, Mr. E.K.T. was constantly calling her in breach of his bail conditions. However, she did not report these incidents contemporaneously to the police. She did not disclose any of these incidents to the society.

[45] The police records indicate that, on 20 August 2006, a man by the name of Maurice Petgrave was charged with assaulting R., for hitting her in the stomach. R. testified that she attended a party, there was an altercation in which she was not involved and that Mr. Petgrave did not assault her. She said that he hit her in the abdomen with his elbow accidentally and "I probably just got in the way."

[46] The most serious abuse incident took place on 7 October 2006. R. and T. told very different versions of this event. Both versions caused me considerable concern about them. R. went out that evening, leaving K. with T. T. was under the impression that R. would return home shortly; R. said that she planned to go out all night. R. testified that her old boyfriend, Mr. T.L., came to her home that evening and that he spent the night drinking beer with T. She testified that when she got home, Mr. T.L. was very drunk, she wanted him to

leave and they argued. T. testified that Mr. T.L. was a frequent and welcome visitor, came over and said that R. had called him and told him to meet her there. She said that R. called at 2 a.m. and was furious that Mr. T.L. was there. Despite this, T. did not ask him to leave. She said that R. came home at 6 a.m., was "a bit upset" and that she called the police to calm R. down. This was another example of her minimizing the evidence, as it is unlikely that a parent would call the police because a child was "a little upset." Oddly, she still did not ask Mr. T.L. to leave her home, which is what one would think a responsible parent would do. The police came and left. According to R., Mr. T.L. then lay down in her bed and refused to leave. She tried to physically remove him from the home, which escalated the situation.

[47] The police records indicate that, while waiting for Mr. T.L. to leave, R. stood with K. in her arms, Mr. T.L. approached her and pushed up against her body. He then pushed her and she gave K. to T. Mr. T.L. then grabbed R. by her neck and began to push her down the hallway to the kitchen. He then banged her head up against a door frame, and pushed her onto a flat roof outside of the kitchen. He then pushed her to the ground and pushed her head into a puddle, yelling "You don't deserve this child! It should belong to me! I'm going to have someone come kill you or I'll do it myself!" The assault continued on a prolonged basis until a neighbour called the police.

[48] Both R. and T. claimed that K. was not present during this confrontation. T. claimed that she was in a different room with K., was not aware of the assault and only heard R. and Mr. T.L. arguing. As the police evidence came from T. and R. in a contemporaneous manner, I find it is far more likely to be an accurate version of the events that evening and that K. was actually present during part of the assault. I also find it unlikely, given her proximity and the intensity and duration of this assault that T. was unaware of it. Mr. T.L. was convicted of assault and sentenced to 49 days of time served and received two years probation.

[49] The police reported this incident to the society and at the same time advised it of the other incidents that R. had failed to report to it. Ms. Gurwitz, the society worker at the time, testified that she attempted to interview R. about these events, but R. was avoiding discussing this with her, claiming that it was not an issue and that she and K. were fine. Ms. Gurwitz testified that T. became hostile when she tried to discuss the "T.L." incident with her, and started screaming and yelling at her.

[50] The society properly decided that the situation was unsafe and too chaotic for K. and apprehended him on 17 October 2006.

[51] Counsel for T. and R. argued that the society, by apprehending K., was blaming the victim. This is a simplistic argument and does not recognize the physical and emotional risks to K. posed by these incidents.

[52] These incidents cause concern in many ways, including:

(a) R. was associating with dangerous persons and exposing herself to what she should have realized were dangerous situations. She continued to have contact with Mr. E.K.T. She would provoke some of these arguments (such

as the incident with Mr. T.L.) and not take steps to de-escalate them. These people often responded with violence against her.

(b) R. was exposing K. to much of this conflict and risking that he be injured in the cross-fire.

(c) This was not a case of R.'s just having difficulties with one person. There were incidents of violence with several different people in a relatively short time span.

(d) R. minimized many of these incidents.

(e) R. did not promptly report many of these incidents to the police.

(f) R. did not report these incidents to the society.

(g) R. demonstrated no insight into how these conflicts could impact on K. At trial, her position was basically, "no harm, no foul", as she insisted that K. was never present during these incidents (the police evidence being to the contrary). She demonstrated no control over these incidents and they could have easily spiralled out of control to a point where K. was exposed to harm. This would have been the likely result if K. had remained in her care.

(h) T. showed incredibly poor judgment and an inability to protect either R. or K. She did not co-operate with the police with respect to Mr. E.K.T. She may have been drinking that evening with Mr. T.L. Accepting her story, she should have certainly insisted that Mr. T.L. leave the home when she found out that R. was so upset with his being there. I cannot understand why she would not insist that Mr. T.L. leave once R. came home at 6 a.m. and was upset, or why she did not ask him to leave after the police first came and left. She did not call the police when the subsequent assault occurred. I do not believe her when she says that K. was not present during the assault, given the information in the police records. T. also failed to protect K. or R. by reporting any of these events to the society.

(i) T. continued a historic pattern of being hostile and unco-operative with the society.

3.3(b): R. and T.

[53] R. began speaking to a counsellor at Jessie's in 2006. The counsellor's notes were filed as business records. These records indicate that R. was reporting significant conflict with her mother prior to K.'s apprehension. In particular, on 11 April 2006, the counsellor reported that R. was very upset, as her mother had been gone for three days without any contact. When she returned, they argued and her mother threatened to "kick her out." R. told the counsellor that there is often little food to eat and she has to go to her grandparents for support. She was crying and felt that her mother was trying to get rid of her. R. telephoned Jessie's several times asking them to find her separate housing from her mother.

[54] A Toronto public health nurse, Ms. Christine Morrison, provided the court with an internal assessment report dated 25 May 2006 that she prepared, based in part, on statements made to her by R. She wrote the following in the report:

(a) Client does not have a good family support system and has been kicked out of the house a few times before by her mother.

(b) Housing not safe. Client lives with her mother and her mother is a smoker, and has frequent unknown visitors in the home. Client's mother also drinks heavily.

(c) Client is 15 and present family living situation unstable and not appropriate for baby.

Ms. Morrison said that it was a continuing priority for R. to find housing separate from her mother during the time that she was involved with her (March-August of 2006). Ms. Morrison had a positive relationship with R. She testified that R. asked good questions, was co-operative, open to suggestions and eager to be a good parent. She testified that K. was thriving in the home. She said that it was R.'s age, relationship with her mother and unstable housing that caused her to record this as a high-risk case. She was not aware of the number and degree of violent incidents in which R. had been involved.

[55] T. minimized the conflict with R. at trial, denying that she had threatened to kick R. out of her home. She accused R. of making up these and many subsequent allegations against her in an effort to obtain priority housing. I find it more likely than not that R. was telling the truth when she complained about T. and her concerns of being kicked out of the home by her.

[56] The evidence established that the conflict between R. and T. was escalating and that K. was living in a home where conflict was the norm.

3.4: Concluding Comments on the Issue of Finding

[57] Neither R. nor T. could understand the society's concerns at trial and felt that the apprehension was entirely unwarranted. They argued that K. was never harmed and that they cared for him in a proper and a loving fashion. In fact, the evidence led at this trial was that, for a parent of her age, R.'s instrumental parenting skills are very good. She is able to properly feed, clothe and bathe K. She interacts very well with him. R. loves K. and would never intentionally hurt him. However, having good parenting skills does not always equate with being a competent parent. A competent parent must be able to make sound choices to keep their child safe. He or she must be able to protect a child from chaos and conflict. Children, even infants, who are continually exposed to conflict are at high risk of emotional harm and impaired development. R. and T. were not making these sound choices and K. was at risk of suffering not only physical harm because of the ongoing nature of these conflicts, but was also at risk of emotional harm due to being exposed to the constant conflict in R.'s life.

[58] R.'s counsel argued that the society had failed to make clear to R. the consequences of not complying with its conditions and, if it had done so, R. would more likely than not have complied with them. I find that expectations were clearly set out for R. She chose:

- to be secretive with the society;
- not to report the serious episodes of domestic violence;

- to continue to have contact with Mr. E.K.T.;
- not to attend programs at Jessie's after K. was born, despite promises to do so; and
- not to co-operate with the society's investigation.

She cannot do this and then turn around and say that she did not understand the consequences of her actions. They should have been apparent to her. In any event, counsel's argument goes more to the issue of whether a supervision order would have been a more appropriate approach at that time. The evidence established that K. was a child in need of protection. In my view, the chaos in R.'s life had escalated to the point where K. had to stay in care for his safety.

[59] R. was represented throughout this case, but chose not to request a temporary care and custody hearing to challenge whether there were reasonable grounds to believe that there was a risk that K. was likely to suffer harm in her care and could not be protected by a supervision order. See subsection 51(3) of the Act.

[60] R., prior to the apprehension, was not taking domestic abuse counselling to address these serious concerns. Since R. did not believe that the incidents of violence posed any risk to K., this made it likely that these types of incidents would continue and would pose a real and not a speculative risk of physical and emotional harm to him. In fact, as will be set out, this is exactly what happened after the apprehension.

[61] While I have made the finding that K. is a child in need of protection based on evidence only up to the date of the apprehension, I am also free to consider evidence that relates to the issue of "finding" up until the day of the hearing. Only facts that are strictly related to disposition are statutorily excluded at the finding phase. See *Children's Aid Society of Hamilton-Wentworth v. K.R. and C.W.* (2001), 114 A.C.W.S. (3d) 71, [2001] O.J. No. 5754, 2001 CarswellOnt 5006 (Ont. Fam. Ct.). If any other court finds that the evidence up to the date of apprehension is insufficient to make this finding, I find that the incidents of violence and conflict in which R. was involved after the apprehension (set out in the next part of this decision) overwhelmingly supports this conclusion.

4: DISPOSITION

4.1 Legal Principles

[62] Subsection 57(1) of the Act set out the types of orders available to me if I feel that a protection order is necessary to protect K. in the future. These provisions read as follows:

> **57. Order where child in need of protection.—**(1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders, in the child's best interests:
>
> 1. *Supervision order* — That the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months.
>
> 2. *Society wardship* — That the child be made a ward of the society and be

placed in its care and custody for a specified period not exceeding twelve months.

3. *Crown wardship* — That the child be made a ward of the Crown, until the wardship is terminated under section 65 or expires under subsection 71(1), and be placed in the care of the society.

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

[63] Subsection 57(2) of the Act requires that I ask the parties what efforts the society or another agency or person made to assist the child before intervention under Part III of the Act. This will be discussed in detail below. Subsection 57(3) of the Act requires that I look at less disruptive alternatives than removing the child from the care of the persons who had charge of him immediately before intervention unless I determine that these alternatives would be inadequate to protect the child.

[64] Subsection 57(4) of the Act requires me to look at community placements, including family members, before deciding to place the child in care. The society tried very hard to support a placement of K. with C. and P. It approved their home and set up a family group conference in December of 2006 to support the placement when it was in danger of breaking down. Unfortunately, C. and P. decided that they could not plan for K. and returned him to society care on 22 December 2006. C. testified that, although he was aware that one of the possible outcomes of this trial could be an order of Crown wardship with no access, he and P. would not be putting forward a plan to care for K. He said that they could only offer a supportive role to R. and T. No other family members came forward to plan for K. or testified on their behalf.

[65] Subsection 57(1) is limited by section 70 of the Act, which provides that the court shall not make an order for society wardship that results in a child's being a society ward for a period exceeding 12 months, if the child is less than six years old on the day the order is made, unless the time is extended as provided in subsection 70(4) of the Act. K. has now been in the care of the society in excess of 17 months and is almost 21 months old.

[66] I must determine what is in K.'s best interests, not R.'s, when deciding the disposition order to be made. Subsection 37(3) sets out the criteria to determine K.'s best interests. It reads as follows:

> (3) *Best interests of child.*— Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:
>
> 1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
>
> 2. The child's physical, mental and emotional level of development.
>
> 3. The child's cultural background.

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

[67] A Crown wardship order is the most profound order that a court can make. To take someone's children from them is a power that a judge must exercise only with the highest degree of caution, and only on the basis of compelling evidence, and only after a careful examination of possible alternative remedies. See *Catholic Children's Aid Society of Hamilton-Wentworth v. Jill G.-T.* (1996), 90 O.A.C. 5, 23 R.F.L. (4th) 79, [1996] O.J. No. 1394, 1996 CarswellOnt 1428 (Ont. Div. Ct.). In determining the best interests of the child, I must assess the degree to which the risk concerns that existed at the time of the apprehension still exist today. This must be examined from the child's perspective. See *Catholic Children's Aid Society of Metropolitan Toronto v. Cidalia M.*, [1994] 2 S.C.R. 165, 165 N.R. 161, 71 O.A.C. 81, 113 D.L.R. (4th) 321, 2 R.F.L. (4th) 313, 1994 CanLII 83, [1994] S.C.J. No. 37, 1994 CarswellOnt 376. It is important not to judge the parent by a middle-class yardstick, one that imposes unrealistic and unfair middle-class standards of child care upon a poor parent of extremely limited potential, provided that the standard used is not contrary to the child's best interests. See *Catholic Children's Aid Society of Hamilton v. J.I. I.M. and V.I.O.*, 2006 CanLII 19432, 150 A.C.W.S. (3d) 406, [2006] O.J. No. 2299, 2006 CarswellOnt 3510 (Ont. Fam. Ct.). It is also important not to impose an unrealistic standard of child care upon a young mother, who has not fully emotionally developed herself, provided that the standard used is not contrary to the child's best interests. See *Children's Aid Society of Toronto v. Rebecca B.-H. and Sheldon W.*, 2006 ONCJ 515, [2006] O.J. No. 5281, 2006 CarswellOnt 8484 (Ont. C.J.).

[68] 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 give the child the care that is in his best interests. There is not to be experimentation with a child's life with the result that, in giving the parents another change, the child would have one less chance. See *Children's Aid Society of Winnipeg v. Redwood* (1980), 19 R.F.L. (2d) 232, [1980] M.J. No. 245, 1980 Cars-

wellMan 44 (Man. C.A.). There has to be some demonstrated basis for a determination that the parents are able to parent the child without unreasonably endangering the child's safety. See *Children's Aid Society of Brockville Leeds and Grenville v. C. and J.* (2001), 104 A.C.W.S. (3d) 892, [2001] O.J. No. 1579, [2001] O.T.C. 287, 2001 CarswellOnt 1504 (Ont. Fam. Ct.).

4.2: The Respective Plans of Care

[69] The society's plan is to find a suitable adoptive home for K. K. has lived in the same foster home since he last came into society care on 22 December 2006. He is healthy, happy and has no exceptional needs. His foster parents are not a prospective adoptive home. There was no dispute that he is adoptable. The society's position is that this plan best meets K.'s need for stability, security and continuity and will best meet his emotional and mental needs.

[70] R.'s preference is to care for K. alone. She found a new apartment as of 1 February 2008. There was no issue that this is appropriate housing for K. R. would like to return to school, to upgrade her grade X level of education. She would arrange for subsidized day care for K. if and when she returns to school. She is currently on public assistance and expects that this would continue. Her housing is subsidized and affordable. She said that she would receive financial and emotional support (including parenting relief) from all of T., P., C. and her extended family. C. and T. confirmed this in their evidence. R. began seeing a counsellor at Jessie's on 6 November 2007 (Ashley Nicholls) and they have begun to discuss domestic abuse issues. She testified that she finds this beneficial and intends to continue with this. She intends to go to programming at Jessie's, including their drop-in centre. She also indicated a willingness to attend anger management counselling. R. testified that she is prepared to co-operate with any other plan that would keep K. from being made a Crown ward. If required to do so, she is prepared to live with K. at the Massey Centre, prepared to live with her mother or lastly, to have K. placed with T. alone.

[71] T. is also willing to take any step to prevent K. from being made a Crown ward. She submits that her plan is in K.'s best interests. In the alternative, she is also willing to co-parent K. with R. She testified that she has just moved into new accommodation that would be appropriate for K. She said that she would have the same family support as R. She presently works as a burlesque entertainer five nights a week, from 9 p.m. to 2 a.m., but says that she can arrange to change her work hours to be more available for K. She says that she can get parenting relief and babysitting help from C., P., R., her sister and two brothers. She indicated that she would comply with any supervision condition ordered by the court.

4.3: Discussion

[72] The evidence was consistent that K. and R. have a very good bond and K. enjoys his time with her. R. is able to read and respond to K.'s needs at visits. She plays with him at his level, reads to him and treats him with love and care. She is able to soothe him and redirect negative behaviour. She knows when and how to feed K. and when to give him his naps. She is generally able to put K.'s needs ahead of her own during the visits. Zoey

Schwartz, another parent at the Jewish Community Centre (with an Early Childhood Education Degree), gave a glowing account of R.'s parenting of K. during these visits, describing the joy that R. and K. have with each other and her ability to interact with him. She felt that R. could give parenting lessons to the older parents.

[73] I also considered the following positive factors about the plans of R. and T.:

(a) K. would have the opportunity to grow up with his biological family. There is no issue that R., K., P. and C. love him.

(b) K. is a mixed-race child (as is R.) and would be able to be raised in his multi-cultural heritage.

(c) The evidence indicated that K. also has a bond with T., P. and C. and enjoys his time with them. It would likely be distressing to K. to lose these relationships and his relationship with R. This distress would be exacerbated by the loss of his primary relationship with his foster family.

(d) The society had no issues with T.'s caring for K. for unsupervised day visits. Its concerns relate to her parenting K. on an extended basis.

(e) P. and C. are positive supports for R. and T. C. testified how the entire family loves K. C. and P. own a cottage. C. testified that he would spend summers with K. at the cottage, teaching him fishing and playing baseball.

(f) R. and T. have both obtained suitable housing for K.

(g) R. began counselling with a domestic violence component in November of 2007.

(h) R. has been able to work well with some professionals. These include the first public health nurse (Ms. Morrison), her counsellor at Jessie's (Ms. Alexiou) and Ashley Nicholls. She dealt with her pregnancy responsibly and attended programs at Jessie's before K. was born. She works best with professionals who encourage her and who are available to her as a resource when she feels the need to use them. However, working co-operatively and effectively with professionals has been a significant problem for R., especially those professionals responsible for monitoring her.

(i) R. wants to be a good parent for K. and does not want him to experience a childhood like her's. She has good intentions for K.

(j) R. is a strong and forceful advocate for K. and herself.

[74] Notwithstanding these positive factors, I have concluded, in weighing the factors set out in subsection 37(3) of the Act, that K. should be made a Crown ward and that there is no less disruptive alternative consistent with his best interests.

[75] The evidence established that the risk concerns that existed when K. was apprehended have not been adequately addressed by R. and T. They still exist at an unacceptable level today. At this time, R.'s positive parenting skills do not translate into being a parent who can protect her child from harm. R. has continued to lead a turbulent lifestyle, been involved in constant conflict with many people, exercised poor judgment,

shown an inability to identify risk and continues to be unable to keep herself safe, let alone a young child. She has been repeatedly in a state of crisis. Her unstable relationship with her mother continues. Neither R. nor T. show any insight into these risk factors and continue to externalize all blame. Neither R. nor T. appears to understand how these factors impact on their parenting. R. has been slow to take steps to address any of these concerns and may not have the ability to meaningfully do so. At this time, I find that neither R. nor T. is capable of meeting K.'s need for a safe and stable home and that neither is able to meet K.'s need to develop in an environment free from conflict. I further find that the risks described are severe enough that they cannot be adequately addressed through a supervision order.

[76] I find that T. is unlikely ever to be able to provide adequate parenting for a child. It is possible that one day R. can do this. The evidence indicated that her parenting skills are far better than T.'s. However, the evidence also established that R. has significant emotional and psychological difficulties that impact on her ability to parent K. safely and that she will first require significant treatment to address these difficulties. Unfortunately, this will take far too long to happen for K. The maximum statutory time period to be able to keep K. in care is expiring and it is incumbent upon the court to plan for his long-term future now. It is in his best interests to be made a Crown ward, so that he can move on with his life. The evidence supporting these conclusions will follow.

4.3(a): Dr. Waiser's Assessment

[77] Dr. Waiser was qualified as an expert in psychology and more specifically in the areas of parenting capacity, child development and the administration and interpretation of psychometric testing. Dr. Waiser is an experienced psychologist who said that he has conducted over 150 parenting capacity assessments. He was jointly retained by the parties. His methodology included obtaining background history, conducting interviews, psychometric testing and parent-and-child observations. His report was delayed as R. missed scheduled interviews with him.

[78] I wish to make it clear that my decision in this case would have been exactly the same if I had not received any evidence from Dr. Waiser. Courts should always treat assessments with caution. The assessor does not have the benefit of the full evidentiary record that a trial judge has. Their reports, by their very nature, are predictive. They are just one piece of evidence and what is important for the court is to evaluate how the findings do or do not correspond with the evidence presented at trial.

[79] In this case, I was particularly cautious with this evidence. I was concerned that Dr. Waiser had called Mr. Theoloduz after receiving the background documents sent to him and asked him, according to Mr. Theoloduz's case note, "why is everyone being so accommodating to this young lady?" This statement demonstrated some pre-judgment before Dr. Waiser even met R. and was unfair.

[80] With this caution in mind, the evidence, as well as my observations of R., supported most of Dr. Waiser's findings.

[81] Dr. Waiser wrote that the test results indicated that R. functions in the borderline range of ability. Her poorest performance in non-verbal skills was on a scale that measures social sensitivity and responsiveness. These results suggest, Dr. Waiser wrote, that R. has little appreciation of social rules and expectations. They indicate that R. feels unsettled in her social relationships and that she believes involvements between men and women are fraught with conflict and difficulties. Dr. Waiser further wrote that the tests indicate that R. has difficulty analyzing and understanding situations, having little appreciation for subtle dynamics that may be present. He said that such personality types tend not to learn from their past and are prone to repeating their behaviour rather than learning from their experiences. She is resistant to change. He wrote:

> [R.] does have some ambitions for herself, but she lacks the internal resources and perseverance to achieve her goals. One would expect that she will strive towards many dreams, but when she encounters a troubling dynamic, she will readily give up and ultimately achieve very little. Further such persons tend to externalize responsibility and blame for their misfortune onto other or their situation. They see themselves as victims of circumstances rather than acknowledging and accepting their own responsibility within such situations and for the results.

[82] Dr. Waiser wrote that the test results indicate that R. has difficulty in dealing with people. She tends to respond to situations from her perspective with little regard for the rights and wishes of others. Of concern, he said, was that R. has little patience for defiance and is prone to retaliate if she does not realize the goals that she has set.

[83] Dr. Waiser did not feel that the interaction between K. and R. was positive and was critical of her parenting skills. This evidence was not supported by the considerable evidence that I heard to the contrary and I attached little weight to this aspect of his assessment.

[84] R., Dr. Waiser testified, presented throughout his meetings as angry about everything. He said, "angry was the nature of her character". I also observed R., when giving evidence, to often be angry and to give clipped responses with a hostile tone when challenged on evidence. She would quickly become exasperated.

[85] Dr. Waiser concluded that many of R.'s actions have been counter-productive to having K. returned to her. His wrote in his conclusion:

> . . . she lacks the maturity, the insight, the caring and the ability to provide [K.] with a healthy environment in which to grow. One is concerned that, if he were returned to her care, we would be perpetuating the dysfunctional family system in which [R.] herself was raised. It is believed that, despite her wishes, she is unable to provide him with a safe and nurturant home. It is expected that, if he were returned to her care, quite readily JF&CS or some similar service would have to become re-involved and again rescue [K.] for his protection and this would be a recurring dynamic for him.

[86] Dr. Waiser also concluded that R. might put K. at risk due to her naïveté, immaturity, lack of insight, planning and ability to see a risk.

4.3(b): Evidence of Continuing Conflict in R.'s Life after K.'s Apprehension

[87] R. testified that she never knowingly had contact with Mr. E.K.T. in contravention of his bail conditions. This was contradicted by the evidence. Ms. Gurwitz testified that, in November of 2006, R. asked her whether Mr. E.K.T. could come to Christmas dinner at P. and C.'s home. The business records from Jessie's indicate that, on 14 November 2006, R. called her counsellor inquiring about how to get married, as Mr. E.K.T. had proposed to her and they planned to marry. The records from Humewood House dated 12 April 2007 indicate that R. told her counsellor that Mr. E.K.T. is not supposed to see her or K. and that she sees him sometimes, but K. is not around. R. admitted continuing to see Mr. E.K.T. to Dr. Waiser.

[88] On 5 February 2007, the police were dispatched to R.'s home over a domestic incident. The police reports indicate that R. told them that Mr. E.K.T. had been calling her on a daily basis since his release from jail in September of 2006 and was sending text messages to her cell phone. She reported that Mr. E.K.T. had approached her on two separate occasions. Mr. E.K.T. was charged with breach of recognizance. What is of concern, is that R. did not report these events to the police until 5 February 2007, never reported them to the society and, according to the police records, stated that she did not think that Mr. E.K.T. posed any danger to herself or her son.

[89] After an all-parties meeting held in March of 2007, it was agreed that R. would participate in the society's Therapeutic Access Program. R. did not oppose the idea of the program, but strongly objected to Ms. Gurwitz's being the supervisor of these visits. R. was very angry at Ms. Gurwitz, who she felt had wrongly apprehended K., and did not feel that she could work with her. Ms. Gurwitz testified that she was the only worker at her agency with training in this program and that she felt that she could work through these issues with R. She acknowledged that R. was left with little choice by the society; if she wanted to have it support K.'s return, she had to participate in the program, and she could only participate in the program with Ms. Gurwitz. In my view, it was not surprising that this arrangement fell apart. The society should have tried harder to find someone from another agency to be the supervisor from the outset.

[90] R.'s parenting of K. in this program was generally observed by Ms. Gurwitz to be positive, who said at one point that she has "great parenting skills". However, she testified that R. was volatile when criticized and had an explosive temper. She said that R. would at times react to her suggestions with hostility. She said that, when upset, R. would scream and yell at her, sometimes with K. in her arms, and not appreciate why this was a problem. She testified that "when R. escalated, her parenting skills would leave her".

[91] Two particular incidents caused the society to terminate R.'s involvement in this program. One was on 11 April 2007, when R. demanded to see Ms. Gurwitz's access notes and tried to grab them. (Ms. Gurwitz acknowledged that she could have handled this situation better, as her refusal to let go of the notes escalated the confrontation). Another was on 16 April 2007, when Ms. Gurwitz testified that R. accused her of injuring K., as R. had observed a scratch on K. after she had returned from the washroom. Ms. Gurwitz said that

R.'s anger escalated and that R. refused to hand K. over to her. R. did not want Ms. Gurwitz to drive K. back to the foster home. Ms. Gurwitz testified that R. said to her that she knew her license plate and to "watch it". Ms. Gurwitz was clearly shaken up by this incident and became fearful of R. She testified, "at times she can be quite scary". She reported R.'s threat to the police. R. stood by her actions at trial, saying that Ms. Gurwitz had been in charge of K. when he was injured, had ignored her concerns and that she had merely said to Ms. Gurwitz: "if anything happens to him when you drive him home, I know your license plate and will call the police". I preferred Ms. Gurwitz's evidence and find that R. did act in a threatening manner to her on that day.

[92] The society asked the Children's Aid Society of Toronto whether it would take over the Therapeutic Access Visits, but it was unwilling to do so because of R.'s behaviour, and in particular because of the incident on 16 April 2007.

[93] R. continued to have a turbulent relationship with T. after K.'s apprehension and focused much of her energy on finding separate housing from her. On 19 March 2007, R. reported to both Mr. Theoloduz and her counsellor at Jessie's that T. had punched her in the face during an argument, striking her eye. Later that day, she called Mr. Theoloduz, saying that her mother had kicked her out of the house and she had nowhere to go. R. wore sunglasses to a meeting with the society on 23 March 2007. Mr. Theoloduz observed a scratch under R.'s eye and a discoloration of the eye. He testified that T. denied punching R. in the face and complained that R. was doing nothing to get K. back, since she was not in school, working or doing anything to obtain housing. At trial, T. denied ever hitting R. and claimed R. was making this up to get priority housing. R., I felt, also tried to minimize the incident at trial and testified that her mother and her were arguing, her mother got really close to her and something cut her eye. She said: "I might have called it a punch, I'm not sure what it was". She was trying to convey that her injury was accidental, but that is certainly not how she described the incident to the professionals at the time that this incident happened. This was characteristic of R.'s testimony in this trial — documented injuries often seemed to have happened by accident.

[94] On 23 March 2007, Gabrielle Hrynkiw, a social worker at Jessie's, wrote a letter in support of R.'s obtaining housing. In the letter, she wrote that: "R. has tolerated an unhealthy, emotionally abusive and now physically abusive home environment". She wrote that R. said her mother had pushed her during her pregnancy and was often verbally abusive to her, saying "you are not my daughter, I hate you." R. told her that these incidents happened often and were sometimes related to her mother's substance abuse. She wrote that R. complained that her mother would leave her for days at a time without providing basic needs for her.

[95] The business records of Jessie's indicate that, on 29 March 2007, T. telephoned R.'s counsellor explaining that she was frustrated with R.'s partying. T. denied complaining about this. I find the business records more reliable evidence of this discussion.

[96] On 5 April 2007, R. was involved in the incident where the taxi driver assaulted her. She testified that the driver wanted to take Ms. A.L. and herself back to his apartment

and they refused. She said that they got into a verbal confrontation, that he followed her out of the car and that he slapped her across the face. This incident was troubling on many levels. R. and her friend were placing themselves in a situation of danger by leading this stranger on for free rides. Further, R. did not appear to recognize the danger signs of the driver's frustration and admittedly provoked him when he made a sexual advance, repeatedly telling him that he was ugly and that no one would have sex with him. This was reckless behaviour on her part. The evidence throughout this trial showed a very clear pattern of R.'s getting into angry confrontations with people who react to her anger with violence. R. also showed poor judgment putting herself into this situation when she was supposed to be demonstrating some level of maturity to have K. returned to her. Lastly, I am very troubled by the fact that she did not give candid evidence under oath about her prior contact with the driver.

[97] The business records from Humewood House indicate that R. told her counsellor on 17 April 2007 that she is very upset about her situation with her mother who constantly calls her "dumb" and blames her for losing her son. On 2 May 2007, T. spoke to the counsellor and said that R. must leave her apartment as her housing is in jeopardy because of R.'s partying and the police having been called a number of times. R. told the counsellor that: "the household is nothing but drama and it is her mother's friends that have been the source of issues, not just her friends". Their records further indicate that, on 7 May 2007, R. reported to the counsellor, that "her and her mother do not get along all the time and that they had physical fights in the past where the police had to come over and that her mother has friends who come over and stay up all night and she is unable to sleep."

[98] Mr. Theoloduz testified that, on 8 May 2007, he observed that R. had a large bruise on her neck, which she did not explain.

[99] The Jessie's records indicate that, on 17 May 2007, T. told the counsellor that the police were called the previous night as R. was causing problems when she returned from a late night out. This was not the only time the police were called to respond to conflict between R. and T.

[100] The Humewood House case notes dated 8 June 2007 indicate R. told her school counsellor that day that: "she had a lot of things going on including the fact that she had no place to live because her mother kicked her out and she was sleeping at friends' houses in Malvern".

[101] R. testified that she moved out of T.'s house into her own apartment in June of 2007. R. and T. both testified that their relationship is better without direct daily contact. However, it was interesting to note in the business records of Humewood House that, on 23 January 2008, R. came to them for assistance as she had nowhere to live (she moved into her new apartment on 1 February 2008). R. was directed to a shelter, but told the worker that she would stay with a friend. I had to question how improved R.'s relationship with her mother was if she was seeking emergency housing assistance instead of just living with her mother until her apartment was ready.

[102] In the summer of 2007, R. became involved with a man by the name of Mr. R.D. This was another violent relationship. According to the police reports, R. called the police on 20 August 2007 and reported that Mr. R.D. had hit her in the back that morning. She said that she had waited until the evening to call the police because she did not want to get him into trouble; she just wanted to get a restraining order. She refused to give a statement to the police or show them her injuries. They noted:

> . . . she was being unco-operative with police and talking on her cell phone. While police were investigating the incident, [R.] was joking and laughing with her friend who was on the scene.

The police did not lay any charges against Mr. R.D. because of R.'s lack of co-operation.

[103] Shortly after this incident, R. called Mr. Theoloduz and told him that "some guy was bothering her". She provided no details to him and told him that there was no risk to K., as he did not know where she lived. Mr. Theoloduz advised R. to call the police.

[104] R. did not call the police until 25 September 2007 and, according to their records, she reported a severe series of assaults upon her by Mr. R.D. that included the following separate incidents since 20 August 2007:

(a) He accosted her on the street, grabbed her wrist and refused to let her go, causing a bruise to the wrist. R. claimed at trial that the police were wrong and the bruise was just a birth mark.

(b) Mr. R.D. picked up a lamp without a shade on it and pressed it against R.'s calf, causing a burn. R. minimized this incident at trial saying that it might have been accidental as Mr. R.D. was jumping on her bed and the lamp might have fallen on her leg. She ended up saying that she was not sure about what had happened. This incident happened in her home.

(c) Mr. R.D. punched a hole in her living room wall. R. testified that he actually took a knife and kept stabbing it in anger.

(d) Mr. R.D. became enraged and kicked her door, breaking the lock and the door frame.

(e) On 21 September 2007, Mr. R.D. punched R. in the nose causing her to momentarily black out. R. testified that she believed that her nose was fractured, but did not seek medical treatment.

(f) Mr. R.D. then called her every day, saying that, if R. left him, he would kill her.

[105] R. had continued her pattern of not reporting these incidents to the police when they happened. Aside from the one vague telephone call to Mr. Theoloduz, she did not advise the society about these incidents and, according to him, lied to him about how her nose was broken. I also note that R. told Dr. Waiser that she was not involved with any man, when it appears that she was very involved with Mr. R.D. at that time. Some of the incidents with Mr. R.D. happened in her home (contradicting that Mr. R.D. did not know where she lived). Fortunately, they did not occur when K. was there for an access visit, but this was just by chance. R. clearly had little control over Mr. R.D.'s conduct. It is also troubling that R. attended the sentencing hearing for Mr. R.D. in January of 2008 (where he was sentenced

to 105 days of pre-trial custody served) and asked that she be permitted to have revocable contact with him. R.'s explanation, which made little sense, was that she wanted Mr. R.D. to be able to get his belongings out of her apartment.

[106] Considerable time was spent at trial hearing evidence about the relationship between R. and her landlord, Mr. Grewal. Mr. Grewal testified that R. was an irresponsible tenant, who failed to pay rent after 11 July 2007, kept the apartment in disarray and had several animals, whose faeces would sometimes be strewn about and who at times she would neglect. R. claimed that her rent was always paid. She and Ms. A.L. both testified that Mr. Grewal continually made sexual advances towards them, called R. in the middle of the night and would enter R.'s apartment, both when R. was there and not there. R. testified that Mr. Grewal failed to provide her with proper locks on her door or to deal with maintenance issues. R. said that Mr. Grewal locked her out of her apartment during this trial and also called the Humane Society to pick up her animals, falsely claiming that they had been abandoned. R. said that she did not feel safe in this apartment and was looking to move as soon as possible.

[107] It was difficult to determine what actually happened between R. and Mr. Grewal since I found neither of them, or Ms. A.L., to be credible witnesses. Mr. Grewal was evasive when examined. He had no rent records. He admitted to threatening to throw R.'s things outside if she did not pay rent, which would be illegal. R. showed two short video clips that she recorded on her cell phone. They were of poor quality, but they showed Mr. Grewal approaching R. in a sexually suggestive way with R. saying "No, no."

[108] The evidence of Ms. A.L. and R. was inconsistent. R. said that the video clips were made within 10 minutes of each other, either late in 2007 or early in 2008. Ms. A.L. testified that one was made in the early summer of 2007 and the other late in 2007. On re-examination, she said that she was guessing at this. Neither reported these incidents to the police. R. never showed the video clips to the society. R. testified that she was not regularly staying at this apartment because of the landlord's conduct (and perhaps this was a reason); however, a review of Ashley Nicholls' notes indicate that, in January of 2008, R. told her that she was not staying at this apartment because she was afraid Mr. R.D. would come there. R. did not give this as a reason in her evidence.

[109] R.'s relationship with her landlord was a continuation of her predilection for conflict. The landlord appeared to be far from innocent in this conflict and acted improperly. R. claimed that non-payment of rent was never an issue between her and her landlord. The evidence did not support that claim. The business records from Toronto Social Services documented that R. told them in September of 2007 that her landlord was "hounding her for the rent" and that, when she paid him the August rent, she gave him notice that she would be terminating the lease. The landlord gave R. a notice of termination in November of 2007 and produced a note signed by R. stating that she hoped to leave by the beginning of December of 2007. Although R. has new accommodation, she would have to establish that she is a responsible tenant over a period of time before I could conclude that she has stable housing. As R. has been in her new apartment for less than two months and had her first and last month's rent paid directly to the landlord, I cannot reach that conclusion at this time.

[110] Lastly, R. testified that, on 5 March 2008, she had to attend at criminal court, because she had been charged with theft because of a complaint made by a friend of Mr. R.D.

[111] The sheer volume of incidents of conflict in such a short time span is staggering. This evidence indicates that R. continues to associate with dangerous men, is unable to identify dangerous situations and exercises poor judgment. She continues to lie, minimize and be secretive about these incidents. She continues to become embroiled in conflict and demonstrates extreme immaturity and judgment. One is left to wonder how many other incidents have not been revealed. R. is still not able to keep herself safe and, until she can do that, any child in her care is also at risk of physical or emotional harm.

[112] R.'s relationship with her mother continued to be volatile. They have taken no steps since K. was apprehended to therapeutically address what is clearly a historically troubled relationship. The evidence indicates that it is more probable than not that their relationship would quickly break down and be conflictual again if they had continued contact with each other. It is more probable than not that they would be unable either to co-parent K. or to play a large role in the other's plan for the child, without exposing K. to an unacceptable level of conflict.

4.3(c): Services Provided to R.

[113] Subsection 57(2) of the Act requires me to consider the services provided to R. both before and after the apprehension. Counsel for R. and T. argued that the society failed in its obligation to provide the necessary supports to maintain K. with R. They argued that the society would provide R. with information, not services. Although the society, in hindsight, might have handled some situations more effectively, I felt that the evidence did not support this argument and in fact, I find that the society worked very hard to provide services for R. and keep K. with his biological family. The society did the following before and after the apprehension:

(a) In June of 2006, the society provided a child protection worker for R. who liaised with her doctor, her public health nurse and Jessie's. The public health nurse referred R. to the Leap Program (an employment program) through Ontario Works. Jessie's provided pre-natal courses and counselling for R.

(b) On 25 July 2006, the society structured a voluntary services agreement designed to support R. and set up clear expectations for her.

(c) The society organized and set up a family group conference on 13 September 2006 to work on a safety plan for R. and K. At this time, there was concern about:

- the domestic violence incidents with Mr. E.K.T.,
- R.'s not attending post-natal programs at Jessie's,
- R.'s not wanting to work with a new public health nurse,
- conflict between R. and T. and
- difficulty in communicating with R.

The society agreed to arrange a meeting with Jessie's to discuss appropriate

programming for R. and K. R. was expected to participate in this programming, continue to work with the public health nurse, maintain contact with her society worker and locate a paediatrician for K.

(d) Ms. Gurwitz attended with R. at Jessie's on 25 September 2006 and R. agreed to attend weekly programs there (she never did).

(e) The society quickly conducted a home assessment of P. and C. after the apprehension and approved their home for K. They supported this family placement.

(f) The society arranged a second family group conference on 6 December 2006 to discuss support for P. and C. and to discuss R.'s going to the Massey Centre (a maternity home for teenage mothers).

(g) The society set up a meeting with R. at the Massey Centre and attended with her.

(h) The society arranged for R. to participate in the Therapeutic Access Program.

(i) The society sent a letter in support of R.'s obtaining independent housing.

(j) The society gave R. top-up funding for her housing.

(k) The society referred R. to spousal abuse counselling and encouraged her to follow through with this.

(l) The society held two all-party (and counsel) meetings to work on case planning. At these meetings, it set out clear expectations for R. At the first meeting held in March of 2007, R. was given the following expectations:

1. To go to school or work.
2. To participate in regular programming.
3. To stabilize her housing.
4. To participate in the Therapeutic Access Program.

The second meeting was held in May of 2007, after the Therapeutic Access Program broke down and R. was given the following expectations:

1. To continue in her school program.
2. To participate in domestic violence counselling.
3. To obtain housing.
4. To participate in the psychological assessment.

[114] Counsel for R. also argued that, if K. was in need of protection, the society had an obligation also to apprehend R. so that the two could be placed together. He argued that, if the theory of the society's case was that R. could not protect K. because she could not protect herself, then she was in need of protection too. I agree with the society that the considerations to apprehend are far different for a child almost 16 years old than for an infant. The evidence clearly indicated that R. was extremely averse to being in care and not following the rules of her last placement. R. was a child who chose to do what she wanted to do. R. had counsel and she did not ask to come into care. K. was a vulnerable child without the ability to make these choices.

[115] R.'s counsel also argued that the society unreasonably expected her to passively

comply with its requests and held it against her when she legitimately questioned its opinions. I agree with counsel that any society needs to listen to its clients and include them in planning, rather than just dictate to them. It needs to be especially flexible and understanding with teenage parents, who have not yet fully developed themselves. However, listening to the evidence, I felt that overall that the society dealt very fairly and appropriately with R., who was a very challenging client. I find that its expectations of R. were reasonable and clearly explained.

4.3(d): R. and Service Providers

[116] The society's position is that R. has not taken the necessary steps to address her issues since K. was apprehended. R.'s position is that she has made sufficient efforts to justify returning K. to her care, subject to terms of supervision. The evidence supports the society's position and is set out in the following paragraphs.

[117] Although she had a positive relationship with her first public health nurse, R.'s relationships with the next two public health nurses were not good. One described R. as defensive and unco-operative and quickly transferred R.'s file. The next nurse closed R.'s file on 16 March 2007 because R. had not contacted her since 4 December 2006. R. stated that she did not feel that this nurse listened to or responded to her concerns.

[118] Ms. T. Benain, a school counsellor at Humewood House, testified that R. enrolled in their school program in the spring of 2007, but rarely attended. She said that R. was evasive when she tried to contact her about this and R. missed several scheduled appointments. Ms. Benain closed her file because of lack of contact with R. on 11 October 2007. R. did not provide a good explanation why she did not follow up with her schooling, claiming that she was too focused on obtaining housing and her access visits. The society had made the expectation of going to school very clear to her. R. did not contact Humewood House again about schooling until the end of October of 2007. She is on a wait list and there is no indication of when she might be able to get into their school.

[119] R. did not attend at Jessie's for programs after K. was apprehended, despite several promises to do so. She did have contact with a counsellor there (Ms. Alexiou), but most of this contact was by phone and related to her attempts to secure housing. Jessie's also facilitated the access visits for a few months after the breakdown of the Therapeutic Access Program. Ms. Alexiou did not provide R. with domestic abuse counselling. She testified that she felt R. should receive a referral for more intensive counselling.

[120] The society made it very clear to R. that she needed to obtain domestic abuse counselling. I heard evidence from Ashley Nicholls, the domestic violence counsellor at Humewood House. She said that R. contacted her about domestic abuse counselling in May of 2007, but had no further contact with her until October of 2007. She did not meet with R. until 6 November 2007. Ms. Nicholls acknowledged that most of their contacts have been about housing, although some aspects of abuse were discussed in two interviews (the total time of in-person contact from 6 November 2007 to trial was only two and one-half hours). Ms. Nicholls' records show repeatedly missed appointments by R., a recurrent theme with

service providers throughout this case. R. claimed at trial to be seeing Ms. Nicholls weekly but, on cross-examination on 11 March 2008, could not recall seeing her after 4 February 2008. Ms. Nicholls had very little knowledge of R.'s domestic abuse history at trial and it was clear to me that she had done virtually no work with R. on this issue.

[121] R. was encouraged by the society to seek a placement at the Massey Centre. I heard evidence from their intake supervisor, Ms. Lori Younger, who I found to be an informative and very reliable witness. Ms. Younger testified that there are three stages that the teenage mothers usually work through at the Massey Centre. The first is the pre-natal stage. This is highly structured and is fully staffed. The mothers usually participate in this stage during pregnancy and until the babies are 2 to 4 months old. If the mother does well, she will progress to the second stage, which is the supervised apartment program. This is less structured than the first stage. There is one full-time staff on-site, a curfew, an inside alarm and a doctor and nurse who come in weekly. The mothers usually spend about six months in this stage. If they do well, they progress to stage three, which is the townhouse stage. She said that this is not supervised. There is a curfew, but it is not enforced. She said there is no security, but the staff may check in up to three times each day. After six months, if the mothers do well, they move on to independent living. The centre provides schooling, on-site day care and life-skill courses.

[122] R. was not eligible to enter the Massey Centre until January of 2007, because she needed to be 16 years old to obtain welfare assistance. Ms. Younger explained that, even then, it might have taken two months to get the welfare in place, since welfare would investigate to ensure that the child would actually be placed with the mother.

[123] R. was reluctant to attend at Massey Centre when this subject was first broached with her. She explained that she viewed it as being similar to the group homes in which she had grown up and did not want K. to have that experience. She preferred to live with T. Her counsel argued that the society was not sensitive to R.'s experiences and concerns and did not make adequate efforts to show R. that this was a positive option. However, the society was recommending the program and R., T. and Ms. Gurwitz met with Ms. Younger on 21 December 2006 (just prior to R. turning age 16 and becoming eligible for welfare assistance) in order that R. could learn more about the program. Ms. Younger strongly suggested that R. go on the waiting list for the apartment program. To her credit, T. also suggested this. At the time, Ms. Younger said that this could take up to six months. She testified that R. would only consider the townhouse program, which had little, if any, waiting list. She said that the centre would not accept her on that basis; they had never had a mother start in Stage 3 and would not do so when there were domestic violence issues. Ms. Younger described the apartment program as supervised and the townhouse program as supportive. She testified that R. rejected the apartment program. R. testified that she told Ms. Younger and the society that she was willing at all times to enter the apartment program. I find the evidence of Ms. Younger more credible.

[124] Ms. Younger testified that her experience was that mothers often managed very well with their children in stage 1, but fell apart in stage 2 of the program because they have no life skills. This is very relevant to R. She manages K. very well in a structured setting,

where the potential for conflict is significantly reduced. The risk to K. will arise when she is parenting him outside of this structure. I fully agree with Ms. Younger that stage 3 of the program would have been inappropriate for R. and K. The Massey Centre is no longer a viable option for R. and K. The townhouse program is not appropriate. The wait list to otherwise get into the program, Ms. Younger testified, could be up to six months; far too long for K. Lastly, I find it unlikely, based on the evidence I heard and my observations of R. that she would follow the rules of the program and sustain her placement in it.

[125] Ms. Younger encouraged R. to participate in their school program as well as other programs offered by the centre, including their life-skills course. She said that R. set up four appointments with them and did not attend any of them. One time when Ms. Younger had called to find out where she was, R. had just woken up. Ms. Younger wrote the society on 13 March 2007 that R. had not followed up with their program.

[126] Ms. Younger testified that her next contact with R. was in October of 2007 when R. made an impromptu visit to her. R. wanted, once again, to go directly into the townhouse program. Ms. Younger said that she told R. that she needed to speak to the society about this and reminded her of the cancelled appointments. She said at that point, R. became angry and slammed her door. Ms. Younger said that R. never participated in any of the other programs offered by the centre.

[127] Lastly, the records from Toronto Social Services indicate that, in the fall of 2007, R. was at risk of having her benefits reduced because of missed appointments and a lack of co-operation with them.

[128] R. testified that she was "too busy" when explaining why she was not going to services or school, despite her promises. Society counsel, in submissions, asked a legitimate question: "What was she so busy with?" R. had her visits twice each week and was looking for housing, but did not explain how else she was spending her days. R. only spent 12 days in school in 2007. She did not appear to be working much, since the social service records show that she only reported minimal employment income between June and December of 2007. She did not start seeing Ms. Nicholls until November of 2007 and did not attend any post-natal programs at Jessie's. She agreed to do volunteer work for Jessie's (as a condition of receiving social assistance), but never did.

[129] I draw the following conclusions from this evidence:

(a) R. has not taken the necessary steps to address her domestic violence issues.

(b) R. has not taken the necessary steps to address her anger, impulse control or lifestyle issues.

(c) R. has not taken the necessary steps to learn appropriate life-skills.

(d) Until the above issues can be addressed in a meaningful way, the incidents of domestic violence and conflict are likely to continue for R. I heard evidence and observed that R. continues to minimize these incidents and lacks insight into the risk of both physical and emotional harm that they pose to K. This puts K. at an unacceptable level of both physical and emotional risk if placed

in R.'s care.

(e) Because of her mistrust, secretiveness and hostility to the society, it is highly unlikely that R. would co-operate for very long with the terms of a supervision order. In any event, I have found the risks to K. to be too severe to justify making such an order.

(f) R. has not taken the necessary steps to upgrade her schooling.

(g) R. is not living in a housing arrangement that will provide sufficient structure for her, or sufficient protection for K.

(h) R. can make effective use of a resource when she identifies a specific need, such as obtaining housing, or learning about infant care.

4.3(e): R.'s Need for More Intensive Treatment

[130] I was struck, listening to the evidence, at how self-damaging many of R.'s actions were, especially in light of the fact that she was advocating for the return of her child. Her actions went well beyond the immature or impulsive actions one might expect from a teenager. Examples of her counter-productive behaviour since the apprehension are:

(a) Continuing her contact with Mr. E.K.T. in the face of bail conditions preventing this contact and when she ought to have known that continued contact with him was dangerous and would prejudice her chance to have K. returned to her care.

(b) Constantly coming late for access visits.

(c) Missing scheduled meetings with the assessor, Dr. Waiser.

(d) The nature of her involvement with the taxi driver set out above.

(e) Her behaviour towards Ms. Gurwitz, who had a major influence on the society's position.

(f) Entering into and continuing a violent relationship with Mr. R.D. and failing to take adequate steps to protect herself.

(g) Rejecting the opportunity to go on the wait list for the apartment program at the Massey Centre and treating Ms. Younger disrespectfully.

(h) Not following through with the school program at Humewood House, the Jessie's programs and her lengthy delay in setting up domestic abuse counselling, when these were clearly identified by the society as steps that she needed to take.

[131] Dr. Waiser wrote that the testing revealed that one of R.'s highest scores was on a measure of Treatment Rejection, the implication being that she is not responsive to the input of others and is reluctant to change. He testified that, since R. sees no fundamental reason to change, services will only help her in the short-term. He said that R. has extensive emotional difficulties and felt that she was on the way to developing a personality disorder (he said that this cannot be diagnosed under age 18) that interferes with her emotional and social functioning. He felt that, to change, R. needs to make use of long-term psychotherapy. He testified that R. is highly unlikely to make effective use of such psychotherapy because she does not acknowledge the need for it and the patient must be committed to this process and feel there is a need to change for it to be successful. He said that all R. has right now is

situational counselling, which is not sufficient to address her fundamental issues. While I view it as a positive development that R. now sees Ms. Nicholls, she is not a therapist and does not have the training or skills to address R.'s significant emotional needs.

4.3(f): Assessment of T.'s Plan of Care

[132] The society did not conduct a fresh, formal investigation of T.'s plan of care once it received it in late November of 2007. The society argued that it was not prepared to consider T. as a caregiver for K. because of her past parenting, R.'s reports of her past and current parenting, and T.'s continued denials of any past or present problems with her parenting. T.'s counsel argued that the society's failure to conduct a fresh, formal investigation was fatal to its case. I disagree. Although I think that the society should have at least met with T. to review her plan, it had strong reasons not to pursue it. In any event, it is ultimately the court's mandate to assess a family or community plan under subsection 57(4) of the Act, and to give it preference to a Crown wardship order, if the plan is in the child's best interests. The evidence that I heard and my observations of T. convinced me that it would not be in K.'s best interests to place him in her care.

[133] Counsel for T. and R. felt that I should go back no further than 12 January 2006 in assessing the relationship between their clients, T.'s relationship with the society and her ability as a parent. This is because an agreed statement of facts was filed in R.'s child protection case that included the following positive statements:

> (a) [T.] has made significant gains since 2003. She has engaged in therapy and has supported the agency much more than previously. [T.] has been working on setting boundaries with [R.] as well as establishing consequences. She has been an effective parent and has been engaged in a co-operative relationship with the child in care worker for over 12 months now.
>
> (b) [R.] has been on an extended visit with her mother since the end of September 2005. According to [R.] and [T.], this has been successful. [R.] and [T.] appear to have a very strong bond and are committed to working through their relationship difficulties when they arise.
>
> (c) [R.] has also made significant gains since 2003. [R.] is able to accept her mother's direction and accepts her authority. It would appear that [R.] has a new found respect for her mother and this has been established over several months of therapy.
>
> (d) [R.] and [T.] continue to express a strong desire to reunite while continuing to work on their relationship with a community therapist. This agency feels that both are ready for this as [T.] and [R.] have made gains in working through their differences. The agency feels that the plan to terminate is in [R.'s] best interests and is the least intrusive.

[134] Unfortunately, the totality of the evidence established that the gains made by T. and R. in this time frame were short-lived and it is important to have a knowledge of the history between T., R. and the society to be able to assess what is likely to happen in the future. Further, subsequent to the signing of this statement of agreed facts, R. revealed many incidents of abuse and neglect by T. to professionals that I found to be more credible than

T.'s denials. It is highly unlikely that the society would have agreed to these facts if it had knowledge of these incidents.

[135] I have already set out many of my concerns about T. that support why I have made this decision. These concerns were set out in the following paragraphs:

(a) Paragraphs [33]-[36] — T.'s lack of credibility, failure to take responsibility and externalization of responsibility.

(b) Paragraphs [42], [45]-[48] and [51] — T.'s poor judgment and inability to protect R. and K. in the incidents with Mr. E.K.T. (by co-operating with the police) and with Mr. T.L.

(c) Paragraphs [52]-[56] — T.'s deficient parenting, conflict with R. and lack of insight into her own deficiencies.

(d) Paragraphs [92]-[94], [96]-[100] and [111] — T.'s continued conflict with R., poor parenting, lack of anger control, physical and emotional abuse towards R., failure to accept responsibility for her actions and failure to take steps to address her own limitations.

[136] The evidence demonstrated that T. is a very limited parent. She was unable to maintain a safe and consistent environment for R. I find that, like R., she exposed her child to conflict and domestic violence. R. told Dr. Waiser that her mother was involved in an abusive relationship and that her mother's boyfriend would assault both her and T. R. told other witnesses that her mother was involved in abusive relationships. The business records from Humewood House dated 12 April 2007 contain statements related to them by R. Portions read as follows:

> She [R.] is an only child and her father had left her when she was two years of age due to domestic violence. Her mother was not always there and tended to leave her unattended for hours at a time. [R.] has been in a group home since she was eight years old. [R.] always thought her mother was on drugs when she was younger. One time her mother left her alone for 5 hours at a young age and [R.] called the police. . . . Mom was extremely abusive as a child, hit her in the face one [*sic*] and was not very nice at all. Her mother also came home sometimes with broken ribs, and she was sure her mom was a crack addict. Her mother had new boyfriends and they were violent towards her and her mother. Her mother chose the boyfriends over her daughter and that is why [R.] kept going back into a group home.

I felt that T. significantly minimized these incidents, foreshadowing the pattern we see with R. many years later.

[137] There also remains the spectre of substance abuse with T. She went over a year not seeing R. because of not taking required drug screens. According to the business records filed, R. reported her mother's substance abuse not only to Humewood House, but to Jessie's and Ms. Morrison. There was the concern as well that T. was drinking with Mt. T.L. on the night of that violent incident.

[138] The evidence showed that R. was neglected by T. Ms. Gurwitz testified that, on 19 March 2007 at her preliminary interview for the Therapeutic Access Program, R. said: "I am

nothing to Mom — I have been on my own since I was 8 years old". The supervision arrangements for R. were a constant concern of the society. R. told Dr. Waiser that she played until dark, while her mother slept. He wrote that:

> . . . one must question the nature of the mother-child bond that developed. Even when her mother was present, it appears that [R.] was either indulged by her mother or neglected by her mother in favour of the liaison with whom she was involved. [R.] never experienced healthy mothering behaviours or attitudes.

[139] When R. was in care, Mr. Mintz testified that T. was inconsistent with access and often would not show up at all. Ms. Gurwitz testified that R. said at the aforementioned interview that her mother did not visit her when she was in care.

[140] The evidence caused me serious concern about T.'s judgment. She went nine months without seeing R. when she was in care, because she did not meet any of the society's preconditions for having access. T. blamed this on the society, but it was within her control to meet the preconditions for access to which she had agreed. T. failed to protect R. during the incident with Mr. T.L., by not asking him to leave her home. She did not co-operate with the society when it investigated this incident. She failed to co-operate with the police (and protect R.), when they were investigating an incident concerning Mr. E.K.T.

[141] Despite occasional thaws in her attitude, T. has for the most part been uncooperative with the society. Mr. Mintz testified that T. constantly failed to keep appointments, was late for them and missed important plan-of-care meetings for R. He said that T. was constantly fighting the society. Mr. Mintz felt that T. undermined R.'s placements by sending R. the message that "service is not ok". He said that T. had no insight into the effect of her behaviour on R. He said that T. kept threatening to call the police on various foster homes. He observed her constantly fighting with R. He deposed:

> [T.] did not adequately address the concerns that lead to JFCS' involvement, and did not seem to be able to understand or acknowledge her own contribution to the family's problems. [T.] failed to acknowledge the negative impact of her behaviour on [R.] and she did not present an adequate plan for her.

Ms. Gurwitz also testified how T. became angry and screamed at her when she asked her about the incident with Mr. T.L. She testified that T. claimed that they apprehended K. out of spite.

[142] T. continued to show disdain for the society at trial and while she presently has a respectful relationship with Mr. Theoloduz, I have no confidence that she would provide any more than short-term co-operation with the society if K. were placed in her care and she were to be closely monitored. It would be essential for K.'s best interests that any caregiver be able to co-operate with the society so that it could ensure his safety. T. demonstrated no insight at all into why the society has been involved with her and R. (despite her several consent agreements with them) making comments such as:

> (a) We've had enough involvement with children's aid. They took her for something I didn't do.
>
> (b) They did horrible things to us. When I tried to take [R.] out, the police were

called and helicopters were after me.

(c) I entrusted Jeff Mintz, one of my dumbest moves ever. I don't like him now, I think he put us through atrocities, subjecting my daughter to things she shouldn't have.

(d) JFCS is the cause of my problems with [R.]. They planted things in her head that aren't true. I missed a lot of my daughter's life for no reason. Taken for something I didn't do.

Is it any wonder that R. has the attitude she does towards the society when constantly exposed to these views by her mother?

[143] T. has demonstrated poor anger control with R. and with society workers. K. would more likely than not be exposed to an unacceptable level of conflict in her care.

[144] T. offered no evidence of steps that she is taking to address her limitations. She provided no evidence of having recently participated in therapy or counselling. Like R., she does not acknowledge limitations and feels that everything would be fine if everyone just left them alone. She had a litany of complaints about everyone with whom she has dealt, including the society, the police, her parents and her own lawyers, but never accepted any responsibility for what has happened to R. and K. Mr. Mintz testified that T. would only use services when she was in crisis and would do nothing at other times. R. is the product of T.'s poor parenting. The evidence gave me no reason to believe that K. would fare any better in T.'s care.

4.3(g): Final Comments on Disposition

[145] The physical and emotional risks that led to K.'s apprehension continue to exist, just as strongly, if not more so, than they did at that time. These risks are very real and not speculative. R. and T. have not addressed these risks, primarily because they fail to acknowledge them. It is not in K.'s best interests to be placed with either of them.

[146] The society's plan gives K. the best opportunity to lead a happy and normal life free from conflict and chaos, a life where he will be safe and protected. Its plan will best meet K.'s physical, emotional and mental needs and provide him with stability and continuity. He deserves no less. The least disruptive alternative consistent with K.'s best interests is to make him a Crown ward.

5: ACCESS

[147] Once a disposition of crown wardship is made, the Act provides for a presumption against access. Since this application was issued just prior to the amendments to this section in the Act, the test is set out in subsection 59(2) of the Act, as it then was, which reads as follows:

> (2) *Access: Crown ward.*— The court shall not make or vary an access order with respect to a Crown ward under section 58 (access) or section 65 (status review) unless the court is satisfied that,
>
> (*a*) the relationship between the person and the child is beneficial and

meaningful to the child; and

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

[148] The onus to rebut the presumption against access to a Crown ward is on R. and T. See *Children's Aid Society of Toronto v. Dora P. and Raymond L.* (2005), 202 O.A.C. 7, 19 R.F.L. (6th) 267, 2005 CanLII 34560, [2005] O.J. No. 4075, 2005 CarswellOnt 4579 (Ont. C.A.).

[149] Once there has been an order for Crown wardship, the legislation reflects an intention to shift the focus from providing services to facilitate the reintegration of the child back to the natural family, to a focus on long-term, permanent placement, preferably through adoption. See *Children's Aid Society of Ottawa v. R.L. and S.B.*, 2004 CanLII 4334, 2004 CanLII 4401, 132 A.C.W.S. (3d) 718, [2004] O.J. No. 3112, [2004] O.T.C. 665, 2004 CarswellOnt 3080 (Ont. Fam. Ct.), paragraph [57].

[150] Section 141.1 of the Act provides that, before a society can place a child for adoption, any outstanding order of access to the child must first be terminated.

[151] I find that the relationship between R. and K. is beneficial and meaningful to K. Although less so, I also find that the relationship between T. and K. is beneficial and meaningful to K.

[152] There was no issue in this case that K. is adoptable, given his age, health, absence of special needs and pleasant personality. K.'s foster parents are not prepared to adopt him and he will need to find a new home. It is in K.'s best interests to be placed in a permanent adoptive home as soon as possible. I find that an order of access would impair K.'s future opportunities for a permanent or stable placement and will make an order for no access.

6: CONCLUSION

[153] An order will go making K. a Crown ward without access for the purpose of adoption.

[154] I am very aware that this decision will be very painful for R. and her family. I recognize how much they love K., and how much R. wanted to parent him. There is no doubt in my mind that R. wants what is best for K. I hope that she and her family will be able to draw some comfort from the fact that K. will not have the difficult childhood that she had — bouncing from foster home to foster home and back to a mother who did not provide a safe place for her. K. will be settled at a young age in a safe and loving adoptive home.

[155] R. has been damaged by not receiving adequate parenting in her childhood. She is repeating the patterns of her mother's instability and susceptibility to domestic violence. However, R. does not have to become her mother. She has far better innate parenting skills and empathy than her. R. has potential. She is going to have to actively and willingly participate in therapy and life-skill programs before she can realize this potential and change

her life for the better. I encourage her to go to school and upgrade her education. She should maintain the connections she has developed with Jessie's and Humewood House. I sincerely wish her the best.

[156] Lastly, I wish to thank all counsel for their sensitive and professional presentation of this difficult case. R. and T. should know that their counsel provided them with outstanding representation and presented their case in the most thorough manner possible.