WARNING

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

This is a case under Part III of the *Child and Family Services Act* and is subject to subsections 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 . . . 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) 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) 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. C1702/01
DATE: 2003·I·28
CITATION: *Children's Aid Society of Toronto v. R.(A.)*

ONTARIO COURT OF JUSTICE

B E T W E E N :

CHILDREN'S AID SOCIETY OF TORONTO,
Applicant,

— AND —

A.R. and G.R.,
Respondents.

Before Justice Robert J. Spence
Heard on 12-13 and 30 September 2002; 1-3 and 7 October 2002; and 4-5 December 2002
Reasons for Judgment released on 28 January 2003

CHILD PROTECTION — Child in need of protection — General — Nature of "risk" — "Risk" did not mean "mere possibility" that harm might occur, but rather real possibility that, if child were in parent's care, it is more probable than not that child would suffer harm.

CHILD PROTECTION — Child in need of protection — Risk of physical harm — Evaluation of risk — Cumulative effect of many concerns — Although individually, some factors would not create risk, totality of 5 following factors persuaded court that real risk existed:

(1) mother's chronic schizophrenia;

(2) mother's child-like dependency on husband for her care and his inability to recognize nature of relationship with wife;

(3) potential added stress of placing young child into family dynamic;

(4) whether mother posed potential risk to child and parents' motivation to take steps to protect against such risk; and

(5) parents' social isolation.

CHILD PROTECTION — Evidence — Documentary evidence — Assessment report — Weight and reliability — Reliability of source material — Tainting — Where society's letter of retainer to clinical psychologist to prepare assessment was riddled with unproven, incorrect and partisan statements about parents, court found it unsafe to

rely on "Discussion" portion of assessor's report, or her conclusions and opinions in her oral testimony, unless those opinions and conclusions were corroborated by non-society employees.

CHILD PROTECTION — Evidence — Past conduct — Application of common law principles — Judicial discretion — Reasons for judgment from child protection trial more than 15 years ago involving same parents would be so marginal and so outdated as to have no material relevance to case before court now — Prejudicial value of parents' history far outweighed probative value and court would exercise overriding discretion to exclude such reasons.

CHILD PROTECTION — Evidence — Past conduct — Scope of conduct — "Conduct", meant *concrete facts* of past behaviour — Where previous child had been apprehended at birth and parents never had chance to engage in "conduct" towards child and where court at that time discussed parents' lifestyle and mental health to assess risk of harm to child, court's reasons for judgment did not qualify as document that dealt with past conduct — Previous judge's analysis of risk of harm could not be equated to "past conduct" — Reasons for judgment were inadmissible under subsection 50(1) of *Child and Family Services Act*.

CHILD PROTECTION — General — Children's aid society — Functions and duties — Duty of procedural fairness — Just dealing — Letter of retainer to prospective assessor — Society's letter of retainer to assessor was misguided, partisan, lacking balance and perspective and exceeding bounds of necessity and propriety — As quasi-governmental organization, society had duty to be scrupulously balanced when dealing with parents and professionals — Society could take firm position eventually, but not until it had facts in its possession, which it did not at time of retainer — Because of tainting, court found it unsafe to rely on "Discussion" portion of assessor's report, or her conclusions and opinions in her oral testimony, unless those opinions and conclusions were corroborated by non-society employees.

CIVIL PROCEDURE — General — Procedure where rules are silent — Importation from *Rules of Civil Procedure* — Propriety of importation — Unlike *Rules of Civil Procedure, Family Law Rules* failed to indicate how adverse party who had just been cross-examined in chief by opposing party should then be examined by his or her own lawyer — Court therefore invoked subrule 1(7) of *Family Law Rules* to examine *Rules of Civil Procedure* where it was clear that, after being cross-examined, adverse party could "re-examined by any party who is not entitled to cross-examine" — Thus, where children's aid society had called mother as witness and cross-examined her as adverse, her own lawyer was not thereafter allowed to cross-examine her but was limited to re-examination — Likewise, where father and mother had presented unified plan of care and had formed united front, his interests were not adverse to those of mother and he was also limited to re-examination.

EVIDENCE — Witnesses — Examination — Adverse witness — After being cross-examined in chief, adverse party could only be "re-examined" by any party who was not entitled to cross-examine — Where children's aid society called mother as witness and cross-examined her as adverse, her own lawyer was not thereafter allowed to cross-examine her but was limited to re-examination — Likewise, where father and mother had presented unified plan of care and had formed united front, his interests were not adverse to those of mother and he was also limited to re-

examination — Because *Family Law Rules* were silent on point, court invoked subrule 1(7) to look to the *Rules of Civil Procedure* for clear statement of practice.

As young teenager, a mother (now 34 years old) had been diagnosed with schizophrenia, having suicidal impulses and periodic hallucinations urging her to "kill". At age 15, she went live with and marry a man nearly 3 times her age, discontinued her medication and very soon gave birth to her first child (1985). Concerned about the physical risk to the baby if left alone with the mother during a psychotic state, a local children's aid society apprehended the child almost at birth. The court had evidence that the mother lacked insight into her illness and thus, could not be trusted to take her medication, especially since the father did not believe that his wife's disease was serious or that the medicine was of any real benefit to her. In 1987, the court had ordered Crown wardship without access for the purpose of adoption.

Now, 15 years later, the same mother gave birth to a second child whom the society also apprehended at birth. The society asked to have the court's reasons from 1987 admitted into evidence at this trial under subsection 50(1) (material relating to past conduct) of the *Child and Family Services Act*.

In preparing its case, the society sought out a clinical psychologist to write the parenting assessment report. Its letter of retainer, however, was riddled with unproven allegations about the father, listed facts about the mother's illness that were not grounded in either time or context, did not mention the stabilization of the mother's condition or current compliance with her medication and set out other statements that were slanted in a negative tone and even factually incorrect.

The mother had not testified in the 1987 trial. In this case, however, the society chose to call her and got to cross-examine her as an adverse witness, at that end of which the mother's own lawyer claimed the right to cross-examine his own client. The father's lawyer also claimed that, regardless of any ruling on that point, he was entitled to cross-examine the mother as the parents were potentially adverse in interest.

Held:— Crown wardship without access, subject to a final "farewell" visit from the parents.

Unlike the *Rules of Civil Procedure*, the *Family Law Rules* failed to indicate how a party who had been cross-examined in chief by an opposing party should then be examined by his or her own lawyer. This gap in the *Family Law Rules* allowed the court to invoke subrule 1(7) to look to the *Rules of Civil Procedure* where it was clear that, after cross-examination of an adverse party, that party could "re-examined by any party who is not entitled to cross-examine". Thus the mother's lawyer was confined to re-examination only. As for the father, the premise of his claim was flawed because, from the outset, he and the mother presented a unified plan of care and a united front. His interests were not adverse to those of the mother and he was likewise limited to re-examination.

The society's letter of retainer to the clinical psychologist was misguided, partisan, lacking balance and perspective and exceeding the bounds of what was necessary and appropriate. As a quasi-governmental organization, a children's aid society had to be scrupulously balanced in its dealings with parents and professionals. Admittedly, at some point in the case, it would have to take a firm position, but not until it had all of the facts in its possession. At the time that this letter was written, the society did not have those facts

and ought to have refrained from expressing a position to a professional from whom it was seeking an independent assessment. Because of this tainting, the court found it unsafe to rely on the "Discussion" portion of assessor's report, or her conclusions and opinions, as expressed in her testimony, except to the extent that those opinions and conclusions were corroborated by non-society employees.

On the issue of past conduct, clauses 50(1)(*a*) and 50(1)(*b*) were conjunctive — the court could admit into evidence a "statement or report" referred to in clause 50(1)(*b*) only if it could be established that this statement or report contained evidence of "past conduct of a person toward any child". Any consideration of "past conduct", however, had to mean a consideration of ***concrete facts*** of past behaviour. The trouble was that the first child was apprehended at birth and the parents had never had the chance to engage in any "conduct" towards that child. Thus, in its 1987 reasons, the court discussed the lifestyle and mental health of these parents in order to assess the risk of harm to that child. Such an analysis of the risk of harm to a child if left in parental care could not be equated to "past conduct". Thus, the 1987 reasons could not be admitted under subsection 50(1), although that did not foreclose the admission of these reasons by some other avenue.

Even if these reasons did qualify under subsection 50(1), the court had an overriding discretion not to admit them. In this case, because of the passage of more than 15 years, those reasons would be so marginal and so outdated as to have no material relevance to this case. The prejudicial value of this history far outweighed any probative value.

Nevertheless, apprehensions at birth (as in this case) were almost always rooted in historical information about the parents and their ability to parent rather than upon any specific conduct toward the new baby. In this case, that historical evidence was quite devastating but so old that the society had a duty to supplement it with more current material. The society's claim was based on risk of harm to the child under clause 37(2)(*b*) of the Act, rather than actual harm. "Risk" did not mean a "mere possibility" that harm might occur, but rather "a real possibility that if a child were to be returned to his or her parent temporarily, it is more probable than not that the child would suffer harm". In this case, the historical information, when combined with the facts known to the apprehending worker — namely, that the mother had stopped seeing her psychiatrist, that the parents ended their involvement with their community support worker and that they had no support system in place from extended family or the community — was enough to justify the society's conclusion that the second baby was at risk of harm if left in the parents' care. Thus, at the time of apprehension, this baby was a child in need of protection.

As for whether the child continued to be in need of protection, the evidence showed that;

(a) The mother's schizophrenia had now stabilized, she was taking her medication regularly and no longer had dangerous hallucinations. When she went into crisis, she appropriately sought outside help. Her illness was not cured and the risk of relapse was always present but, on the basis of the illness alone, the child would not be at risk.

(b) The mother and the father had formed a committed, stable relationship, but more akin to a relationship between parent and child. The mother was not only a wife but had a child-like dependency on her husband. That alone was

troubling and it was made worse by the husband's lack of awareness of just how deep that dependency ran but, by itself, would not constitute a risk to the child.

(c) The parents scarcely needed exposure to stressful situations. The introduction of a new child into the family dynamic would be a new stressor but, by itself, would not be a reason to find the child in need of protection.

(d) More serious was the couple's understanding of the risks of their plan and their lack of motivation to minimize that risk. In her evidence, the mother revealed ambivalence about her role — at times, she insisted that her husband would do "everything" in terms parenting; and at other times, she saw herself as a co-parent with her husband as a helper. It was the latter that strongly suggested that was not convinced that she posed a potential risk to the child or that she could not be left alone with him. The dark side of the husband's ambivalence lay in his evidence that he saw no risk in leaving the child alone with his wife and in his belief that his daily routine would not be affected by the child's presence in his home.

(e) Equally if not more serious was the couple's social isolation. The father was essentially a recluse who controlled his wife to avoid outside entanglements. Challenged by the care of a highly dependent, handicapped wife and by the added care of a young child, he should logically have explored every possible program or community resource that could help him. His failure to do so showed a lack of initiative and foresight. What few links the couple had to community and extended family were minimal, tenuous and far short what they would need to raise a child.

In isolation, some of these factors were not critical but, in their totality, particularly the last two, lead to the inevitable conclusion that this child remained in need of protection.

Those same factors weighed heavily against the disposition that the parents sought — the child's placement with them subject to society supervision. The least intrusive disposition that could protect the child was Crown wardship.

STATUTES AND REGULATIONS CITED

Child and Family Services Act, R.S.O. 1990, c. C-11 [as amended], clause 37(2)(*b*), subsection 50(1), paragraph 57(1)¶3, subsection 57(2) subsection 57(3) and subsection 59(2).

Family Law Rules, O. Reg. 114/99 [as amended], subrule 1(7).

Rules of Civil Procedure, R.R.O. 1990, Reg. 194 [as amended], subrule 53.07(6).

CASES CITED

Children's Aid Society of Metropolitan Toronto v R.(A.) and R.(G.), 1987 CanLII 1199, 120 A.C.W.S. (3d) 459, [1987] O.J. No. 2491, 1987 CarswellOnt 2226 (Ont. Prov. Ct., Fam. Div.).

Children's Aid Society of Rainy River v. B. (Boyd) and B. (Evelyn), 2001 CanLII 28113, 107 A.C.W.S. (3d) 1021, [2001] O.J. No. 3493, 2001 CarswellOnt 3025 (Ont. C.J.).

Children's Aid Society of Waterloo Region v. C. (Rachelle) and S. (Merlyn), 1994 CanLII

4520, 52 A.C.W.S. (3d) 84, [1995] W.D.F.L. 193, [1994] O.J. No. 2955, 1994 Carswell-Ont 2132 (Ont. Prov. Div.).

Whiten v. Pilot Insurance Co. (1996), 27 O.R. (3d) 479, 132 D.L.R. (4th) 568, 47 C.P.C. (3d) 229, [1996] O.J. No. 227, 1996 CarswellOnt 187 (Ont. Gen. Div.).

AUTHORS AND WORKS CITED

Shorter Oxford English Dictionary, 3rd ed. (Oxford: Claredon Press, 1973), *sub verbo* "conduct".

Mira Pilch ..... counsel for the applicant society
Gary Gottlieb ..... counsel for the respondent mother, A.R.
Alawi K. Mohideen ..... counsel for the respondent father, G.R.

For previous proceedings involving the same parents with respect to an older child, see *Children's Aid Society of Metropolitan Toronto v A.R. and G.R.*, 1987 CanLII 1199, 120 A.C.W.S. (3d) 459, [1987] O.J. No. 2491, 1987 CarswellOnt 2226 (Ont. Prov. Ct., Fam. Div.), *per* Provincial Judge Douglas A. Bean.

JUSTICE R.J. SPENCE:—

1: THE PARTIES

[1] The child who is the subject of this proceeding is R.W.R., born on 21 March 2001. R.W.R.'s parents are Mrs. A.R. ("the mother") and Mr. G.R. ("the father"). Mr. and Mrs. R. are married to one another and have lived together for approximately 18 years. The Children's Aid Society of Toronto ("the society") apprehended R.W.R. at birth, while R.W.R. and his mother were in the hospital.

2: ORDER SOUGHT BY THE SOCIETY

[2] The society seeks a finding pursuant to clause 37(2)(*b*) of the *Child and Family Services Act*, R.S.O. 1990, c. C-11, as amended ("the Act"), that R.W.R. is a child in need of protection; that provision states:

> (*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) pattern of neglect in caring for, providing for, supervising or protecting the child;

[3] Following this finding, the society is seeking a dispositional order under paragraph 3 of subsection 57(1) of the Act, that R.W.R. be made a ward of the Crown and further, under subsection 59(2) of the Act, that there be no access to the parents, to permit R.W.R. to be adopted.

3: POSITION OF THE PARENTS

[4] The father's position is that there is no basis for a finding that R.W.R. is in need of protection. He says R.W.R. ought to be returned to his care and custody. Alternatively, if the court should find that R.W.R. is a child in need of protection, the father submits that R.W.R. should be returned to his custody, subject to a supervision order, with specified terms and conditions. In the final alternative, should the court find that R.W.R. is a child in need of protection and makes an order for Crown wardship, the father seeks an order permitting him access. The mother supports the father in all respects. The mother states that she herself is not advancing a plan of care for the child. In other words, she is not proposing to act as a parent figure but, instead, would be another dependent of the father, along with the child.

4: BACKGROUND LEADING TO THE APPREHENSION

[5] The mother is 34 years old. The father is 63 years old. They are the biological parents of an older child, J.R., born on 4 December 1985. J.R. was apprehended by the society on 7 January 1986.

[6] In that case, a court-ordered assessment was performed by the Clarke Institute of Psychiatry and a report was prepared on 24 November 1986. That report goes into considerable detail concerning the history and clinical observations of the parties. I do not propose to repeat the extensive detail contained in that report. However, a brief summary of the report's contents is necessary to place the current situation into context.

[7] Mrs. A.R. was diagnosed with schizophrenia as a young teenager, during which time she had periodic hallucinations urging her to "kill". She demonstrated, as well, suicidal impulses. The report noted that "she appeared to have some paranoid delusions that compelled her to protect herself with a knife". She experienced "violent fantasies". While at the Youthdale Treatment Centre, she needed constantly to be monitored as she was "looking for sharp objects to stab one of the staff". The above was occurring in the period of 1982-1983. In 1984, she left Thistletown Regional Centre, where she had been an in-patient, and went to live with Mr. G.R. It was then that she discontinued her medication for her schizophrenia.

[8] At the time that baby J.R. was apprehended by the society on 7 January 1986, the mother's "grasp of reality and mental health appeared to be deteriorating". In short, although the report noted the "excellent physical care" that Mr. G.R. provided to baby J.R., it was clear that Mrs. A.R. had "decompensated" to the point where she was a danger to herself as well as to baby J.R.

[9] During the assessment process, Mr. G.R. expressed his view that Mrs. A.R. was competent to care for baby J.R. He voiced his scepticism at both the diagnosis of schizophrenia as well as the mother's need to take medication for that illness. Both parents were seeking to have baby J.R. returned to them on the basis that neither of them believed that the mother was dangerously ill and neither believed that she required any medication.

[10] The report noted that Mrs. A.R.'s prognosis was poor, given the early onset of the schizophrenia. The report expressed concern for the possible recurrence of the acute psychotic symptoms of suicidal and homicidal ideation as well as the violent fantasies, including violence towards babies. The report concluded: "We believe [J.R.] would be at risk physically if he were to be left alone with [Mrs. A.R.] in a psychotic state."

[11] Of particular concern, as noted in the report, was the fact that Mrs. A.R. lacked insight into her illness. Because of this, it was felt she might not be compliant in taking her medication, particularly since Mr. G.R. himself did not believe his wife's disease was serious, or that the medication was of any real benefit to her. As I stated above, there is much more information, history and analysis in the report than I intend to set out in these reasons. However, the bottom line for each of these parents was that the Clarke assessors viewed the proposed parenting scenario of Mr. G.R. and Mrs. A.R. for baby J.R. in a very negative light.

[12] It was against this backdrop that the protection trial proceeded, leading to the decision of Provincial Judge Douglas A. Bean on 29 June 1987, wherein he ordered J.R. to be made a ward of the Crown, with no access to the parents, for the purpose of adoption. See *Children's Aid Society of Metropolitan Toronto v A.R. and G.R.*, 1987 CanLII 1199, 120 A.C.W.S. (3d) 459, [1987] O.J. No. 2491, 1987 CarswellOnt 2226 (Ont. Prov. Ct., Fam. Div.). The society, in this case, sought to have those reasons admitted into evidence.

5: ADMISSIBILITY OF REASONS FOR JUDGMENT DATED 29 JUNE 1987

[13] The society sought to have the reasons for judgment ("the reasons") admitted into evidence pursuant to subsection 50(1) of the Act, which states [my emphasis]:

> **50. Consideration of past conduct toward children.—**(1) Despite anything in the *Evidence Act*, in any proceeding under this Part,
>
> (*a*) the court may consider the past conduct of a person toward any child if that person is caring for or has access to or may care for or have access to a child who is the subject of the proceeding; and
>
> (*b*) any oral or written statement or report that the court considers relevant to the proceeding, including a transcript, exhibit or finding or the reasons for a decision in an earlier civil or criminal proceeding, is admissible into evidence.

[14] The society argues that subsection 50(1) creates a statutory exception to the hearsay rule and makes certain "statements or reports" admissible to the extent that the information contained in those documents relates to "past conduct of a person toward any child". I agree with the society.

[15] The society concedes that clauses (*a*) and (*b*) are conjunctive. In other words, the court may admit into evidence the "statement or report" referred to in clause (*b*) only if it can be established that this statement or report contains evidence of "past conduct of a person toward any child". I agree with the society on this point as well.

[16] I initially ruled that the reasons were admissible, but only as to those portions

dealing with the past conduct of the R.s "toward any child". The society asked for leave to make further argument on this issue, seeking to have the entire reasons admitted into evidence. I did hear further argument on this issue; I also re-read the reasons and I then ruled them inadmissible in their entirety.

[17] I did so for two reasons. First, in my opinion, there is nothing in the reasons that pertains to past conduct toward children. I asked the society lawyer to read to me those portions of the reasons that she believed pertained to "past conduct". The portions she read out in court dealt with the parents' lifestyle and their mental health. In my view, those portions of the reasons — and indeed most of the reasons — contained an analysis of the ***risk of harm*** to baby J.R. were he to be left in the care of the parents. Notwithstanding the society's submissions, I do not agree that an analysis of ***risk of harm*** should be equated with ***past conduct***.

[18] The *Shorter Oxford English Dictionary,* 3rd ed. (Oxford: Claredon Press, 1973), defines "conduct" as "to comport or ***behave*** oneself in a ***specified*** way" [my emphasis]. Thus, the words "past conduct" in subsection 50(1) mean "past ***behaviour***" of a ***specific*** nature (in this case, past behaviour toward children). In other words, a consideration of "past conduct" in subsection 50(1) is a consideration of concrete facts of past behaviour. The discussion of a parent's lifestyle or a parent's mental health — no matter how relevant that discussion may have been to the assessment of risk of harm to baby J.R. in 1987 — cannot be equated with "past conduct . . . toward any child". If the legislature had intended the words "past conduct" to include an analysis of risk, it would have been simple to have worded the section in such a way as to make that clear. I agree with and adopt the approach taken by Provincial Judge Heather L. Katarynych in *Children's Aid Society of Waterloo Region v. Rachelle C. and Merlyn S.*, 1994 CanLII 4520, 52 A.C.W.S. (3d) 84, [1995] W.D.F.L. 193, [1994] O.J. No. 2955, 1994 CarswellOnt 2132 (Ont. Prov. Div.), wherein she stated, at paragraph [29] [my emphasis]:

> **[29]** **. . .** I have long been persuaded by the evolution of child welfare law that, ***except as specifically abrogated or altered by specific provision*** in the *Child and Family Services Act*, the law of evidence is alive and well in proceedings under the [Act].

Accordingly, I would interpret the hearsay exception created by subsection 50(1) narrowly, rather than in the expansive manner argued for by the society.

[19] There is a second reason that I would not admit the reasons into evidence. Subsection 50(1) grants a discretion to refuse to admit the tendered document ("the court ***may*** consider the past conduct . . ."). Even if it could be argued that the reasons do contain a reference to a specific fact relating to past conduct toward children, that fact would be so tangential, so marginal and so outdated by the passage of time (more than 15 years) as to have no material relevance to these proceedings. In my opinion, the unfair prejudicial value of what is contained in the reasons far outweighs any probative value.

[20] Before I leave this issue, I wish to make it clear that subsection 50(1) was the only ground upon which the society sought to have the reasons admitted. Accordingly, it was on

the basis of that subsection alone that I considered the issue of admissibility and then declined to admit the reasons into evidence. I do not propose to address the speculative question — namely, would the result have been otherwise had the society advanced different grounds for admissibility.

6: CAN COUNSEL FOR A PARENT CROSS-EXAMINE THAT PARENT IF SHE IS CALLED AS A WITNESS BY THE SOCIETY?

[21] Counsel for the society called Mrs. A.R. as part of its case in chief. Because Mrs. A.R. was an adverse witness to the society, counsel was entitled to ask leading questions of Mrs. A.R. The issue then arose whether Mrs. A.R.'s counsel was entitled to cross-examine his own client. Additionally, counsel for the father argued, regardless of my ruling on that point, that ***he*** should be entitled to cross-examine the mother as the parents were potentially adverse in interest. Counsel for the society argued that neither party was entitled to cross-examine the mother. I agreed with counsel for the society, for the following reason.

[22] There is a clear gap in the *Family Law Rules*, O. Reg. 114/99, as amended, in that they do not provide for how a party who has been cross-examined in chief by the opposite party should then be examined by his or her own counsel. Where there is a gap in the rules, subrule 1(7) applies and the court may then look to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended. Subrule 53.07(6) of the *Rules of Civil Procedure* states [my emphasis]:

> **53.07.** *Re-examination.*—(6) After cross-examination [of an adverse party] . . . the person may be ***re-examined*** by any party who is not entitled to cross-examine . . .

[23] This rule was considered in *Whiten v. Pilot Insurance Co.* (1996), 27 O.R. (3d) 479, 132 D.L.R. (4th) 568, 47 C.P.C. (3d) 229, [1996] O.J. No. 227, 1996 CarswellOnt 187 (Ont. Gen. Div.), in which the court held that, where a party calls an adverse party as a witness pursuant to this rule, counsel for the adverse party may not cross-examine by leading questions but is restricted to non-leading questions.

[24] The argument raised by counsel for the father, namely that his client may be adverse in interest to the mother and thus, even if the mother's counsel is not entitled to cross-examine his client, the father's counsel should be so entitled, fails on the very foundation upon which this case was presented. From the outset, both the mother and the father made it clear that they were presenting a unified plan. They both took the position that R.W.R. should be returned to be parented by the father. They both agreed that the mother was not presenting a plan of care for the child. And the mother fully supported the father's position in response to the society's protection application. In the face of that unified front, it is illogical for the father to argue that his interests are adverse to those of the mother. For that reason, I ruled that counsel for the father was also limited to non-leading questions of the mother.

7: WAS BABY R.W.R. IN NEED OF PROTECTION ON THE DATE OF

APPREHENSION?

[25] As I stated at the outset of these reasons, the society is seeking a finding that the child is in need of protection on the basis of clause 37(2)(*b*). It is the position of the parents that a finding is inappropriate, given certain acknowledged facts, particularly:

1. The mother had participated in prenatal care sessions.
2. The mother was attending those sessions on a regular basis and the father had accompanied her to all her appointments.
3. Baby R.W.R. was born healthy.
4. Although the mother was known to be schizophrenic, she was taking her medication for her illness.
5. The father was retired and was intending to be home full time with baby R.W.R.
6. There was no evidence of anything inappropriate regarding food, clothing, or other physical preparations for the child's care at home; and
7. Neither parent had been given the opportunity to care for baby R.W.R. so that there was no evidence that they were incapable of doing so.

[26] Severina Volpe, a social worker with the society, attended at Mount Sinai Hospital on 21 March 2001, the day baby R.W.R. was born. At that time, she had with her a "letter of apprehension". In other words, she went to the hospital with the intention of apprehending baby R.W.R. The parents allege that the society pre-judged this case by forming the intention to apprehend without even having interviewed the parents in order to ascertain whether a real risk of harm existed. They submit that the society was biased from the very outset and there was nothing that either parent could have said or done to deflect the intention to apprehend, as this intention had been formed prior to Ms. Volpe's attendance at the hospital. I do not agree.

[27] It is important to note that the test in clause 37(2)(*b*) for finding a child to be in need of protection is not whether the parents have inflicted ***actual*** harm on a child but whether there is a ***risk*** of harm. The evidence discloses that, when Ms. Volpe attended at the hospital on 21 March 2001, the following was known by the society:

1. Marjorie Bothwell, a social worker at Mount Sinai Hospital, had met with the mother in September 2000, early in the mother's pregnancy. At that time, Ms. Bothwell became aware of the existence of the mother's schizophrenia as well as the parents' past history of having lost a child (baby J.R.) to the society.
2. Ms. Bothwell learned from the parents that they did not have an interest in pursuing the issue of child care. She also learned that the parents had stopped seeing their community support person in Scarborough.
3. The parents informed Ms. Bothwell at that meeting that they did not wish to meet further with her.
4. On or about 14 December 2000, Ms. Bothwell contacted the society to refer the matter of the mother's pregnancy and pending birth.
5. On 21 March 2001, Ms. Bothwell advised the society that the baby had been born.

She also met with the parents to inform them someone from the society would be coming to speak with them later that same day.

6. Ms. Volpe attended at the hospital on 21 March. She had a discussion with the parents that lasted about 30 minutes. (The father's evidence was that this interview lasted "not even five" minutes. However, I reject the father's evidence on this point as it was not consistent with the father's acknowledgment that Ms. Volpe asked a ***series*** of questions and that the father could not recall what any of the specific questions were. This suggests to me that his recollection of that meeting is poor.). She was aware of the society's prior apprehension of baby J.R. and the fact that J.R. had been made a Crown ward. Her main concern at this time was to ascertain whether there was a plan in place to care for baby R.W.R. She ascertained from her discussions that there did not appear to be any family members who would be available to assist in caring for the baby.
7. Ms. Volpe learned that Mrs. A.R. had been under the care of her psychiatrist, Dr. Cruz, for a number of years. However, Mrs. A.R. had stopped seeing Dr. Cruz when she became pregnant. Ms. Volpe testified that Mr. G.R. stopped taking his wife to see Dr. Cruz because he "didn't think that it was safe there because of all the mentally ill patients". Although Mr. G.R. does not dispute that he said this to Ms. Volpe, he did state in a subsequent affidavit sworn on 7 May 2001 that the reason that he stopped taking his wife to Dr. Cruz was "partly because Dr. Cruz had started discouraging my wife having the baby . . . I was afraid Dr. Cruz might have been able to talk my wife into having an abortion. Consequently, my wife and I decided that she would stop seeing Dr. Cruz."

[28] On the basis of the family's past history, her hospital interview with the family and her interviews with collaterals, Ms. Volpe apprehended baby R.W.R. Although Ms. Volpe attended at the hospital with the intention of apprehending, she testified that she could have destroyed the apprehension letter had she been satisfied that there was a sufficient "set plan" in place and if other family members had been available to assist the parents in the care and support of baby R.W.R. I would point out that, although the father did depose in his affidavit of 7 May 2001 that he has available certain family members to assist him, the father does not dispute that he failed to ***convey*** this information to Ms. Volpe on 21 March 2001.

[29] The parents submit that the society's apprehension of baby R.W.R. on the day of his birth was unwarranted as the parents were not given any opportunity whatsoever to demonstrate their ability to parent this child. The parents also submit that, at the time of apprehension, there was no evidence that the child was in need of protection.

[30] Birth apprehensions, by their very nature, are usually predicated upon historical information about the parents and their ability to parent rather than upon any specific conduct toward the new baby. As I have previously recounted, the historical evidence respecting these parents was quite devastating. I note, however, that the historical information was very old and the society had an obligation (I make no finding whether it fulfilled this obligation) to question how relevant that information was in March 2001. Nevertheless, clause 37(2)(*b*) speaks of ***risk*** of harm to the child, rather than ***actual*** harm.

"Risk", in this context, does not mean a "mere possibility" that harm might occur, but rather "a real possibility that if a child were to be returned to his or her parent temporarily, it is more probable than not that the child would suffer harm". See *Children's Aid Society of Rainy River v. Boyd B. and Evelyn B.*, 2001 CanLII 28113, 107 A.C.W.S. (3d) 1021, [2001] O.J. No. 3493, 2001 CarswellOnt 3025 (Ont. C.J.), *per* Justice Judythe P. Little.

[31] I do not need to decide whether the historical information, by itself, would have been sufficient to apprehend baby R.W.R. However, when that history is combined with the facts that were known by Ms. Volpe as of 21 March 2001 — particularly that the mother had ceased all contact with her psychiatrist, that no community support worker was actively involved with the family and that there appeared to be no external supports in place — the society was more than justified in coming to the conclusion that baby R.W.R. was at risk of harm were he to be left in the care and custody of Mr. G.R. and Mrs. A.R. On the basis of all of this evidence, I find there was a risk of harm on 21 March 2001 and, as of that date, baby R.W.R. was a child in need of protection.

[32] At this point, I will refer to the evidence of two of the society's witnesses, Greg Babcock and Norman Bodach. I do so because portions of their evidence neatly summarize the basis for the society's belief that the child continues to be in need of protection and requires intervention through a court order at the present time.

[33] Mr. Babcock is a children's services worker for the society and has been the worker for this child since February 2002. In that capacity, he oversaw a number of the access visits between the child and his parents. He observed the father to be generally appropriate in his interaction with R.W.R., including feeding, changing, holding and speaking to the child. The mother would often appear enthusiastic at the beginning of the visits but would become tired toward the end. The father was the parent primarily involved with R.W.R.

[34] Mr. Babcock supports the society's application for Crown wardship for a number of reasons. First, he believes the mother's mental health may interfere with her ability to care for R.W.R. (although he does acknowledge the mother's stated plan to refrain from actual parenting). Second, the father would have a significant challenge in caring for the child in addition to his current burden of caring for the mother. And third, Mr. Babcock wondered how Mrs. A.R. would cope with this young child's living in the apartment, together with herself and Mr. G.R.

[35] Mr. Babcock expressed concern that the unpredictability of schizophrenia creates uncertainty as to the mother's ability to be flexible and to change and to adapt to the new family dynamic of having a child in the home. During the access visits, he did not see anything "significantly inappropriate" in the parents' interaction with one another or with the child but he qualified that by stating that the access visits were of limited duration, during which he saw no stress at all. This would have to be contrasted with the child's living permanently with the parents, which, in Mr. Babcock's opinion, could create a significantly more stressful environment.

[36] Mr. Bodach is a family services worker, employed by the society. Some of his

responsibilities include assessing risks to children and ensuring their safety, developing goals and implementing treatment plans for families and children, collaborating with community agencies and facilitating referrals to appropriate resources and community organizations. Mr. Bodach has been the R.s family services worker since baby R.W.R. was about two weeks old.

[37] As part of the society's case, I have Mr. Bodach's affidavit, sworn on 26 July 2002, as well as Mr. Bodach's evidence at trial. As of 26 July 2002, he had directly observed approximately 28 of the access visits at the society's offices and four access visits in the R. home. He has also conducted six home visits and has met with the R.s on six other occasions, including "plan of care" meetings for R.W.R. I note there have been ongoing access visits since 26 July 2002 and, indeed, since the commencement of this trial.

[38] In his affidavit in support of the society's amended protection application seeking Crown wardship, Mr. Bodach stated that the following is, in essence, the basis for the society's position:

1. Mrs. A.R. continues to suffer from schizophrenia. Historically, it was much worse than it is today. She currently shows "mild symptoms from time to time."
2. Mrs. A.R. is child-like in her behaviour and, because of this, she has an incapacity to parent. Accordingly, R.W.R. should not be left alone with her. Mrs. A.R. is like a child to Mr. G.R. who must supervise her as well.
3. Mr. G.R. appears to "minimize" his wife's illness and attempts to conceal her symptoms from the society.
4. The parent-and-child nature of the relationship between Mr. G.R. and Mrs. A.R. would place added demands and stresses on Mr. G.R. should R.W.R. be allowed to return home, particularly as Mr. G.R.'s outside supports appear limited in depth and breadth.

[39] On the basis of all of the foregoing, as well as the evidence at trial, I would summarize the issues that encompass the alleged risk of harm to the child as follows:

1. the mother's chronic schizophrenia and its current symptomatic manifestation;
2. the mother's dependency on the father for her care;
3. the added stress, if any, of placing a young child into the family dynamic;
4. whether the mother poses a potential risk to the child and the family's motivation to protect against any such risk; and
5. the isolation of the family.

I propose to discuss each of these issues in the following section of this decision.

8: IS THERE AN ONGOING NEED FOR PROTECTION? — DISCUSSION OF THE ISSUES

8.1: The Mother's Chronic Schizophrenia and Its Current Manifestation

[40] At the outset of these reasons, I referred to the Clarke Institute court-ordered assessment dated 24 November 1986. That document revealed Mrs. A.R. to be a very ill woman in 1986. She was non-compliant with her medication; her illness was manifesting itself in very serious and very dangerous symptoms. Each of her and Mr. G.R. were in a state of denial — both as to the existence or seriousness of the illness as well as to the need for medication to control that illness. I have carefully reviewed that assessment and it is abundantly clear, on the evidence contained in that document, why Judge Bean ordered baby J.R. to be made a Crown ward. The question now is this: What, if anything, has changed in respect of the mother's illness?

[41] Mr. Bodach's affidavit makes reference to the historically serious nature of the mother's schizophrenia. However, he did agree that Mrs. A.R. was now compliant with her medication. Notwithstanding that the mother had reported to him that she had experienced an auditory hallucination, he acknowledged that she took the appropriate steps by consulting with her psychiatrist, Dr. Cruz for a possible adjustment of her medication.

[42] Mr. Bodach's gave considerable evidence dealing with schizophrenia and its significance in this case. However, I would point out that Mr. Bodach is a social worker rather than a psychiatrist. In his two years with the society, he has managed 30 to 35 files, of which schizophrenic parents featured predominantly in two files. Prior to his society involvement, he had no other experience with persons diagnosed with schizophrenia. Nor did any of his school degree programs focus on the subject of schizophrenia. Nor did he read any articles or texts to prepare himself for dealing with persons with schizophrenia.

[43] I would be fair, therefore, to characterize Mr. Bodach's evidence on the subject of schizophrenia as that of a lay person and, accordingly, of little assistance to this court, except where it may be confirmed or corroborated by psychiatric opinion.

[44] I did hear from two psychiatrists and it is on their evidence that I will concentrate in this portion of my discussion. Dr. Robin Brooks-Hill was qualified as an expert in schizophrenia. He apparently assessed Mrs. A.R. on 25 August 1999. In his report, prepared subsequent to that assessment, Dr. Brooks-Hill makes reference to Mrs. A.R.'s dependence on her husband ("he treats me like a daughter, and I really like that" and "he tells me my every move to make"). After reviewing some of Mrs. A.R.'s history, Dr. Brooks-Hill observed: "she speaks clearly and articulately . . . her affect was normal. She described hearing voices, but recognized them as being not real." He noted that Dr. Cruz had been her treating psychiatrist since about 1996 (this date appears to be incorrect having regard to Dr. Cruz's evidence that she has been the treating psychiatrist for about 20 years. However I am unable to determine whether that was Dr. Brooks-Hill's error or the mother's error). Dr. Brooks-Hill's impressions were "chronic schizophrenia, borderline intellectual capacity and personality disorder with dependent and passive aggressive features".

[45] Dr. Brooks-Hill noted that Mrs. A.R. had been diagnosed at a young age with schizophrenia and he stated that usually the younger the person is so diagnosed, the poorer is the prognosis. The voices that the mother described as hearing would be categorized as "benign" rather than "evil". Being diagnosed as a schizophrenic does not automatically disqualify someone from being a parent. Although he has not seen Mrs. A.R. since the assessment, he was able to say that, on the date of that assessment. she was showing insight into her illness. He expressed the opinion that she needed to remain involved with her psychiatrist, Dr. Cruz. Finally, he could not testify where the mother's illness is at today (that is, whether it is better or worse), but he did opine that stable relationships mitigate to the positive.

[46] In summary, Dr. Brooks-Hill's evidence assisted in providing me with some general observations about the mother and schizophrenia in general, as well as an historical snapshot of where the mother's illness was at in 1999.

[47] Dr. Carived Cruz is a licensed psychiatrist who has been treating the mother for about 20 years. Approximately one-quarter of Dr. Cruz's patients are diagnosed schizophrenics.

[48] According to Dr. Cruz, the mother has been dually diagnosed as a schizophrenic who is also developmentally delayed. Much of her behaviour is childlike. Dr. Cruz confirmed the history of the mother's florid symptoms — the homicidal and suicidal ideation referred to in the 1986 Clarke Institute report — but she insisted that the mother has not behaved in that way in the 1990s and beyond. I note, however, this conflicts with Darby Miller's evidence. When she worked for the Scarborough mobile crisis unit, Ms. Miller was involved with Mr. G.R. and Mrs. A.R. On 18 November 1997, Mr. G.R. telephoned that crisis unit and advised "my wife needs to be in hospital, she is suicidal". It may be that Dr. Cruz was simply unaware of those facts when she gave her evidence at trial. Nevertheless, that incident in 1997 does appear to be the last documented occasion on which the mother experienced suicidal ideation. Dr. Cruz noted that, in the past, the mother has had periods of remission and relapses. When she is stressed, she hears voices; she regresses when there is a crisis in the family.

[49] In Dr. Cruz's opinion, the mother is currently "stable" in her illness. That is, she is neither decompensating nor regressing. She believes the mother has insight into her illness. The mother knows when to take her medication as well as when a relapse is coming. When she does hallucinate, she is aware this is an hallucination and not reality. This, Dr. Cruz stated, is a positive thing for the mother. When the mother becomes agitated, she usually calls either Dr. Cruz or the crisis nurse. Dr. Cruz stated that such responses by the mother are appropriate.

[50] Dr. Cruz does not believe that the mother can be the primary caregiver or be the primary source of stimulation for the child. However, she can play a secondary role — for example, she can sing to the child. Dr. Cruz believes that the child's primary source of stimulation needs to come from day care. She believes that the parents' plan whereby the father would be the primary caregiver and that he would never leave the child alone in the

mother's care, is a reasonable plan. In terms of either homicidal or suicidal ideation, she is absolutely certain that the mother presents no danger whatsoever to the child. She did confirm past auditory hallucinations but stated that the last such hallucination was about a year or so ago and was in the nature of the devil talking to her, using vulgar language.

[51] She also confirmed some of the general comments made by Dr. Brooks-Hill — for example, that schizophrenia is a relapsing and remitting illness; there are no cures, only treatments. As well, adolescent onset (as in the mother's case) can result in a poorer prognosis than adult onset of the illness.

[52] Mrs. A.R. gave evidence, during which she talked about her illness. She stated that, when she has had auditory hallucinations, her husband would say to her "it's just your imagination" and "it's your illness", resulting in Mrs. A.R.'s realizing that what she was experiencing was an hallucination, rather than reality.

[53] In respect of both the history of the illness as well as its current state, I place a great deal of weight on the evidence of Dr. Cruz who has been Mrs. A.R.'s patient for 20 years. On the basis of on all the evidence regarding schizophrenia, I conclude that the mother's illness and its impact on her is very different today than it was in the 1980s, when baby J.R. was made a Crown ward. Although she will never be cured of her illness, the mother today is a stable schizophrenic who is compliant in taking her medication. She experiences no dangerous hallucinations and has no dangerous ideation. When she goes into crisis, she responds in an appropriate manner by seeking outside help. However, the risk of relapse is always present.

8.2: TheMother's Dependency on the Father for Her Care

[54] There was a good deal of evidence regarding the parents' relationship with one another. Greg Babcock testified that they seemed appropriate with one another, their interactions "seemingly normal" but that the mother is "somewhat childlike in her presentation". In his view, Mr. G.R. has been generally patient with his wife.

[55] Mr. Bodach states that "Mrs. A.R. appears to relate to Mr. G.R. as a child over whom he must have full supervision". It is his conclusion based on his extensive observations of the family that the R.s have a "parent-child type of relationship". It is Mr. Bodach's belief that the relationship of the parents to one another is one of dependency. His sense is that Mrs. A.R. is both the wife as well as the child in the relationship. It is important to point out that Mr. Bodach's conclusions are based on his observations rather than upon any medical or professional diagnosis. Nevertheless, I do give some weight to those observations, particularly as he is a trained social worker.

[56] Dr. Nitza Perlman is a clinical psychologist. The society retained her to conduct a parenting capacity assessment. Her report, dated 26 September 2001 is based on interviews with the parents, observations of a visit between the parents and R.W.R. and conversations with Mr. Bodach.

[57] Before I refer to Dr. Perlman's evidence, I will deal with an issue raised by counsel for the parents, namely, the alleged bias of this witness. The society sent a detailed retainer letter to Dr. Perlman (exhibit 5). That letter contains considerable information pertaining to a number of issues, including, the history of Mrs. A.R.'s illness, her relationship with Mr. G.R., certain unproven allegations pertaining to Mr. G.R. and the child welfare litigation regarding baby J.R. Some of the facts contained in that letter respecting the mother's illness were not grounded in either time or context. Nor did the letter state that the mother's illness had stabilized and that she was currently compliant with her medication. Certain statements regarding Mr. G.R. and his relationship to his own family were negative in tone and, arguably, factually incorrect. The letter stated that Mr. G.R. has been placed on the "sexual abuse registry due to his involvement with [Mrs. A.R.]". There was no evidence at trial to support this allegation.

[58] Counsel for the parents submit this letter goes well beyond the parameters of what ought to be contained in a retainer letter of this sort. They further submit that the intention of the letter was to bias Dr. Perlman's assessment in favour of the society's position. For that reason, the argument goes, little if any weight ought to be given to Dr. Perlman's report.

[59] I agree with much of this criticism. In my opinion, the contents of the letter exceeded the bounds of what was necessary and appropriate. Much of the letter lacks balance and perspective and it is difficult to read this letter without concluding that the society was advocating a position, rather than simply making a referral for an assessment. I am not familiar with the society's practice when making these kinds of referrals. However, if this letter is typical of such referral letters, it is, in my opinion, misguided.

[60] A children's aid society, as a quasi-governmental organization, has an obligation to be scrupulously balanced in its dealings with parents and professionals. I realize that, at some point, and certainly at trial, the society does take a firm position. However, the society ought to refrain from taking that firm position until such time as it has all of the facts in its possession. When exhibit 5 was written, baby R.W.R. had been in the society's care for less than three months. Even if the society had felt justified in formulating its position at that early stage, it ought to have refrained from expressing that position to a professional from whom the society was seeking an assessment. In my view, the referral letter should either have been very brief, containing few if any facts at all, or it should have been much lengthier so that the facts could have been presented in a more balanced manner.

[61] Dr. Perlman testified that, typically, these society referrals are accompanied by the society's notes. However, in this case, the society decided to refrain from providing its notes because (according to Dr. Perlman), it did not wish to bias the doctor in her assessment. I have no reason to disbelieve Dr. Perlman on this point, but I find it remarkable that the society would withhold its notes and, instead, choose to replace them with this rather one-sided narrative. Dr. Perlman also stated that she is often provided with the society's legal position in the referral letter and she believes this is reasonable because of the importance of knowing what the society has in mind in terms of its direction of the case. She testified that, once she knows the issue between the society and the parents, she then tries to work objectively.

[62] I do not question either the credibility or good faith of Dr. Perlman. Nor do I doubt her testimony that she made a conscious ***effort*** not to be biased by the contents of exhibit 5. What I do question, however, is her ***ability*** to be truly objective in her assessment and in her conclusions when she is presented with an unbalanced set of facts and allegations, particularly in a case such as this where she is dealing with one parent — the mother — who is "childlike" and a second parent — the father — who is admittedly and obviously inarticulate.

[63] It is for these reasons that I have decided it is unsafe to rely on the "Discussion" portion of her report, or her conclusions and opinions, as expressed in her testimony, except to the extent that those opinions and conclusions may be corroborated by non-society employees. This is indeed unfortunate because it undermines the evidentiary utility of a highly experienced psychologist, albeit a professional who devotes a considerable portion of her practice to work paid for by the society.

[64] I do accept the following from Dr. Perlman's report:

> both [Mr. G.R.] and [Mrs. A.R.] see her as absolutely dependent on him. [Mrs. A.R.] reported that her physician tries to remind her husband that she is a "grown woman" but that she is "too childish to understand" such matters. She does not mind this state of affairs. Her husband takes care of all her needs and she trusts him completely.

Dr. Perlman's conclusion on this issue is that "her dependency on her husband and her infantile personality are not likely to change."

[65] She also stated that there appears to be somewhat of a conflict between how Mr. G.R. himself regards the degree of dependency and how Mrs. A.R. views it. According to Dr. Perlman, he tends to minimize the extent to which she is dependent upon him but, in Mrs. A.R.'s mind, she is highly dependent on him for all of her needs. Dr. Perlman's opinion is that the parents are committed to one another, that they are very attached to each other and that the father provides for all of her needs. For them, these are positive qualities in this relationship.

[66] Darby Miller was called by the society to give evidence in connection with her prior involvement with the parents. This occurred in Ms. Miller's capacity as a crisis worker for the Scarborough Mobile Crisis Unit as well as in her capacity as a family and children services worker for the society. Based on her observations, Ms. Miller stated that the father is committed in his relationship to the mother and to looking after her needs. However, she believes that the relationship is similar to that of a parent and child, based on how they interact with one another.

[67] Mr. G.R. gave evidence at trial. He acknowledged that he takes care of his wife's basic needs. Earlier in their relationship, this posed some difficulty — he stated it was a "little edgy" from time to time — but it has become much easier since Mrs. A.R. has been taking her proper medication and she understands what is going on.

[68] He agreed with Dr. Perlman's observation that he is "extremely protective" of his

wife. However, Mr. G.R. says the reason for this is that his wife is a little naïve and therefore this level of protection is necessary for her well-being. It appeared from his evidence that the father believes his wife is highly dependent upon him. For example, he stated that he takes her to all her medical appointments on the bus because he does not believe she is capable of going on her own or that she is ***capable*** of learning how to go on her own. He did point out that she is capable of doing certain things independently, such as reading, making a sandwich, bathing herself and listening to music. However, he does not believe she can become much more independent than she already is. I make no finding as to the accuracy of the father's belief in this regard, other than to note that the father does believe his wife is dependent upon him. I will shortly have more to say about the father's perception of the nature this dependency.

[69] Dr. Cruz's dual diagnosis of schizophrenia and borderline mental development suggests in and of itself a likely high degree of dependency by Mrs. A.R. on her husband. She did agree with Dr. Perlman's observation that the mother does from time to time wet her bed and lose control over her bowels. However, she did not agree with Dr. Perlman's assessment that the mother is "extremely self-centred, demanding and over-reacts to stresses and problems". For the reasons I stated earlier, I reject this aspect of Dr. Perlman's assessment.

[70] Another theme that emerged from Dr. Cruz's evidence is that Mrs. A.R.'s attachment to her husband is not an adult-type attachment but, rather, a dependency of a child to an adult. She also agreed with Dr. Perlman's conclusion — and I accept this as a fact — that the mother's "infantile personality contribute[s] further to her dependency on her husband and to an inability [other than to a "small extent", according to Dr. Cruz] to participate in child rearing in a mature and responsible way."

[71] It follows, therefore, that I reject the father's characterization of their relationship as just like "husband and wife". While I accept the sincerity of the father's characterization, it is that very sincerity itself that demonstrates, in my opinion, a lack of understanding of the child-like nature of her dependency on him. As I stated earlier, I accept as accurate the father's perception that his wife is dependent on him. However, the father seems entirely unaware of the nature and extent of that dependency.

[72] From all of this evidence I conclude that, although Mr. G.R. and Mrs. A.R. have a close and stable relationship with one another, it is a relationship of a parent and child rather than a relationship of one mature adult to another. And, just as a child is capable of doing certain things on her own, ultimately a child is highly dependent upon her parent to care for her and provide her with the day-to-day necessities of life. Without Mr. G.R.'s involvement in her life, Mrs. A.R. would likely be institutionalized. I cannot conclude from the evidence that Mrs. A.R. is ***incapable*** of acquiring a level of independence that would permit her to live on her own. What I do conclude, however, is that she has lived such a sheltered life, a life that Mr. G.R. has carefully protected that, ***at her current level of functioning***, she is incapable of living independently. And, so long as she continues to live with Mr. G.R., this is unlikely ever to change.

[73] Because of the child-like nature of this relationship, I conclude that the mother is incapable of parenting the child — a position that the mother herself ***purports*** to acknowledge. I also conclude that the father would be acting as a single parent to two children. While this might be a difficult but not unusual situation for many single parents, it would be both difficult and unusual in this case. This emanates from Mr. G.R.'s belief that he would be acting as a parent to only ***one*** child. In other words, Mr. G.R.'s self-perceived role in this new family dynamic would be "out of sync" with his true role.

8.3: The Added Stress, if Any, of Placing a Young Child into the Family Dynamic

[74] To some extent, a discussion of this issue requires an element of crystal-ball gazing. It is impossible to quantify with any degree of certainty how much additional stress would result from placing R.W.R. into the R. home. From everyday human experience, however, I can reasonably conclude that adding a young child to any "two-parent" "no-child" household will, by necessity, add a degree of stress from time to time. That is not to say that the addition of a young child will not also provide parents with many moments of tremendous joy, happiness and satisfaction. However, the experience of raising a child incorporates the entire continuum of human emotions and feelings, among which I include anger, frustration and sometimes helplessness. These latter feelings naturally tend to elevate the stress level in the parent who is experiencing those emotions. The degree of stress that such a parent experiences will, of course, vary from parent to parent.

[75] Although I am unable to predict how much stress Mr. G.R. and Mrs. A.R. would experience or how often that stress would occur, Dr. Cruz testified that, when the mother is stressed, she hears voices; when her husband is ill, she will hear voices; and the mother will regress when there is a crisis in the family. All of these things — stress, illness and crises — would inevitably occur were the child to be placed back with his parents. Dr. Cruz testified that "on a scale of 1 to 10" the removal of baby R.W.R. from his mother on 21 March 2001 would have been a "10". She stated that, when she saw the mother in the spring and summer of 2001, there was no evidence of any relapse. Therefore, the parents argue, if she did not relapse under this most stressful of situations, how likely is it that she would relapse under any other type of stress?

[76] Dr. Cruz's evidence in this regard it is only a partial response to the issue. Stresses can be cumulative in nature. How someone reacts to a given stimulus on one occasion may be different than how he or she reacts on another occasion. Neither Dr. Cruz nor any other doctor can quantify ***with precision*** the number "10" on the "scale of 1 to 10". The best Dr. Cruz can really say is that the particular stressor in question would rank toward the higher end of the scale, all other things being equal. To accept Dr. Cruz's evidence as anything more than that would be to interpret her evidence far too literally and with little understanding of the complexity of human emotions and feelings.

[77] Furthermore, although the evidence at trial was directed to the issue of how the mother might respond to the child's return to the parents, there was little evidence directed to the issue of how much stress it would place on the father. The father is already living in a highly demanding environment. With a limited education and limited resources, he is

required not only to care for himself but also for another adult with the very specific, unique and demanding needs of Mrs. A.R. He is, in effect, a single parent caring for a child, a child who will never grow older, a child who will never develop.

[78] Complicating this is the fact that he is not really the parent of that child but, rather, her husband. An added complication is his lack of understanding of the child-like nature of his wife's dependency on him. It does not take a soothsayer to realize that the addition of R.W.R. to his household would add to the stresses already present in his life. As Mr. Babcock stated in his evidence, the father would have significant stressors in managing both the child and coping with the mother. How he would react to those stressors and whether they would manifest in a detrimental way to either his wife or to his child is difficult to predict. However, what is beyond doubt is that he is currently functioning at, or close to, the limit of his resources. He does not have much of a cushion upon which to fall back.

8.4: The Mother's Potential Risk to the Child and the Family's Motivation to Protect against Any Such Risk

[79] Mr. Babcock noted that, during the six visits that he observed between the mother and baby R.W.R., the mother did not display any dangerous inclinations toward the child.

[80] Mr. Bodach, in his affidavit, acknowledged that nothing that he observed posed a risk of imminent harm by the mother toward R.W.R. It was Mr. Bodach's evidence, however, that the risks posed by the mother were in the form of potential relapses and the manifestation of her illness in its florid state. He categorized the risks by the mother, such as he had observed them, as being "latent".

[81] Dr. Brooks-Hill testified that the mother's "borderline intellectual capacity" could make it more difficult for her to maintain her schizophrenia on a stable level. For example, he noted that decreased intellectual functioning can make it more difficult for the individual always to understand the importance of medication, to keep medical appointments and to maintain adequate nutrition. Therefore, Dr. Brooks-Hill's evidence in this regard was consistent with Mr. Bodach's lay characterization of the risk as "latent" rather than imminent.

[82] Dr. Cruz characterized the mother's illness as "stable" and noted that at the present time she is not decompensating. She experiences no homicidal or suicidal ideation and, in that sense, does not present as a danger to the child. However, she did state that stress could exacerbate her illness and that one such stressor would be the illness of her husband.

[83] As I noted earlier, the current state of the mother's illness does not present an immediate risk of harm to the child. However, it is not disputed that this risk would materialize if the mother were to regress or decompensate. Such regression or decompensation would likely occur if she were to experience a greater (but unspecified) level of stress, in turn, causing her to neglect to maintain her medication, her medical appointments or appropriate nutrition.

[84] Mrs. A.R.'s evidence on the issue of potential risk raises a red flag. In her affidavit sworn on 4 June 2001 she stated: "I am well able to parent my infant son on a full time basis." At trial, she modified that evidence by stating that she cannot parent on her own and needs the ***assistance*** of her husband and his sister. She went further and said that her husband would do "everything". However, at a later point in her testimony, she commented that looking after a baby would be a lot of work but her husband "would be helping me".

[85] Therefore, what I have from Mrs. A.R. is evidence of ambivalence, evidence of a conflicted attitude. On the one hand, she sometimes says the right words — her husband would do "everything"; on the other hand, she makes statements that are indicative of dual parenting by both herself and her husband. The latter statements reflect her expressed attitude at trial, namely, "my wish is to be normal". And, of course, the wish to be "normal" incorporates the desire to be actively involved in parenting one's own child. The mother's conflicted attitude strongly suggests to me that she herself is not persuaded that she poses a potential risk to R.W.R. or that she cannot be left alone with him.

[86] On this issue I found the father's evidence to be equally revealing. In his affidavit dated 7 May 2001, he deposed that his wife "has had hallucinations in the past when she was not taking her medications. However, she has not had hallucinations for many years." This contradicts the mother's own evidence that she had auditory hallucinations about three months prior to trial. This contradiction causes me to wonder how tuned in the father is to his wife's illness, as indeed he would have to be were he to have any chance of success in his proposed endeavour of raising the child and caring for his wife. My concern about the father's understanding of his wife's illness and its potential for risk is underscored by the following excerpts from his affidavit sworn on 3 December 2001: ". . . there is ***no risk*** to the child if my wife is left alone with the child" [my emphasis] and "I expect as my wife gets older, she will get better."

[87] At paragraph 6 of the same affidavit the father swore: "I undertake not to leave the child alone with my wife." However, when asked during cross-examination whether he felt R.W.R. would be at risk if he were left alone with his mother, the father's response was "Not really, no."

[88] The father's evidence, both in his affidavits as well as at trial, creates concern as to his understanding of his wife's illness, his recognition of the potential for risk, as well as the sincerity of his undertaking never to leave the child alone with his wife. The father's apparent ambivalence on this issue is, unfortunately, consistent with the ambivalence expressed by the mother in her evidence. If the father's plan of care for this child were to have any hope whatsoever of succeeding, he would have to be highly motivated to protect R.W.R. from all potential risks emanating from the mother. The mother, too, would have to have this same degree of motivation. On the evidence, neither one displays the necessary motivation to make their plan work.

8.5: The Isolation of the Family

[89] The father's sister, Ms. Alice C., gave evidence on behalf of the father. I found her

to be a very forthright and highly credible witness. She has a good relationship with Mr. G.R. and both sees as well as speaks to him regularly. She had many positive things to say about Mr. G.R.'s interaction with R.W.R. on those occasions when she was present during the access visits. However, she stated that Mr. G.R. is a "loner". The father essentially agreed with this characterization, acknowledging that, although he has lived in his present apartment building for about 10 years, he has never been to a neighbour's apartment. Furthermore, although Mr. G.R. is one of 14 siblings, apart from his sister Ms. Alice C. and his other sister Carol, he has had little or no contact with his other siblings, including his brother Donald who lives in the same building as Ms. Alice C. Mr. G.R.'s own evidence is that he has "no close friends" and "no social network".

[90] Unfortunately, the R.s' social isolation is exacerbated by their isolation from community agencies and the father's apparent aversion to seeking outside help. As I noted earlier in this decision, Marjorie Bothwell, the Mount Sinai Hospital social worker, stated that, when she first met with the parents in September 2000, they did not have much interest in pursuing child care and they were not currently seeing a community care person in Scarborough. She described them as "unprepared for parenting".

[91] Ann Lindsay is employed by the Toronto Association for Community Living, an agency that assists persons with disabilities to look for employment. Prior to that, she was an adult protective service worker, advocating for services on behalf of persons with developmental disabilities. In that capacity she first became involved with Mrs. A.R. Ms. Lindsay provided assistance by taking the mother to her medical appointments with Dr. Cruz. At one point, when she was at the couple's home, the mother expressed an interest in adult literacy classes, but Mr. G.R. intervened, saying such classes would not be necessary.

[92] Ms. Lindsay had telephone conversations with Mr. G.R. about the various services that she could offer to the mother but, according to Ms. Lindsay, "everything was denied" and "he [Mr. G.R.] didn't want any involvement". Ultimately, of all the services that Ms. Lindsay could have made available to this family, the only one that they sought and obtained was transportation.

[93] When Mr. G.R. was asked about what kind of community service supports would be beneficial to his family, he responded that he needed more money from them. He testified that he had met with Ms. Olfat Ibrahim, from "some community" agency, who indicated a willingness to assist his family. However, he was unable to remember when that meeting occurred, specifically what agency she represented or the details regarding any programs that her agency was offering.

[94] It was not until after the commencement of this trial that Mr. G.R. filled out an application for day care for R.W.R. at the Canadiana Court Daycare Centre. However, he was unfamiliar with many of the details regarding the program.

[95] He and his wife did participate in the 10-week "Success by Six" parenting program, a program for parents who have mental health challenges or who have been mandated by the court to attend. According to Marion Crawford, the program co-ordinator,

the R.s attended this program voluntarily and Mr. G.R., in particular, seemed to interact well with the other participants. She noted that they appeared isolationist at times and, at other times, not. She stated that, although they probably benefited from taking the program, it would have been helpful for the two of them to have re-attended at the course. They did not, however, return after the program's conclusion. Nor, I would note, did they participate in any other program in the 21-month period from the time baby R.W.R. was apprehended to the conclusion of this trial.

[96] The parents argue that their attendance in this program and the father's ongoing commitment to ensure that the mother attends all her medical appointments, as well as his contact with the day-care centre are indicative that he is ***not*** isolationist and in fact willing to avail himself of community services. I do consider the parents' involvement in the Success by Six program to be of ***some*** note. That participation, however, is insufficient to demonstrate the father's openness or willingness to engage community-based services. In my opinion, the father is doing what he believes he has to do (or perhaps what he has been advised by his lawyer — not inappropriately — to do) in order to succeed in this litigation. He is, however, basically a closed individual, a "loner". He is unlikely suddenly to acquire new friendships at this stage of his life. Nor is he going to change his personality such that he becomes an outgoing, ebullient individual.

[97] All of that means he would be able to offer very little human stimulation for his child (outside of himself and his wife and ***possibly*** day care). When he was asked about the kind of stimulation he would provide to his son, he replied that he would need to buy "toys". He said he would ensure his son has social interaction by communicating with other children in the yard and at the nursery. It is noteworthy, however, that in all the access visits that he had with R.W.R., he never once took the child for a walk in the stroller; nor has he ever once taken R.W.R. outside the apartment. Although he talks about the Canadiana Daycare Centre, he has never even been there to look into the day-care program or to check on the availability of any programs for himself or for his wife. While the R.s do have connections to both the community as well as to Mr. G.R.'s family, those connections are minimal; they are tenuous; and they are far from sufficient to provide what this couple, raising a young child, would adequately need.

[98] I do not intend by my comments to be critical of Mr. G.R. as a person. There are many positive things that can be said about him, not the least of which is his devotion to his wife. However, given the fact that he is living with the great challenge of caring for his highly dependent, handicapped wife, it would have been incumbent upon him to seek out every possible program or community resource that could have assisted him and that would continue to assist him with the added challenge of caring for a young child. Simply put, the father lacks both initiative as well as foresight.

[99] He agreed with Mr. Bodach's statement regarding parenting classes that "the classes were fine but that he did not need the classes, because he knows how to raise children due to his experience in raising his other children." This statement by the father underscores his notable lack of insight. He claims to have helped to raise his five children, on his own evidence — taking it at its highest, the oldest of his five children would have been three

years old when he and his wife separated, after which he did not participate in raising them at all. Even if he had participated actively for those first three years prior to separation, he has had no experience raising children since 1975. In other words, the last child-rearing experience he had was about ***27 years ago***. He is, in effect, a new parent. That does not mean he would be a bad parent. What it does mean, however, is that he needs assistance; and, perhaps most important, he requires the necessary insight to realize this. He clearly lacks this insight and, because he lacks it, he lacks the motivation to learn how to become a good parent to his son.

[100] Furthermore, Mr. G.R.'s own evidence is that he does not think beyond the present. When asked about his plan for his wife if he were no longer around or no longer able to care for her, he said he had not looked into available resources; he had not spoken to anyone about this issue. He was asked what would happen to R.W.R. if he were to die? He replied: "I've never really thought about dying". Perhaps the most revealing piece of evidence from the father occurred when he was asked whether he foresaw any difficult adjustments if baby R.W.R. were to come home and whether Mr. G.R.'s life would change. His reply: "Not much".

8.6: Summary of the Issues — Does the Child Continue to be in Need of Protection?

[101] The mother's schizophrenia is currently under control. At the present time, she is stable on her medication. On the basis of the mother's schizophrenia alone, I would not, today, find the child to be at risk.

[102] The mother and the father are in a committed, stable relationship. It is clearly not an adult-to-adult relationship, however, but rather a relationship akin to that of a child to an adult. It is a relationship where the mother, like a child, is highly dependent upon her husband for providing most of her basic needs. What makes this problematic is not only the nature of this dependency but the father's lack of awareness of just how deep that dependency runs.

[103] Although the added stress of placing a new child into the family dynamic is not, by itself, a reason to find the child in need of protection, it is a factor that must be considered in combination with the other factors.

[104] It is, however, the evidence on the final two issues — first, the ***potential*** risk to the child and the family's motivation to protect against such risk, and, second, the isolation of the family — that I find to be the most significant in my assessment of whether this child continues to be in need of protection. Although the five issues, when examined individually may not be overwhelming, their cumulative impact leads me to the inevitable conclusion that this child remains in need of protection. In my opinion, clause 37(2)(*b*) continues to apply to R.W.R.

9: DISPOSITION

[105] Subsections 57(1), (2) and (3) of the Act provide:

> **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 with or returned to a parent or another person, subject to the supervision of the society, for a specified period of at least three and not more than twelve 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.
>
> (2) *Court to inquire.*— In determining which order to make under subsection (1), the court shall ask the parties what efforts the society or another agency or person made to assist the child before intervention under this Part.
>
> (3) *Less disruptive alternatives preferred.*— The court shall not make an order removing the child from the care of the person who had charge of him or her immediately before intervention under this Part unless the court is satisfied that alternatives that are less disruptive to the child, including non-residential services and the assistance referred to in subsection (2), would be inadequate to protect the child.

[106] Subsection 57(2) does not apply, as baby R.W.R. was apprehended immediately upon birth. I have already found that he was in need of protection at the time of that apprehension.

[107] Is there a less disruptive alternative for baby R.W.R. than making him a Crown ward? That Mr. G.R. loves his child is beyond doubt. That he is capable of providing his child with his basic needs — food, shelter and clothing is also beyond doubt. It is also apparent that some measure of positive attachment developed between the father and the child during the period of time the child has been in foster care. All of those factors would mitigate against Crown wardship and in favour of some form of supervision order.

[108] Unfortunately, these mitigating factors are far outweighed by the negative impact of the five issues that I discussed earlier in this decision. The result of this is that a supervision order would be both impractical as well as contrary to R.W.R.'s best interests. In arriving at my conclusion that a Crown wardship order is necessary and in the best interests of R.W.R., I have taken into account all of the evidence in this trial as well as the factors set out in subsection 37(3), as they pertain to "best interests".

[109] The parents argue that, if a Crown wardship order is made, the court should order access in their favour. Unfortunately, the legislation prohibits me from making such an order

on the facts of this case.

[110] Subsection 59(2) states [my emphasis added]:

> (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.

[111] As I noted above, there does appear to be some positive attachment between Mr. G.R. and his child. It would be a stretch to conclude, however, that this relationship is a "beneficial ***and meaningful***" one. There is an added difficulty for the parents in making this argument. Even if I could make a positive finding on clause 59(2)(*a*), clauses 59(2)(*a*) and 59(2)(*b*) are conjunctive. That means the court must be satisfied that, ***in addition,*** such access would not impair R.W.R.'s "future opportunities for a permanent or stable placement." The only evidence as to R.W.R.'s adoptability is the adoptability affidavit of Betty Phillips at tab 6 of exhibit 1. That affidavit states that R.W.R. is an adoptable child. Ms. Phillips states: "I believe R.W.R. has made an emotional attachment to his foster mother and it is reasonable to believe he will be able to form emotional bonds with others including new adoptive parents." This evidence is not challenged by the parents.

[112] This child is entitled to permanency planning. Permanency planning, in this case, means allowing the child to be adopted into a home where all of his needs can be met by his new adoptive parents. Given R.W.R.'s young age and his undisputed ability likely to form emotional bonds with adoptive parents, he would enjoy a greater and more secure form of permanency by being adopted rather than by remaining in a foster home. Adoption is inconsistent with continued access.

10: FINAL ORDER

[113] The court's order is as follows:

1. The child R.W.R. is found to be in need of protection pursuant to clause 37(2)(*b*) of the Act.
2. R.W.R. Robinson is made a Crown ward, without access, for the purpose of adoption.
3. Mr. G.R. and Mrs. A.R. shall be entitled to a reasonable opportunity to enjoy a meaningful goodbye visit with their child.

11: CONCLUDING REMARKS

[114] There was an ongoing suggestion by the parents throughout this trial that the society's position was determined at the outset, in part, due to the father's age and the great discrepancy between his age and the age of Mrs. A.R. I make no comment one way or the

other whether this was a factor in the society's considerations or whether the society had a "hidden agenda", as suggested by counsel for the parents. However, I wish to make it perfectly clear that my decision has not, in any way, been influenced by these considerations. I heard no credible evidence whatsoever that would suggest, all other things being equal, that a 63-year-old the father and a 34-year-old mother are in any way diminished in their capacity to be effective and loving parents to a very young child.

[115] Second, I realize that, following their next visit, it is unlikely that these parents will ever again see their young child. I know that will make them both very sad and possibly angry. These feelings are understandable. Once those feelings have subsided, however, and they have had the opportunity to reflect on this case, I urge both of them to consider the following: In all likelihood, R.W.R. is going to be placed into an environment where he will be given every opportunity to be raised by a loving couple, with all the essential resources necessary to help him become a happy and healthy child and, eventually, a useful member of our society. I hope that will provide Mr. G.R. and Mrs. A.R. with some small measure of comfort.

[116] Finally, I wish to thank all three counsel for the effective manner in which each presented his and her case. Mr. Gottleib and Mr. Mohideen, on behalf of the parents, had a particularly challenging task to perform and they both met their responsibilities with skill and good grace.