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 45(8) of the Act. This subsection and subsection 85(3) of the *Child and Family Services Act*, which deals with the consequences of failure to comply with subsection 45(8), read as follows:

> **45.—**(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.
>
> . . .
>
> **85.—**(3) A person who contravenes subsection 45(8) (publication of identifying information) or an order prohibiting publication made under clause 45(7)(*c*) or subsection 45(9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than three years, or to both.

Toronto (Scarborough) Registry No. C1531/90
CITATION: *Children's Aid Society of Toronto v. W.(M)*, 2004 ONCJ 127

ONTARIO COURT OF JUSTICE

B E T W E E N :

CHILDREN'S AID SOCIETY OF TORONTO,
Applicant,

— AND —

M.W. and W.C.,
Respondents,

Before Justice Harvey P. Brownstone
Heard on 14-16 June 2004
Reasons for Judgment released on 21 June 2004

CHILD PROTECTION — Evidence — Plan of care — Reliability — Inconsistent positions — Where mother's position on plan of care for child was internally inconsistent and vacillated alarmingly from court appearance to court appearance, court rejected any notion of placing child with her now or in foreseeable future.

CHILD PROTECTION — Evidence — Plan of care — Reliability — Lapses in judgment — Father's plan of care was flawed by his history of poor choices and poor judgment — Court could not place any trust in father's plan of care in light of his many mistakes with respect to his addiction, misplaced pride, his romantic attachments, his reluctance to seek out supports within his extended family and his commitment to child — Moreover, aspects of his plan were so new that many elements were not yet in place.

CHILD PROTECTION — Form of order — Ancillary order — Access — Access to Crown ward — General — Silence as to access — Question of mother's access was effectively left to unfettered discretion of children's aid society — For now, society's focus would be on boy's relationship with father into whose home court expected that he would soon be placed — If placement proved successful, court felt that mother should definitely have access to son but only under supervision of adult approved by society.

CHILD PROTECTION — Form of order — Ancillary order — Access — Access to Crown ward — General — Twin tests of whether access would impair child's future opportunities for permanent or stable placement and whether relationship beneficial and meaningful to child — Father with otherwise remarkable parenting qualities had problems that needed some time to iron out — Child's relationship with father was beneficial and meaningful to child and worth preserving — Because evidence existed

to support faith in likelihood that child would be returned to father permanently in reasonably near future, court concluded that access would not impair child's future opportunities for permanent and stable placement — Father's likelihood of success was so strong that child's placement with him would be infinitely better for child than adoption by strangers — Nevertheless, should father falter before child's return, child was so young and adoptable that his prospects for permanency planning elsewhere would not be impaired by brief period of access to father.

CHILD PROTECTION — Form of order — Crown wardship — Least restrictive option to protect child — Statutory limit on temporary care of child had expired and time limits in rules of court for processing child protection case through to conclusion had been disregarded and still, father was far from being able to provide permanent, stable long-term placement for safe, loving and happy childhood — In view of father's half-baked plan of care with its many uncertainties, court was not prepared to make enormous leap of faith or to conduct experiment on child or gamble with child's best interests — Father needed time for his plan to mature but not at expense of child — Least disruptive option was Crown wardship.

CHILD PROTECTION — General — Children's aid society — Powers and authority — Supervision of access — Powers of suspension and reinstatement — Where access parent inexplicably failed to appear for scheduled visits and did not even call to cancel them, society was justified in suspending all access — When parent finally resurfaced months later and asked for reinstatement of access, society should have required him to make his request at motion in court and should not have unilaterally reinstated access.

CIVIL PROCEDURE — Conduct of trial — Adjournment — General — Child protection cases — Because of strict timelines in section 70 of *Child and Family Services Act* and in rule 33 of *Family Law Rules*, court should scrupulously examine grounds for request and allow it only sparingly.

CIVIL PROCEDURE — Conduct of trial — Adjournment — General — When to ask for adjournment — On day of trial — Circumstances creating delay known in advance — Request for adjournment should be made as soon as party becomes aware of circumstances that could give rise to delay — Where parent entered drug rehabilitation program of known and set duration, he should have made motion for adjournment then or, at latest, at assignment court for setting trial dates, but not on morning of trial itself — Where court of limited resources has set aside several days for trial, it should refuse last-minute request for adjournment in absence of highly compelling, unavoidable circumstances.

COURTS AND JUDGES — Duties of judge — To conduct case justly and impartially — Latitude where child's best interests are at issue — Ordinarily, trial judge should not interfere with lawyer's presentation of evidence in manner that might compromise trial fairness or appearance of impartiality — In cases where child's best interests are at stake, however, trial judge may intervene more actively than in ordinary civil litigation — In child protection cases, section 49 of *Child and Family Services Act* even allows judge to summon witnesses not called by any party — In unusual child protection case where examination of witnesses by lawyers appeared to leave evidentiary gaps in key details and pivotal events, judge felt obligated to interrupt and to supplement lawyer's questioning on many occasions to obtain

essential and most complete information to arrive at decision that would truly serve child's best interests.

STATUTES AND REGULATIONS CITED

Child and Family Services Act, R.S.O. 1990, c. C-11 [as amended], clause 37(2)(*b*), subsection 37(3), section 49, subsection 59(2), subsection 59(3), clause 70(1)(*a*) and subsection 70(4).

Children's Law Reform Act, R.S.O. 1990, c. C-12 [as amended].

Family Law Rules, O. Reg. 114/99 [as amended], clause 17(8)(*b*) and subrule 33(1).

CASES CITED

Catholic Children's Aid Society of Metropolitan Toronto v. O. (Lisa Marie) and P. (Michael) (1996), 139 D.L.R. (4th) 534, 12 O.T.C. 161, [1996] O.J. No. 3018, 1996 CarswellOnt 3160 (Ont. Gen. Div.).

Children's Aid Society of Sudbury and Manitoulin v. M. (Paula), S. (William) and Sagamok First Nation (2002), 112 A.C.W.S. (3d) 889, [2002] O.J. No. 1217, 2002 CarswellOnt 965 (Ont. C.J.).

Cundy v. Irving (1998), 106 B.C.A.C. 5, 48 B.C.L.R. (3d) 344, 172 W.A.C. 5, 37 R.F.L. (4th) 401, [1998] B.C.J. No. 754, 1998 CarswellBC 718 (B.C.C.A.).

Gordon v. Gordon (1980), 23 R.F.L. (2d) 266, [1980] O.J. No. 1469, 1980 CarswellOnt 341 (Ont. C.A.).

R. v. Brouillard, [1985] 1 S.C.R. 39, 57 N.R. 168, 16 D.L.R. (4th) 447, [1985] R.D.J. 38, 17 C.C.C. (3d) 193, 44 C.R. (3d) 124, [1985] S.C.J. No. 3.

R. v. Valley (1986), 13 O.A.C. 89, 26 C.C.C. (3d) 207, [1986] O.J. No. 77, 1986 CarswellOnt 822 (Ont. C.A.).

R. v. W.(A.), [1995] 4 S.C.R. 51, 206 N.R. 161, 102 C.C.C. (3d) 96, 44 C.R. (4th) 317, [1995] S.C.J. No. 90, 1995 CarswellOnt 957.

Ravka v. Ravka (2002), 165 O.A.C. 44, 35 R.F.L. (5th) 176, [2002] O.J. No. 3636, 2002 CarswellOnt 3081 (Ont. C.A.).

Ross v. Hern and Hern (2004), 45 C.P.C. (5th) 107, [2004] O.J. No. 1186, 2004 CarswellOnt 1104 (Ont. C.A.).

Shoppers Mortgage & Loan Corp. v. Health First Wellington Square Ltd. et al. (1995), 23 O.R. (3d) 362, 80 O.A.C. 346, 124 D.L.R. (4th) 440, 38 C.P.C. (3d) 8, [1995] O.J. No. 1268, 1995 CarswellOnt 350 (Ont. C.A.).

Mira R. Pilch ..... for the applicant society
Herbert J. Stover ..... for the respondent mother, M.W.
Irving I. Frisch ..... for the respondent father, W.C.

[1] JUSTICE BROWNSTONE:— By way of a consent order dated 7 February 2003, B.W.C., born on […] 2002, was found to be in need of protection under clause 37(2)(*b*) of the *Child and Family Services Act*, R.S.O. 1990, c. C-11 (as amended). On 14-16 June 2004, a trial in the dispositional stage of the protection application proceeded before me. For the reasons that follow, I have determined that B.W.C. shall be a Crown ward with graduating access to the father; the order shall be silent as to access by the mother. In the very unusual

circumstances of this case, I have concluded that Mr. W.C. will most likely be in a position to demonstrate within the next few months that it will be in B.W.C.'s best interests to terminate the Crown wardship and return B.W.C. to him.

1: REQUEST FOR ADJOURNMENT

[2] The trial began with a request by the father, supported by the mother, for a 3-month adjournment. The father had 2 reasons for this request: (1) he had just completed residential drug treatment 2 weeks prior and wanted to prove that he had truly conquered his addiction by remaining drug-free for a lengthy period of time; and (2) he had just obtained housing on 10 June and needed time to move in, set up a residence for the child, and allow the society to conduct a home study.

[3] The adjournment request, which was opposed by the society, was denied for the following reasons:

1. The child has been in temporary foster care since 2 December 2002, which is 6 months longer than the 12-month maximum provided for in clause 70(1)(*a*) of the Act. This child has waited more than long enough for his parents to make whatever arrangements are necessary to resume custody of him. In addition, subrule 33(1) of the *Family Law Rules*, O. Reg. 114/99 (as amended), requires that protection applications be completed in 120 days. This application commenced on 25 February 2002, and ought to have been disposed of by the end of June 2002. We are now almost 2 years beyond the timelines provided in the rules, and this, especially in the circumstances of a young infant for whom Crown wardship for the purpose of adoption is being sought, is frankly appalling.
2. This is the 3rd trial date scheduled in this case. The endorsement section of the continuing record indicates that, on 9 April 2003, a trial was scheduled for 17 and 29-31 July 2003. On 3 July 2003, at what was to be a trial management conference, the trial dates were vacated, with the following explanation endorsed by the judge: "CAS and father agree adjournment in best interests of child. Father in rehab. Mother opposed but notified CAS of new plan of care today." New trial dates of 5, 8 and 10-11 December 2003 were set. These dates were vacated on 5 November 2003, because, according to the judge's endorsement, the society was bringing a summary judgment motion. The summary judgment motion was set for 11 February 2004, but was adjourned to 10 March 2004 (the endorsement of 11 February simply states that the motion "could not be heard"). The motion did not proceed on 10 March "due to time constraints". For reasons that are not disclosed in its endorsement, the court, rather than set a new date for the summary judgment motion, sent this case to the assignment court of 11 May 2004 and new trial dates of 14-16 and 18 June 2004 were set. In the face of this fractured and tortured history, I considered it entirely inappropriate to allow any further adjournments. The father was in drug treatment since November 2003 and knew that it would be over at the end of May 2004; therefore, he knew on 11 May when these trial dates were set that, by the trial date, he would only just have been released from the treatment facility a few days and would need to acquire proper housing for the child. The time to ask

for an adjournment of the trial was, at best, as soon as possible after the father entered drug treatment in November 2003, and at the very latest, at the assignment court on 11 May 2004, but certainly not on the trial date. In this regard, I note from the court's endorsement of 14 January 2004, that the father's request for a postponement of the summary judgment motion to permit him to complete his drug treatment was denied.

3. The family courts in Toronto are seriously under-resourced and court time is scarce and precious. It is completely unacceptable for a litigant to show up on the first day of a 4-day trial and request an adjournment. Four valuable days of court time were set aside for this trial and, in the absence of highly compelling, unavoidable circumstances, a last-minute adjournment should not be granted. In addition, although the father was seeking an adjournment of 3 months, it is by no means clear that any family court in Toronto would have 4 clear days of trial time available that soon.
4. The father's reasons for his adjournment request were inadequate to justify any further delay in the determination of a long-term plan. The child was removed from his care on 2 December 2002. More than sufficient time has elapsed since then for the father to establish that he has conquered his addiction problem and a further 3 months, while quite prejudicial to the child, would not put the father in a much better position than he is today, given that he can already show that he has in the past managed to stay drug-free for long periods of time, most recently since November 2003. As for the housing issue, it is not in dispute that the father has obtained housing and I do not see any reason why an adjournment is necessary for the father to get the key to the apartment and arrange for the society worker to inspect it and determine its suitability for a child, even if the apartment is as yet unfurnished. Clearly, if the court, at the end of the trial, were to decide that the child should be returned to the father's care, the order could stipulate that the child remain in foster care for several weeks, to give the father time to move into and furnish the apartment. In any event, such a transitional period would be required. The child's move from foster care to parental care should be a gradual one, with steadily increasing access, given that, up until now, he sees his father only once weekly. The bonds that he has acquired to his foster parents after 18 months in their care need to be detached slowly and with sensitivity to ensure minimum disruption and trauma.

2: BACKGROUND FACTS

[4] The key facts of this case are not in dispute and are set out in a "request to admit" served by the society on each parent's counsel on 29 April 2004. Neither parent responded to the request to admit and therefore they are deemed to have admitted those facts.

[5] B.W.C. was born on […], 2002. Because Ms. M.W.'s 4 other children were already Crown wards, the society immediately became involved in B.W.C.'s life. Ms. M.W. and Mr. W.C. had never lived together; their relationship was tenuous at best. Despite this, the initial plan was for B.W.C. to live with both parents. This arrangement lasted only 6 days. The baby was apprehended on 20 February 2002 because the father, who justifiably did not

approve of the mother's conduct, took B.W.C. to his sister's home without telling the society and he also missed an appointment with the public health nurse. After receiving an adequate explanation from the father and approving his plan, the society returned the baby to him on 26 February 2002 under a temporary supervision order. At this time Mr. W.C. had not disclosed to the society that he had a history of alcohol and drug (marijuana and crack cocaine) abuse, which started when he was 16 years old.

[6] Initially Mr. W.C. and B.W.C. lived with Mr. W.C.'s friends — Ms. T.C. and Mr. M. and their two children. Ms. T.C. provided daycare for B.W.C. when Mr. W.C. was at work trying to build up his lawn care business. On 1 May 2002, Mr. W.C. and B.W.C. moved into their own apartment and Ms. T.C. continued to provide day care. However, in August 2002, Ms. T.C. decided to return to school and could no longer provide day care. This was the beginning of Mr. W.C.'s troubles. He could not find suitable day care, so began cutting back at work so that he could take care of B.W.C. himself. Eventually, his business failed and, with that, his source of income. No longer able to pay the rent on his apartment, he found temporary hostel housing with Family Residence on 3 September 2002. From that date until the child was apprehended on 2 December 2002, Mr. W.C. lived with B.W.C. in a small motel room and was in receipt of social assistance. The society had no concerns with the parenting that Mr. W.C. provided to B.W.C. and observed no indications of substance abuse.

[7] In the fall of 2002, Mr. W.C. developed a plan to move with B.W.C. to Belleville, where the cost of living would be less expensive than Toronto and where he would be closer to his mother. The society supported this plan and encouraged him to obtain a custody order under the *Children's Law Reform Act*, R.S.O. 1990, c. C-12 (as amended). In the last week of November 2002, Mr. W.C. received $3,600 from social assistance to finance his relocation to Belleville, but instead of using the money for the relocation, he went on an alcohol and drug binge lasting an entire weekend. He had placed B.W.C. with a neighbour for the weekend and, on 2 December 2002, when B.W.C. was returned to him, he called a "help" line to say that he had descended into drug and alcohol abuse and needed help for himself and his son. The police and society personnel arrived, and B.W.C. was apprehended and placed in foster care, where he has remained since that date.

[8] Mr. W.C. immediately admitted himself into a detoxification centre, followed by residential drug rehabilitation treatment at Downsview Dells Treatment Centre from January to July 2003. While at Downsview Dells, he also attended the Bridgeway Chemical Dependency Centre at Humberview Hospital. On 1 August 2003, he moved into Ecu Home, a supportive shelter for men recovering from addiction. Despite requests made by society worker Ms. Passero on 31 July, 11 August and 23 September, 2003 for Mr. W.C. to submit to random drug screening tests, he failed to do so.

[9] Mr. W.C. relapsed into drug and alcohol abuse in September 2003. He says that he resumed drinking and using drugs because he mistakenly believed that he had been "cured" of his addiction problems, was no longer an addict, and therefore could drink and use drugs "casually, recreationally and socially". He quickly realized that he was wrong, and, after spending some time at a detoxification facility and at Downsview Dells, he was admitted

into the residential drug treatment program at St. Michael's Half Way Homes on 25 November 2003. He successfully completed the program and was released from that facility on 1 June 2004. He has lived at Downsview Dells since then and, with the help of Helen Winters of the Good Shepherd Ministries, he has obtained subsidized housing in the form of a bachelor apartment, which is available immediately. Ms. Winters advised that, if Mr. W.C. obtains custody of B.W.C., there are "very favourable prospects" for a prompt transfer to a 1-bedroom apartment.

[10] Mr. W.C. attended for hair sample drug screening on 26 April 2004, and the results corroborate his assertion that he has been drug-free since November 2003.

3: ACCESS BY Mr. W.C.

[11] After B.W.C.'s apprehension on 2 December 2002, Mr. W.C. exercised fairly regular weekly supervised access to B.W.C. until 23 September 2003. Mr. W.C.'s conduct during these visits is described by society worker Ms. Parisheva-Fort as child-focussed and appropriate and an extended 4-day visit with Mr. W.C. and his family over the Easter 2003 weekend was described as "very successful and uneventful". From 23 September to 28 October 2003, he did not show up for visits and only called once to cancel a visit. As a result, the society suspended his access. Despite offers from the society to reinstate access, Mr. W.C. did not ask to do so until 11 March 2004. He resumed regular weekly 1-hour supervised visits on 30 March 2004, and society staff state that his interaction with the child continues to be positive and appropriate.

[12] As can be seen from the above chronology, Mr. W.C. chose to have no contact with his son for 6 months, which is a very long time in the life of an infant. During this 6-month period, Mr. W.C. did not call the society to inquire about his son's well-being, and did not attend "plan of care" meetings. His reasons for discontinuing access for such a long period of time are somewhat unclear, but I have inferred from all of the evidence that his initial unreliability can be attributed to his drug relapse, since these events coincide in time. I find that, once he got into treatment in November 2003, he did not resume access visits because he needed to focus completely on his recovery and moreover, to prove to himself and to the society that he could complete his program and remain drug-free for a sustained period of time. I find it noteworthy that his request to resume access was made on 11 March 2004, because that is the day after his court appearance of 10 March 2004, when it was decided that the society's summary judgment motion would not be proceeding and that a trial would occur instead. It seems that, when Mr. W.C. realized there would be a trial, he felt encouraged and hopeful that it was not too late to advance a plan of care for B.W.C. and that the delay would given him time to advocate and prepare to implement that plan.

[13] I must say that, given the circumstances that existed as of 11 March 2004 and the society's plan of Crown wardship without access, and its summary judgment motion, I am somewhat mystified that it agreed to reinstate Mr. W.C.'s access. There is little doubt that, had the summary judgment motion been heard in March 2004, it would have been granted. In my opinion, the society was justified in suspending the father's access in October 2003

and ought not to have unilaterally reinstated visits in March 2004. It ought to have required Mr. W.C. to bring an access motion to the court, so that he could establish that it was in the child's best interests to re-establish contact. In my experience, this is what children's aid societies usually do in Crown wardship cases where a parent has unilaterally and without reasonable excuse discontinued access to an adoptable infant for such a long period of time.

[14] The fact is that the society did agree to reinstate the father's access and that decision, combined with the resulting delay in waiting for this trial, worked very much to the father's advantage, with the unlikely result that, by the first day of trial, there really was a triable issue and, had a summary judgment motion been heard that day, it would have been dismissed.

4: ACCESS BY Ms. M.W.

[15] While B.W.C. was in Mr. W.C.'s care from 26 February to 2 December 2002, Ms. M.W.'s access was to be arranged between the parents and supervised by Mr. W.C. or another adult acceptable to the society. Her visits were sporadic and, in her testimony, she blamed Mr. W.C. It does not appear that, during this period of time, she asked a court to further stipulate or enforce her access rights.

[16] After B.W.C. was apprehended on 2 December 2002, Ms. M.W. had access at the society office for one hour twice weekly. Ms. Parisheva-Fort states in her affidavit that Ms. M.W.'s parenting style during these visits was "rigid" and "limited".

[17] From June to November 2003, Ms. M.W. did not visit her son, attend "plan of care" meetings or inquire about his well-being. Her explanation is as follows: she had surgery for cervical cancer on 28 May 2003 and, for the next two months, she was under doctor's orders to "stay off her feet"; she knew that the society was working with Mr. W.C.'s plan of care and she did not want to interfere; she had dental surgery on 22 October 2003; she suffers from panic attacks for which she takes medication; and finally, once she learned that Mr. W.C. had a drug relapse in the Fall of 2003, she "did not want to get too attached" to B.W.C. because she knew that the society would be pursuing Crown wardship and she did not want to "get involved in a fight like with the other kids". Interestingly, the society did not file an amended protection application seeking Crown wardship until 12 December 2003.

[18] Ms. M.W. has been having supervised visits with B.W.C. at the society office once weekly for 1½ hours since 20 November 2003. In April 2004, she did not attend for 3 consecutive visits and arrived 40 minutes late for the 4th visit.

[19] Ms. Leung states in her affidavit that, although Ms. M.W.'s visits with B.W.C. are generally positive and appropriate, she often does not understand the concept of routines for B.W.C., or the need to respond to his cues, as is evidenced in her handling of feeding issues. She has also on two occasions failed to notice when B.W.C. was wandering away from the visitation room.

5: INTERVENTION BY THE TRIAL JUDGE

[20] This is a very difficult case. Although most of the facts were not in dispute, they present one of the most challenging dilemmas that I have ever encountered in my 9 years as a family court judge. Given the fact that Mr. W.C. apparently has no parenting deficits other than his drug addiction and the obvious benefit to B.W.C. in being raised by his own father if he can remain drug-free, I am in essence being required to assess, on a balance of probabilities, the likelihood of Mr. W.C.'s having a further drug relapse. In a case such as this, I consider it crucial to try to "get to know" and to understand the parent as much as possible within the confines of the trial setting. I want to assess not only his credibility but his judgment, intelligence, insight, character strengths and weaknesses, temper control, capacity to absorb and process information, ability to withstand pressure, degree of commitment to the child, understanding of the evidence, respect for authority figures, sense of accountability and countless other factors. It was equally important that I acquire a complete understanding of the mother's position, attitude and parental capacity, and it was equally important that I obtain as much information as possible from the other three witnesses who testified, given the monumental decision that I was being required to make for B.W.C.'s future.

[21] A trial judge should not intervene in counsel's presentation of the evidence to such an extent that trial fairness or the appearance of impartiality is compromised. I am mindful of the admonitions of numerous appellate courts in this regard: *R. v. Brouillard,* [1985] 1 S.C.R. 39, 57 N.R. 168, 16 D.L.R. (4th) 447, [1985] R.D.J. 38, 17 C.C.C. (3d) 193, 44 C.R. (3d) 124, [1985] S.C.J. No. 3; *R. v. A.W.,* [1995] 4 S.C.R. 51, 206 N.R. 161, 102 C.C.C. (3d) 96, 44 C.R. (4th) 317, [1995] S.C.J. No. 90, 1995 CarswellOnt 957; *R. v. Valley* (1986), 13 O.A.C. 89, 26 C.C.C. (3d) 207, [1986] O.J. No. 77, 1986 CarswellOnt 822 (Ont. C.A.); *Shoppers Mortgage & Loan Corp. v. Health First Wellington Square Ltd. et al.* (1995), 23 O.R. (3d) 362, 80 O.A.C. 346, 124 D.L.R. (4th) 440, 38 C.P.C. (3d) 8, [1995] O.J. No. 1268, 1995 CarswellOnt 350 (Ont. C.A.); *Ravka v. Ravka* (2002), 165 O.A.C. 44, 35 R.F.L. (5th) 176, [2002] O.J. No. 3636, 2002 CarswellOnt 3081 (Ont. C.A.); *Ross v. Hern and Hern* (2004), 45 C.P.C. (5th) 107, [2004] O.J. No. 1186, 2004 CarswellOnt 1104 (Ont. C.A.). That being said, it is well recognized that, in family law cases, especially where a child's best interests are at stake, a trial judge can take a more active role than in ordinary civil litigation: *Gordon v. Gordon* (1980), 23 R.F.L. (2d) 266, [1980] O.J. No. 1469, 1980 CarswellOnt 341 (Ont. C.A.); *Catholic Children's Aid Society of Metropolitan Toronto v. Lisa Marie O. and Michael P.* (1996), 139 D.L.R. (4th) 534, 12 O.T.C. 161, [1996] O.J. No. 3018, 1996 CarswellOnt 3160 (Ont. Gen. Div.); *Cundy v. Irving* (1998), 106 B.C.A.C. 5, 48 B.C.L.R. (3d) 344, 172 W.A.C. 5, 37 R.F.L. (4th) 401, [1998] B.C.J. No. 754, 1998 CarswellBC 718 (B.C.C.A.). In child protection cases, this latitude extends so far as to permit the judge to call witnesses who were not called by any party: section 49 of the *Child and Family Services Act*.

[22] The trial judge's ability to make the best possible decision based on the best possible information from the witnesses is directly proportional to the degree to which counsel are organized and thorough in their questioning of those witnesses. With respect, I

found that the questioning by all 3 counsel of the witnesses in this case, at times, left gaps in chronology and omissions of key details and explanations of pivotal events. Where a child's future is at stake, particularly when the issue consists of whether forever to terminate that child's legal connection to his parents, the trial judge has an obligation to that child to acquire the most complete understanding of all of the relevant circumstances, so that a decision can be arrived at that will truly be in the child's best interests. In this case, I felt compelled to interrupt and supplement counsel's questioning on numerous occasions in order fully to understand exactly how every material event transpired and why the witnesses did or did not do certain things, and why they felt or did not feel certain ways. I do not apologize for those interruptions. Given the importance of this case to the parties and especially to the child, and given the finality of the decision I was being required to make, and having regard to the inadequacies of counsel's questioning, I considered it my obligation to make the effort to ask all of the questions I asked of every witness. By the end of the trial, I was satisfied that I had received the most complete information that every witness had to offer and I felt able to make the decision required of me. I want to assure the parties, counsel and witnesses that my interventions were entirely motivated by a desire to obtain essential information, and that at no time was my impartiality compromised.

6: Ms. M.W.'s PLAN OF CARE

[23] Ms. M.W. has a lengthy history with the society. Her four older children were made Crown wards and she has access to only one of them. Although the circumstances giving rise to the Crown wardship of her eldest child were not provided, the society did adduce into evidence the reasons for judgment of Justice Heather L. Katarynych dated 27 July 2001, wherein 3 of Ms. M.W.'s children were made Crown wards. These reasons for judgment indicate that, notwithstanding intensive assistance and support from the society over the course of 6 supervision orders and almost 2 years of temporary foster care, Ms. M.W. has consistently lacked the capacity or willingness to identify her children's needs and respond appropriately and effectively to meet those needs. Her parenting history is fraught with neglect, inability to learn, and lack of insight into her own parenting deficits, with the result that every child she has attempted to raise has been developmentally delayed and has had to be permanently removed from her care. Justice Katarynych's decision makes it abundantly clear that, absent strong and committed live-in support from a person with good parenting skills, Ms. M.W. could not raise a child on her own.

[24] Ms. M.W. is of the view that she has "turned her life around" since her last Crown wardship trial in July 2001. She is no longer with Mr. A.G.; she has addressed her health issues and learned to manage her panic anxiety disorder with medication (no corroborating medical evidence was provided); she successfully completed the "Nobody's Perfect" parenting course in March 2002; she now works for a telemarketing agency weekday evenings; and she has the strong support of Mr. M.B., an ex-boyfriend with whom she has maintained a close friendship. Although she currently lives in a bachelor apartment, she feels confident that, if she were to acquire custody of B.W.C., she could obtain a 1 or 2-bedroom apartment from Toronto Housing (no corroborating evidence was offered in this regard).

[25] Despite these admirable improvements in Ms. M.W.'s life, for which I commend her, I have concluded that it would not be feasible to place B.W.C. in her care now or at any time in the foreseeable future. My reasons are as follows:

1. Ms. M.W.'s parenting capacity, skills and judgment have not sufficiently improved. B.W.C. lived with her for only a few days after his birth. He was apprehended so quickly primarily because Ms. M.W. failed to comply with the conditions imposed upon her (regarding the presence of Ms. M.), which caused Mr. W.C. to terminate their cohabitation and take the child from her home. Since that time, her only parenting time with B.W.C. has been during supervised access visits, and I accept the evidence of society staff who observed those visits. I find that Ms. M.W. has not demonstrated adequate improvement in her parenting skills and remains unable to provide and sustain an appropriate standard of care for B.W.C. Another example of her flawed judgment is that her plan of care totally omits any involvement by the father, who raised the child for the first nine months of his life and should clearly be an active parent if Ms. M.W. were to have custody. Ms. M.W. evidently considered it appropriate for Mr. M.B., who has only met the child once, to play a more important role in B.W.C.'s life than the child's own father.
2. I was favourably impressed with the testimony of Mr. M.B. and would have seriously considered a plan for the placement of B.W.C. in the joint care of Mr. M.B. and Ms. M.W., with Mr. M.B.'s being the primary caregiver. Sadly, this was not an option because Mr. M.B. and Ms. M.W. do not live together and have no plans to do so. Mr. M.B. is a kind, compassionate and supportive friend to Ms. M.W. and has good parenting experience. He is willing to give Ms. M.W. financial and emotional support as well as transportation and baby-sitting assistance. He sees himself as a potential uncle or grandfather figure for the child and I am sure that B.W.C. would benefit from such a relationship. Unfortunately, B.W.C. urgently needs a ***parent*** more than he needs an uncle or grandparent, and Ms. M.W. would need much more than what Mr. M.B. is in a position to offer; she needs Mr. M.B. or someone else with proven strong parenting skills to live in the home and assume primary care-giving responsibilities. Although Mr. M.B. has only met B.W.C. once (12 June 2003), I hope that he will have an opportunity in the future to befriend and embrace B.W.C. as a member of his extended family. The society should give serious consideration to approving Mr. M.B. as a supervisor if Ms. M.W. has access in the future.
3. Ms. M.W.'s commitment to B.W.C. throughout this case has been ambivalent. Her access while B.W.C. was in Mr. W.C.'s care from February to December 2002 was infrequent and she provided no explanation for failing to increase her involvement in the child's life during this period. On 6 December 2002, shortly after B.W.C. was apprehended, Ms. M.W. presented a plan to care for B.W.C. jointly with Mr. M.B., with whom she was romantically involved, but she abandoned that plan when the relationship evolved from romance to friendship. Ms. Passero's affidavit states that Ms. M.W. told her on 3 July 2003 that she would be presenting a plan to parent B.W.C. alone but, despite a court order and repeated requests from Ms. Passero for the details of this plan, she did not provide a written plan until 5 November 2003.

Moreover, from June to November 2003, she did not visit B.W.C., attend "plan of care" meetings, or inquire about his well-being. Her explanations for this lengthy hiatus were not entirely reasonable. Although she did resume access in November 2003, her other appointments and commitments have frequently taken precedence over her relationship with her son, as can be seen from her access track record as recently as April 2004.

4. Quite apart from her pattern of conduct set out in the preceding paragraph, her testimony in this trial was internally inconsistent and vacillated alarmingly. At the beginning of the trial, her counsel stated that Ms. M.W.'s first choice was to support Mr. W.C.'s plan to obtain custody, and she was offering herself as a custodial parent only if Mr. W.C.'s plan was unacceptable. However, early on in her testimony, she stated that her first plan was to have B.W.C. placed with her, because she believed her plan was stronger than Mr. W.C.'s, because of his substance abuse problem. Then, she stated that, so long as B.W.C. grew up in a stable home, it did not matter whether he lived with her, Mr. W.C. or with adoptive parents. She said she would agree to Crown wardship if it were the best option. Then, she suggested that B.W.C. should live with her and, if Mr. W.C. remained drug-free for 6 months, B.W.C. should be placed with him. Although I certainly appreciated her worry that Mr. W.C. might have another relapse, this proposal for B.W.C. would hardly provide him with the "stable home" that she wanted him to have. And finally, after the lunch break, she ended her examination-in-chief by saying that she supported Mr. W.C.'s plan as "plan A". She offered no explanation for why she changed her mind and was no longer wanting Mr. W.C. to prove that he can remain drug-free for another 6 months. My assessment of Ms. M.W.'s testimony, in the context of her conduct throughout this case, is that it is indicative of a deeply conflicted parent. She loves her child, wants the best for him and would like to give him a good upbringing, but knows that she cannot meet his needs and is not sure which plan of care to support. I empathize with Ms. M.W. and want her to know that I too have agonized over the question of what would be best for B.W.C.

7: Mr. W.C.'s PLAN OF CARE

[26] Mr. W.C. wishes to resume care of B.W.C. He obtained a bachelor apartment on 10 June but, as of the last day of trial on 16 June, he did not yet have the key and therefore had not yet moved in or acquired furnishings. Helen Winters, who is the supervisor for resettlement and crisis intervention at the Good Shepherd Ministries, obtained this apartment for him and testified that, if he obtains custody of B.W.C., there are "very favourable prospects" that she can arrange a transfer to a 1 or 2-bedroom apartment. He plans to return to school (he has a grade X education) to become qualified to work in the health care field, in which he has developed an interest. Presumably, he would rely on social assistance or student loans for financial support while he is at school and until he obtains full-time employment. While he is at school or work, he intends to place B.W.C. in day care.

[27] The court has the following serious concerns regarding Mr. W.C.'s plan, and they mostly center around some startling examples of poor judgment:

1. Mr. W.C. is an alcoholic and a drug addict. Even though he is diabetic, he has abused alcohol and drugs (marijuana and crack cocaine) since he was 16 years old (he is now 33), although he was able to maintain steady employment until his child-care responsibilities required him eventually to stop working in the fall of 2002. He was also able to provide B.W.C. with good parenting for the first 9 months of his life. However, his substance abuse problem caught up with him in November and December 2002 when a variety of pressures and fears made him most vulnerable, leading to the removal of B.W.C. from his care. Mr. W.C. underwent residential drug treatment at the Downsview Dells Treatment Centre from January to July 2003 and, notwithstanding his stated resolve to remain drug-free and resume parenting B.W.C., he relapsed in September 2003. The fact that he allowed himself to descend once again into drug use, at such a critical time, while he was involved in this litigation and ought to have been on his best behaviour, knowing that the eyes of the society and the court were on him, and knowing that his child was waiting for him in foster care, speaks volumes about Mr. W.C.'s strength of character and resolve (or lack thereof) and is highly indicative of the potency of his addiction. He has only very recently completed this 2nd treatment program, and therefore has not had the time to demonstrate that this time, he has truly conquered his addiction and can remain drug-free. Elizabeth Pakula, his case manager at St. Michael's Half Way Homes, was not able to rate the success of her drug treatment program because no statistics are kept to measure the long-term success of graduates. Helen Winters of the Good Shepherd Ministries, who works with recovering drug addicts, stated that 95% of her clients have had "a relapse or two in the first two years of recovery". This is a very important piece of evidence. Is Mr. W.C., on a balance of probabilities, likely to have another relapse, or is it safe to conclude that he has already had his two relapses (December 2002 and September 2003), making his recovery closer to being complete? This depends on one's view as to when an addict's "recovery" begins. Ms. Winters testified that "recovery" begins when the addict "first got clean"; if she is correct, then given that Mr. W.C. was drug-free for the first 8 months of B.W.C.'s life, his recovery began in February 2002, and he has already suffered the predictable relapses and is not likely to relapse again. I would have thought that an addict's "recovery" begins at the point where he truly accepts that he is in fact an addict and can never again consume alcohol or drugs, not even "casually" or "socially". If I am correct, then Mr. W.C.'s "recovery" began only in the fall of 2003 and, statistically, he may be likely to have at least one more relapse. Although statistics are helpful, it is not possible to predict with certainty whether an addict will relapse, because every person's circumstances are unique. However, it is indisputable that, in assessing the best interests of B.W.C. or any other child for that matter, the court must be primordially mindful of the serious risks of placing a child with a drug addict, especially someone like Mr. W.C. who allowed himself to relapse at such a critical time (September 2003). If Mr. W.C. were to relapse with B.W.C. in his care, Bandon would once again have to go into foster care — and that would be tragic.
2. One of the important factors to be considered in the dispositional phase of a child protection hearing is whether the society has made adequate efforts to assist this

family prior to and since the apprehension. Mr. W.C.'s pride, and fear of the society, prevented him from taking advantage of the help that it could have provided. He did not tell it that he had a substance abuse problem when it first entrusted him with B.W.C.'s care in February 2002. He did not tell his worker the extent of his day-care, financial or emotional difficulties as his circumstances worsened in the fall of 2002. He did not tell his worker that he was feeling tremendous anxiety and fear about the prospects of moving to Belleville, which ultimately led to his self-sabotaging conduct on the weekend leading up to 2 December 2002. Had he asked his worker for help, she would have assisted him to access the necessary community resources and he probably would not have lost custody of B.W.C. Moreover, he did not comply with his worker's request for random drug screens during the summer and early fall of 2003; had he done so, his descent into relapse might have been "nipped in the bud" with the society's pro-active intervention. And, once he was admitted for drug treatment in the fall of 2003, he did not advise the society of his whereabouts; his worker had to track him down. Although it is hoped that Mr. W.C. has learned his lesson and now understands that the society's role is primarily to help parents and children, there is some lingering concern that, should Mr. W.C. regain custody of B.W.C., he might once again fail to be honest with his worker if he once again finds himself in a state of overwhelm.

3. Mr. W.C. is single. He allowed himself to get romantically involved with Ms. M.W., who was his employee at the time, and to father a child with her knowing that he had no intentions of being a parent or of having a long-term relationship with her. This demonstrates poor judgment on his part. He is an attractive, likeable, intelligent, healthy young man and there is every likelihood that he will have more romantic liaisons. If his relationship with Ms. M.W. is any indication, I must conclude that Mr. W.C. is at risk of having more unstable partnerships, which could produce more children, and create stress and disorder for B.W.C. When I asked Mr. W.C. about this, he responded that he is no longer the same person that he was when he got involved with Ms. M.W., and that he expects to attract and to be attracted to a more suitable partner. Let us hope so. However, in determining the best possible disposition for B.W.C., this is one more question mark hanging over Mr. W.C.'s head.

4. Mr. W.C. has a sister and brother-in-law living in Toronto with their 2 children. He also has parents in the Belleville area. They did not provide him with the assistance that he needed in the fall of 2002 while he and B.W.C. were living in squalor on $7.50 per day (in fairness, I have no idea whether Mr. W.C. asked them for help). Moreover, they were conspicuously absent during this trial. Although Mr. W.C. believes that they will support him in his plan of care for B.W.C., he admitted that they chose not to be involved in this litigation because they no longer trust him — they want sustained proof that he has turned his life around. No one knows at this point whether he will be able to convince them. Their commitment to B.W.C. is questionable. Whatever Mr. W.C.'s family may think of him, B.W.C. is innocent and deserves to enjoy the love and affection of his entire family. It is regrettable that his aunt, uncle, and grandparents have not put forward a plan for B.W.C. or, at the

very least, requested access visits with him. Given the success of the extended access visit over the Easter 2003 weekend, I am sure that a request for regular access would have been granted. I suspect that they gave up hope that Mr. W.C. could succeed in regaining custody of B.W.C., and that consequently they did not want to become attached to a child who would not be remaining in the family. I hope that, once they are made aware of my decision, they will resume their involvement in B.W.C.'s life. However, in terms of assessing Mr. W.C.'s plan of care today, I must conclude that Mr. W.C. is a single parent in the truest sense of the word; not only does he have no partner, but at the present time he has no family support. He will have the support of his after-care counsellors at St. Michael's Half Way Homes and the Good Shepherd Ministries, who, as Ms. Winters stated, often become "extended family" to their clients, but the fact remains that neither of these facilities can provide any meaningful assistance in the direct care of B.W.C. The most appropriate agency to provide that assistance is the society.

5. Mr. W.C.'s commitment to his son has been problematic. In a display of monumentally bad judgment, he voluntarily ceased visiting him from September 2003 to March 2004. For the first month on three occasions, he did not even have the courtesy to call ahead to cancel the visit, with the result that B.W.C. was brought to the society office for nothing. Even after this, the society offered him visits, which his drug treatment facility was prepared to accommodate, and yet he declined to avail himself of the opportunity to maintain contact with his son. Not only did he not visit, but he also did not even once call the society to inquire about his son's well-being. These circumstances, combined with the drug relapse in September 2003, constitute the most damaging evidence against Mr. W.C. in this case and have given me the most difficulty in weighing the pros and cons of giving Mr. W.C. another chance. How could he have been so thoughtless (some might say cruel) as to abandon his son so completely that he turned himself into a virtual stranger? The answer is clear: Mr. W.C. gave up hope when he relapsed in September 2003 and felt it was not fair to B.W.C. to keep the bond alive unless he was going to be fit and worthy of being in B.W.C.'s life permanently. When the society justifiably decided to pursue Crown wardship and then brought a summary judgment motion, this must have intensified Mr. W.C.'s feelings of despair and hopelessness. It is regrettable that it took as long as it did for Mr. W.C. to believe that he still had something to offer his son and to request a resumption of access. Obviously, the court has concern that, if Mr. W.C. were to regain custody of B.W.C. and then have even a minor relapse requiring temporary respite care for B.W.C., Mr. W.C. might once again abandon his son and the potential damage to B.W.C., if this were to occur, is both obvious and unfathomable.

6. Mr. W.C.'s plan is so new that, as of the close of the trial, he had not as yet moved into his apartment and, in any event, according to Ms. Winters, he would have to obtain a larger apartment if B.W.C. were returned to him. (That being said, I am sure that the bachelor apartment would be infinitely better than the hotel room in which he and B.W.C. lived during the fall of 2002, so the society should have no problem with the bachelor apartment, provided it is clean, appropriately furnished

and safe). He does not have any furnishings and has no source of income other than social assistance. He has no job, is not enrolled in school, and has not arranged day care for B.W.C. when he will be at work or school, and baby-sitting when he will be at after-care and AA meetings. (I trust I made it clear to Mr. W.C. during his cross-examination that he should not expect to take B.W.C. to counselling sessions or after-care meetings.) All of these things would have to be put into place before B.W.C. could be returned to him.

7. Although this is a minor point, I feel compelled to make it. I was surprised and dismayed to discover during Mr. W.C.'s cross-examination that he had not thoroughly read the trial brief, which contained the evidence adduced by the society in this case. The brief was not particularly voluminous and there is absolutely no excuse for sloppy preparation when Mr. W.C. and his counsel must have been aware that they had an uphill battle, to say the least, and needed to prepare intensively for the trial. The trial brief was served on Mr. W.C.'s counsel on 29 April 2004. Despite this, neither Mr. W.C. nor his lawyer were aware that B.W.C. has a heart murmur, because they "missed" this detail in Ms. Leung's affidavit. Consequently, Mr. W.C. did not know about, attend, or ask about the child's appointment on 1 June 2004 with a heart specialist. Mr. W.C. and his lawyer did not learn that B.W.C. has a heart murmur until this was pointed out to them by the society lawyer. Frankly, this is inexcusable.

8: CROWN WARDSHIP

[28] Given all of the above circumstances, Mr. W.C. is asking the court to make an enormous leap of faith. The courts do not conduct experiments on children or gamble with their best interests. B.W.C. is 28 months old and has been languishing in temporary foster care for more than 18 of those months, well over half of his life. He urgently needs and deserves a permanent long-term placement with solid, stable caregivers who can give him a safe, loving and happy childhood. Most importantly, the court, the society and B.W.C.'s family have let this little boy down by disregarding the time limitations in rule 33 of the *Family Law Rules* and section 70 of the *Child and Family Services Act*, which were enacted for the express purpose of preventing infants such as B.W.C. from being kept in a state of legal limbo for inordinate lengths of time. This is unconscionable. Simply put, Mr. W.C. has done too little, too late and B.W.C.'s time ran out long ago. There are too many uncertainties in Mr. W.C.'s life for B.W.C. to be placed with him at this time. Also, his access to B.W.C. has been supervised and limited to one hour per week at the society's office. Obviously, if a decision were made to return B.W.C. to his father's custody, there would need to be a transitional period of several months during which B.W.C. could gradually detach from his current caregivers and reattach to his father. All of this takes time and Mr. W.C. knows this; that is why he asked for an adjournment at the start of the trial. Unfortunately, it is neither in keeping with the law nor in B.W.C.'s best interests to give Mr. W.C. any more time. B.W.C. must be made a Crown ward, as that is the least disruptive alternative that will protect him and meet his best interests as defined in subsection 37(3) of the *Child and Family Services Act*.

[29] Surprisingly, neither parent's counsel raised the issue of whether the 12-month time limit for temporary foster care should be extended for up to 6 months pursuant to subsection 70(4) of the *Child and Family Services Act*. However, I did give this possibility some consideration. In *Children's Aid Society of Sudbury and Manitoulin v. Paula M., William S. and Sagamok First Nation* (2002), 112 A.C.W.S. (3d) 889, [2002] O.J. No. 1217, 2002 CarswellOnt 965 (Ont. C.J.), Justice Yvon A. Renaud opined that it may be possible to consider "individual and separate 6-month extensions" of the statutory time limit. I agree that in an appropriate case this might be done where a child's best interests clearly necessitate it. No child's connection to his family should be severed solely by reason of an arbitrary time limitation. However, for all of the reasons stated above, this is not a case where an extension of temporary wardship should be made. Furthermore, it is crucial that Mr. W.C. understand that this time, there can be no margin for error and no further delays. He has lost his parental rights (other than access) and can only regain them if he successfully and expeditiously follows through on every aspect of his plan. If he fails, B.W.C. cannot afford the time that another Crown wardship trial would entail; the society must swiftly bring an application (and hopefully a summary judgment motion) to terminate access, so that B.W.C. can be placed for adoption.

9: ACCESS

[30] After a great deal of thought and not without some hesitation, I have decided to continue Mr. W.C.'s access to B.W.C. because, in my opinion, Mr. W.C. has met the rigorous test set out in subsection 59(2) of the *Child and Family Services Act*. Despite all of the circumstances set out above, I am convinced not only on a balance of probabilities but beyond a reasonable doubt (because B.W.C. deserves no less than that degree of certainty) that, within a relatively short time, Mr. W.C. will be in a position to resume custody of B.W.C. permanently and successfully, and this is most definitely in B.W.C.'s long-term best interests. My reasons are as follows:

1. Despite his shortcomings, Mr. W.C. has demonstrated remarkable strengths and, most importantly, some sterling examples of sound judgment, especially regarding B.W.C. He correctly removed B.W.C. from Ms. M.W.'s home in February 2002 when he concluded that she was not going to be able to parent him properly. He placed B.W.C.'s needs ahead of his own by reducing his work and caring for B.W.C. himself when he lost the baby-sitting services of Ms. T.C. On that fateful last weekend of November 2002 when he realized that he was headed for an alcohol and drug "binge", he placed B.W.C. with a baby-sitter rather than expose his child to inappropriate conduct. And most importantly, he demonstrated the greatest act of love that a parent can do: on 2 December 2002, he contacted the authorities and requested that B.W.C. be placed in society care because he recognized his own inability to meet B.W.C.'s needs. This is clearly a man who loves his child and would never fail to protect him, even when he feels the seductive and irresistible pull of substance abuse. And both times when he descended into serious drug use, he quickly recognized it and navigated his way through numerous community agencies to rapidly obtain residential drug treatment — and, unlike so many drug addicts we see who cannot bring themselves to complete the treatment program —

Mr. W.C. did complete it both times.

2. Other than his substance abuse problem, there are no apparent deficits in Mr. W.C.'s parenting skills. When sober, he is an excellent parent. He managed to do so well in the first 9 months of B.W.C.'s life that the society worker had no inkling that he was actually decompressing, and she was encouraging him to obtain a custody order and move to Belleville! Clearly the society was preparing to withdraw from B.W.C.'s life, and this is the strongest possible indication that Mr. W.C. has excellent parenting skills. I must say that I have never before seen a case where a drug-addicted parent did not have some, even minor, parenting deficits. Mr. W.C. is quite unique in that respect, particularly when one considers that he was living with the child in a small hotel room and meeting his own and the child's needs on the paltry sum of $7.50 per day. This is quite remarkable.
3. Another unique aspect of this case is that the society itself has not vigorously pursued Crown wardship, and I suspect this is because the agency, like myself, has been struggling with the question of whether Crown wardship and adoption is the right solution for B.W.C. It did not have Mr. W.C. noted in default when he failed to file a proper answer and plan of care after the amended protection application was filed in December 2003. It agreed to reinstate his access in March 2004 after an inexcusably long hiatus. It brought a summary judgment motion and then did not insist that it be heard, agreeing to go to trial instead. And at the trial, notwithstanding the society lawyer's able cross-examination of Mr. W.C., I felt compelled to intervene and really "grill" Mr. W.C. myself to get a strong sense of who he is and why he has behaved the way he has. In short, the society's handling of this case is not at all typical of the way in which a child protection agency generally proceeds in the case of a highly adoptable baby whose mother's four other children are already Crown wards and whose father is an unemployed, homeless (until 2 days before the trial), drug addict with no (or very little) family support. I have inferred from the society's conduct in this case that, although it is not prepared to consent to giving Mr. W.C. another chance, neither is it strongly opposed. I commend the society for this; I believe it has "read" Mr. W.C. correctly and I pray that I have as well. It may be that the case management judge also saw great potential in Mr. W.C., since it is unusual for a trial to be scheduled when a summary judgment motion has been brought.
4. As the foster parents are not seeking to adopt B.W.C., he is going to have to be moved soon in any event. A return to his father's care would be much less traumatic than a move to complete strangers. In addition, if Mr. W.C.'s plan succeeds, B.W.C. will have the benefit of continued contact with his mother, albeit supervised.
5. I was very impressed with Ms. Pakula and Ms. Winters. They know Mr. W.C. better than anyone else who gave evidence in this trial and their faith in him is worthy of great respect. Although no one can be expected accurately to predict whether Mr. W.C. will relapse, I accept the evidence of Ms. Pakula and Ms. Winters that Mr. W.C. shows every indication of being well on his way to complete and sustainable recovery. With the continued support of these dedicated and experienced community workers and the support of the society, there is good reason to be

optimistic about Mr. W.C.'s prospects. Even if Mr. W.C.'s own family may not in the short term be giving him support, Mr. W.C. has a very reliable "extended family" in the form of Ms. Pakula, Ms. Winters, his new after-care counsellors and his society worker, and I have no doubt that he will make good use of the support that they will give him and B.W.C.

6. Perhaps most importantly, I was very impressed with Mr. W.C.'s testimony. He endured lengthy and at times gruelling questioning and came through "with flying colours". He has developed great insight into his addiction and good coping mechanisms to address the underlying causes giving rise to his attraction to alcohol and drugs. He loves his son deeply and sincerely regrets the pain and disruption that he has caused him. He will need further counselling to help him to come to terms with this, so that in time, he can forgive himself and heal completely. Mr. W.C. is an emotionally strong, determined young man who is entirely focussed on staying clean and sober and being the best possible parent he can be. He says that he enjoys sobriety and has absolutely no intention of ever consuming alcohol or drugs again and, almost in spite of myself, I believe him. I do not consider myself easily convinced, given the countless broken promises that I hear from so many drug-addicted parents with whom we deal in an inner-city child protection court. However, I have searched my conscience and find that I do believe Mr. W.C. He convinced me that he has truly overcome his substance abuse addiction and that, within a reasonably short period of time, he will be in a position to provide good parenting to B.W.C.

[31] In conclusion, applying the test in subsection 59(2), I find that the relationship between B.W.C. and his father is beneficial and meaningful to B.W.C. and that it is a relationship worth preserving. In addition, because I have found that there is every likelihood that B.W.C. will in the reasonably near future be returned to Mr. W.C. permanently, I have concluded that access will not impair B.W.C.'s future opportunities for a permanent and stable placement. Further, having regard to B.W.C.'s age and high degree of adoptability, his prospects for permanency planning will not be impaired by having access to his father for a short time, because the society is expected to move swiftly to terminate the access at the first indication that Mr. W.C.'s plan is falling through, so that B.W.C. can then be placed for adoption. Simply put, it is in B.W.C.'s best interests to delay his adoption by a few months to give Mr. W.C. a chance to implement his plan of care, because in my opinion Mr. W.C. has a strong likelihood of success and a placement for B.W.C. with Mr. W.C. would be infinitely better for B.W.C. than adoption by strangers.

[32] I am not going to specify in detail the exact terms of Mr. W.C.'s access because the society requires the discretion to monitor Mr. W.C.'s progress in a variety of areas and tailor the escalation (or diminution) of his access accordingly. Access will gradually increase with a view to a termination of the Crown wardship provided that Mr. W.C. satisfies the following conditions:

(a) he must secure and maintain adequate housing;

(b) he must have a reliable source of income;

(c) he must either obtain suitable employment or be enrolled in a program of education;

(d) he must co-operate fully with the society, including but not limited to: keep them apprised at all times of his address and telephone number; obtain advance approval for the placement of B.W.C. with any baby-sitter; attend all meetings, counselling programs, parenting courses, medical appointments; and sign all consents for the disclosure of information from any service provider;

(e) he must continue to attend all after-care meetings and other addiction-related programs as directed by the society;

(f) he must attend for each and every random drug screening test requested by the society without exception; and

(g) most importantly, he must completely abstain from the consumption of alcohol and non-prescribed drugs.

[33] I am asking Mr. W.C.'s lawyer and society worker to meet with him as soon as possible and clearly to explain these reasons for judgment to him. I trust that he will give greater attention to the words of the court than he gave to the society's trial brief. Mr. W.C. must clearly understand that he is being given a unique, precious and extremely rare opportunity to prove that he can fulfill his promise to B.W.C., and moreover, to justify the faith that Ms. Pakula, Ms. Winters and this court have placed in him. He and the society should clearly understand that if, over the course of the next few months, ***any*** aspect of his life is not in keeping with B.W.C.'s best interests, the society should immediately bring an application under subsection 59(3) to terminate the access, and the case management judge should be urged to fast-track this case to a swift conclusion by way of summary judgment, or even possibly an order at a case conference under clause 17(8)(*b*) of the rules, given the obvious urgency in terms of B.W.C.'s need for a long-term placement.

[34] My order will be silent as to access by Ms. M.W. I am leaving this in the society's discretion for the time being. Right now the focus must be on B.W.C.'s relationship with his father. If Mr. W.C.'s plan is progressing well and it becomes clear that B.W.C. will be placed with him, then Ms. M.W. should have access to B.W.C., but it should occur in the presence of an adult approved of by the society. Hopefully, Mr. M.B. can be approved by the society as a suitable supervisor.

[35] I want to thank all counsel for their participation in this trial.

[36] Order to issue as follows: B.W.C. shall be a Crown ward, with gradually increasing access to his father at the society's discretion, provided all conditions set out at paragraph [32] of these reasons are satisfied. Order shall be silent as to mother's access.