

WARNING

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

This is a case under Part III of the *Child and Family Services Act* and is subject to one or more of subsections 45(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,

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- (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) PROHIBITION: IDENTIFYING CHILD — No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

(9) IDEM: ORDER RE ADULT — The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

. . . .

85.—(3) IDEM — A person who contravenes subsection 45(8) or 76(11) (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.

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

ONTARIO COURT OF JUSTICE

CITATION: *Jewish Family and Child Service of Greater Toronto v. A.W.*, 2017 ONCJ
962
DATE: December 4, 2017
COURT FILE No.: Toronto C91687/16

B E T W E E N :

JEWISH FAMILY AND CHILD SERVICE OF GREATER TORONTO

Applicant,

— AND —

A.W.

J.N.

Respondents

Before Justice Roselyn Zisman
Heard on November 9, 10 and 17, 2017
Reasons for Judgment released on November 30, 2017
Amended Reasons released December 4, 2017

Sara Westreich counsel for the applicant society
Nancy Iadaluca counsel for the respondent father
Margarida Pacheco counsel for the Office of the Children’s Lawyer,
legal representative for the child R.N.
Gary Gottlieb counsel for the Office of the Children’s Lawyer,
legal representative for the child J.N.

Zisman J.:

1. Introduction and Background

[1] This is a temporary care and custody motion pursuant to subsection 51 (3) of the *Child and Family Services Act* (“CFSA”) with respect to the children, R.N. (“R.”) who is 15 years old and J.N. (“J.”) who is 10 years old.

[2] The Respondents are the parents of the R. and N. who are the children before the court. They are also the parents of B.N. (“B.”) who is 16 years old and is therefore not the subject of the Protection Application before the court. B. resides full-time with the father and has been estranged from the mother for several years.

[3] The parents separated briefly in November 2012, reconciled and separated permanently in February 2013 although they continued to reside under the same roof until November of 2013. The parties were involved in litigation in the Superior Court of Justice with respect to property and child support issues. In September 2015 they entered into a temporary parenting plan with a parent co-ordinator. They agreed that R. reside primarily with the mother, B. reside primarily with the father and that J. reside equally with both parents.

[4] The Jewish Family and Child Service of Greater Toronto (“the society”) seeks an order continuing the without prejudice order made on October 13, 2016 that placed J. in the temporary care of his father and the without prejudice order made on June 15, 2017 that placed R. in the temporary care of the V.-J. family. The society also seeks a continuation of the without prejudice order that access to the children by the parents or other community members be in the discretion of the society.

[5] Based on the submissions of counsel the mother seeks an order placing R. in her care immediately, although the motion filed on behalf of the mother only seeks a transition plan with declining supervised access and involving therapy. The mother also seeks an order that the cost of supervised access to be shared between the mother and an order that J. be placed in her care and the care of the father equally.

[6] The father supports the society’s position with respect to both children.

[7] Counsel for R. seeks an order placing her in the care and custody of her mother in accordance with R.’s views and preferences or in the alternative, with expanded access including unsupervised access to the mother.

[8] Counsel for J. supports the society’s position for his continued placement with his father and with access to the mother at the discretion of the society.

[9] Despite the Protection Application being commenced in October 2016, the hearing of this temporary care and custody motion was significantly delayed as all parties agreed that a risk assessment of the mother, conducted pursuant to subsection 54 of the Child and Family Services Act (“section 54 assessment”), was necessary before a resolution was possible. The mother now having derailed the subsection 54 assessment, the temporary care and custody motion has been brought forward to be dealt with on its merits.

[10] The temporary care and custody motion was argued before me on November 9, 10 and 17, 2017. I read and relied upon the affidavits filed on behalf of the society namely, the affidavit of Nicole Khaitman sworn October 13, 2016, the affidavits of Marice Hart sworn November 7, November 9 and December 19, 2016, the affidavits of Liana Ansell sworn August 23 and November 6, 2017, the affidavit of the mother sworn October 30, 2017 and the affidavits of the father sworn August 30 and November 2,

2017. I also read and relied upon the transcripts of the questioning of the society workers and the father on their sworn affidavits.

2. Historical involvement of the society

[11] The society became involved with the family in 2012 and worked voluntarily with the family until the most recent opening in 2015. The historic concerns included the following:

- a) The mother's alleged abuse of prescription medications specifically Oxycotin;
- b) The parents were involved in high conflict separation and divorce proceedings that sometimes involved the children;
- c) Aggressive and assaultive behaviour by the mother against members of the family and the destruction of personal property within the home;
- d) The father's inappropriate physical discipline of the older son B.;
- e) Concerns about the mother's mental health that led to instances of involuntarily hospitalizations;
- f) Concerns that the mother might harm herself;
- g) Concerns that the children were not functioning well; and
- h) Concerns about B.'s physical aggression with his parents.

[12] Although the police were often called throughout those years, no charges were ever laid against family members. A review of the police records reflected a difficult history between the parents during the period prior to the separation.

[13] There were 2 concerning incidents between the mother and B. On November 11, 2012 the police had to attend the home 3 separate times with respect to an allegation that the mother assaulted her older son B. and because the mother was hysterical and yelling and screaming at the other children. The police report refers to the mother as "an emotionally disturbed person" and describe her condition as "aggressive, chronic victim, confused, mentally ill, nervous upset and hysterically crying". The mother was apprehended under the *Mental Health Act* and taken to the hospital but left before she was assessed. She later returned to the home, yelling, screaming, and waking up the children. She then left but later again returned to the home and was assaulting B. The mother was re-apprehended and taken to the hospital but was subsequently released.

[14] Another violent episode was documented by the police on October 20, 2013. The parents were involved in an argument and then both R. and B. became involved and the mother was alleged to have pushed B. at which point B. put her in a headlock but he let her go a few seconds later and the mother then called the police. The mother confirmed the details of the incident except that she denied pushing B. The police concluded that there were no threats, assaults or allegations thereof between the parents. The children left to stay with their grandparents and the father also left the

home but returned for the sake of the children a few days later. The father permanently left the home shortly after this incident as he reported that the mother again began to show signs of instability and she was making accusations against him and threatening to ruin his life.

3. Events leading to commencement of the Protection Application

[15] In January 2015, the society investigated concerns reported by the mother's sister in law about the mother's mental health and the physical and emotional well-being of R. who was living full-time with the mother.

[16] Nicole Khaitman, who was assigned to the investigation, spoke to B. who called his mother "crazy" and spoke of the physical and emotional abuse he had endured over the years. B. shared text messages he had received from the mother that read as very long paragraphs about random topics. J. who was going back and forth between his parents only reported that his mother cried a lot. R. did not disclose any concerns about her the mother's mental health and described her father as being very mean to her and at the time she had chosen not to have access to him.

[17] Ms Khaitman met with the mother who appeared to her to be anxious and on medications. The mother showed her texts from her son B. that said he wanted her dead and called her nasty names. The mother informed Ms Khaitman that she was being treated by a psychiatrist but refused to sign a consent permitting her to exchange information. The mother also seemed more focussed on who made the reports as opposed to the actual concerns.

[18] Ms Khaitman verified concerns about the mother's mental health and the negative impact the parents' conflict was having on the children. Ms Khaitman was also concerned that the mother's focus on who was making the reports was interfering with her ability to see the severity of the child protection issues. The file was then transferred for ongoing services.

[19] Over the next several months there were ongoing reports by professionals and community members about the father's inability to supervise B., the mother having mental health issues and the mother constantly yelling and swearing at the children. The mother confirmed that R. had assaulted her and had destroyed property in the home. R. disclosed fear of being hurt and the mother confirmed that J. who was present during the altercations between herself and R. was also fearful.

[20] On November 21, 2015, R. was apprehended under the *Mental Health Act*, taken to the hospital and then released. On November 23, 2015 the police reported that they attended at the home due to a neighbour's complaint about screaming. The police found both R. and her mother fighting. Both R. and the mother were apprehended to and taken to the hospital for a psychiatrist assessment.

[21] On November 28, 2015 the mother reported that R. assaulted her.

[22] On January 10, 2016, Marice Hart, who was the worker assigned to the family, was copied on an email exchange between the mother and father in which the mother reported that R. was out of control, assaulting her and that J. had witnessed everything.

The next day the mother told Ms Hart that R. had been hitting her and had run away to her father. Later the mother left a message for Ms Hart saying it is “too much”.

[23] On January 13, 2016 Ms Hart was copied on another email exchange, in which the mother told the father about another incident in which R. had been violent towards her. Several days later, the mother showed Ms Hart photos of her bruises, scratches to J. and photos of destruction of property allegedly caused by R.

[24] Ms Hart spoke to R.’s therapist who confirmed that R. did not have any underlying psychiatric issues and that the issues were all behavioral. R. admitted that she would get angry and physical with her mother and she knew that getting physical was not the way to handle things.

[25] On January 22, 2016 Ms Hart met with the parents and their parent co-ordinator and expressed concerns about J.’s exposure to R.’s violent outbursts and to the fights between R. and the mother. It was agreed that at times of escalation that R. would go to her father’s home in order to decompress.

[26] On February 22, 2016 Ms Hart was forwarded an email by the father from R. in which R. reported that her mother was acting “crazy” and kicked her out of the home.

[27] On February 23, 2106 the mother emailed Ms Hart to report that R. was attacking her. On the same day, the police attended at the home and R. reported that she did know what happened as her mother woke her up and started yelling and calling her bad names and she locked herself in a room and the mother forced her way into the room. R. ended up going to her father’s but told Ms Hart she wanted to stay with her mother as her belongings were there and she was more comfortable being there.

[28] On February 24, 2016 the mother reported that R. and J. were fighting and when she went to see what was wrong R. pushed J. down the stairs and punched him. The mother reported that she was afraid that the father was trying to take her children away from her and she was “hanging on by a thread”.

[29] On February 25, 2015 R. reported that her mother starts a lot of the fights but does not realize it.

[30] During the months of March to June 2016 there were further reports from the mother, the father and R. reporting conflict and physical altercations with R. At times J. was also hurt and other times he was a witness to the violent episodes.

[31] On June12, 2016 Ms Hart received a report from the police due to another physical altercation between R. and her mother. The police reported that the mother sounded quite intoxicated. When Ms Hart went to the home to investigate the police allegations, R. and her mother had an argument in front of Ms Hart.

[32] On June 20, 2016 the mother reported to Ms Hart that the police were at the mother’s house again as R. was totally out of control.

[33] The society assessed the risk as very high as neither the mother nor R. has shown any ability to regulate themselves when arguments occur and the mother in

particular seemed very fragile. However, the society deemed the situation as safe as R. did not express any fear of the mother, R. had willingly returned home and maintained her long-held position that she wanted to live with her mother and be at her mother's home. R. and the mother continued to attend therapy at the North York General Hospital to work on managing their conflict, R. was going away to camp for 6-8 weeks which would allow time for the society to work with the mother on her coping skills, a referral had been discussed to Blue Hills Intensive Family Resource Consultation and the mother said she would call the police if she felt things escalated to a point of imminent risks to safety.

[34] However, after the summer, the same patterns of conflict and physical altercations between the mother and R. continued. On September 12th, the police called the society to report another disturbance at the mother's home that started because R. was not cleaning the kitchen to the mother's liking. R. reported that her mother called her names such as "cunt" and "bitch" and that her mother squeezed her cheeks and pulled her hair. The police advised that the mother did not seem to be "holding it together". The police noted that there were marks around R.'s neck but both the mother and R. reported that the fighting was mutual and no charges were laid. The society verified caregiver conflict but not physical abuse. The mother subsequently advised Ms Hart that J. had been present during these incidents.

[35] On September 15th the mother called the society several times to report that nothing had changed, R. was defiant, she did not know what to do as J. was in the home and she felt R. should stay with her father when J. was at her home. She called back and reported that R. had pushed her, threw her phone at her and that J. had witnessed everything. The mother stated that R. needed to leave. Ms Hart spoke to R. the next day and told her that she needed to stay with her father because of what had happened the night before in front of J. R. agreed to stay at her father's for the week-end.

[36] On September 27th, the mother emailed Ms Hart several photos of physical injuries to her body and property destruction that she reported had been caused by R. She titled the email in the subject line "enough" and in another "I need her out".

[37] On the same day the mother called to report that R. had cut her during an altercation. Several minutes later the mother left a voicemail that R. was out of control throwing things at her, she needed help and that Ms Hart should call the police. Moments later R. called and reported that she and the mother were fighting because her mother would not drive her as R. had asked. R. said that she did not feel safe and reported that she hurt her mother and her mother hurt her as well. R. said that she did not know if her mother meant to give her a nosebleed but her mother sat on her to contain her and that her mother also pushed her and she fell to the ground.

[38] R. stayed with her father for several days but then returned to the mother's home on October 2nd to spend the Jewish New Year with her mother.

[39] On October 3rd the mother reached out to both the father and Ms Hart stating that R. had been violent again, she was clearly out of control and posed a health and safety risk to herself and J. The mother reported that R. could not stay at her home anymore

and that R. had gone after J. as well and in an effort to be protective, she would not allow J. to be around R.

[40] On October 5th, the society recommended that R. needed to leave the mother's home immediately given the events of the last few days. However, R. stayed at the mother's home and the mother reported that R. was showing some remorse and that she hoped to build on that with therapy.

[41] On October 7th, the father reported that R. had walked to his home without her belongings as the mother kicked her out. But R. then reported that her father kicked her out in the middle of the night.

[42] On October 11th, a Group Planning Session was held with various society workers in attendance as well as the parents. The purpose of the meeting was to identify a safe living situation for R. that would minimize the conflict between R. and the mother as well as J.'s exposure to the physical outbursts and conflict. Additionally, treatment and therapeutic options were discussed.

[43] Both parents wished a peaceful shared parenting arrangement with all of the children but recognized that at this time the focus needed to be on R. Although the conflict between the parents had decreased, they barely communicated and if they did, it was over email. There was still a high level of animosity between them but the children were not involved.

[44] The situation between R. and the mother had deteriorated significantly over the past several months. The mother described her situation with R. as one of an abuser (R.) and abused (the mother). The mother explained that R.'s rage explodes without notice and with little if any provocation. She reported that she had been badly hurt in violent attacks by R. The mother explained that these attacks are inevitably followed by R. apologizing, swearing it will never happen again and then hugging and kissing. The police were often called due to the escalation. Although the plan had been for R. to go to her father's, grandparents' or a friend's home, frequently R. refused to leave as it was the opinion of the society workers that she is very aligned with her mother and R. felt that if she goes to her father's this may impact negatively on her mother in court. The mother vacillated between kicking R. out of the house and wanting her to live with her. The mother was torn as she already lost a son, B. who refused to speak to her and she had not had a relationship with him for a couple of years.

[45] The society was concerned about J. as although he appeared to be functioning fairly well on the surface, he had witnessed a lot of arguments and he was struggling to hold himself together and without a more peaceful environment to live in, his situation was tenuous and in need of attention. Both parents agreed with this assessment. On the several occasions when Ms Hart met with J., he refused to speak to her or simply said "hi" and then shut down and would not answer any questions.

[46] It was also noted while R. displayed violent and aggressive behaviours at her mother's home, she did not display similar behaviour towards her father, others or herself while residing with him. The society had not received any concerning reports about R. from her father or outside community resources such as her school or camp.

[47] At the meeting, it was the society's position that due to safety risks neither R. nor J. could continue to reside with the mother. It was proposed that R. reside with her father for an indefinite period of time and that access would be arranged between R. and the mother. It was noted at the meeting that the mother presented as hazy and was slurring her words and there was a concern about her overall presentation.

[48] The father agreed that R. and J. reside with him. However, the mother did not agree that R. should reside primarily with the father. The mother stated that she believed that her own safety was at risk not that R.'s safety was at risk. The mother believed that she could provide a safe and secure placement for R. within her own home.

[49] As a result of the mother's refusal to the safety plan being proposed by the society, it was explained to both parents that a Protection Application would be commenced to place both R. and J. in the care of the father for 6 months subject to the supervision of the society and that it would be the expectation that therapy and treatment would be pursued by all family members.

[50] From November 21, 2015 to September 13, 2016 the police were involved as a result of altercations between the mother and R. on 8 separate occasions and at times with multiple involvements on the same day and with concerns that resulted in apprehensions pursuant to the *Mental Health Act*.

[51] There were only 3 reports about conflict between the father and B. On January 15, 2015 the nanny called the police as the father and B. were fighting as the father was trying to get B. to a psychiatrist appointment. The police attended and the father reported that B. had suffered from psychotic episode for the last few months. B. was apprehended under the *Mental Health Act*, taken to the hospital and then released a few days later.

[52] In February 2015 B.'s psychiatrist reported a conflictual relationship between the father and B. and that he heard the father being verbally abusive. As the society was already involved with the family no further investigation was conducted with respect to this referral.

[53] On September 26, 2015 the father reported to police that he had been assaulted by B. B. was cautioned by the police. B. apologized and committed to not acting this way again. No charges were laid.

[54] The summary of the police records¹ in addition to noting the physical altercations between R. and the mother contains several observations by the police with respect to the mother's statements and concerns about the mother's presentation with the mother being referred to as an "emotionally disturbed person", "addled", "credibility in doubt," "paranoid delusions" and "prattled on in length" and on one occasion that the mother sounded like she had been drinking. The mother expressed to the police that she was

¹ The summary is set out in the affidavit of Marice Hart sworn December 19, 2016 at paragraphs 77-95. All counsel had disclosure of the entire police records and the mother in her affidavit does not dispute Ms Hart's summary.

“overwhelmed with R.’s behaviour” and deprived because the society was taking a more active interest in R. than in her. Regarding the most recent incident on September 12, 2016 the police noted that in their follow up with the mother on September 13th she was “repetitive and had difficulty focusing on the topic at hand” and spoke about her separation as opposed to the incident with her daughter.

[55] In addition to the police reports, there were reports from the school, family members and community members. In total there were at least 30 reports of incidents of concerns with respect to the relationship between R. and the mother and with many of the reports being made by the mother herself.

[56] The society also obtained the records from a number of service providers who were involved with providing care to the mother. The records confirm that the mother was being treated from 2005 to 2013 at the Centre for Addiction and Mental Health for generalized anxiety disorder, chronic pain relief, migraines and insomnia. She was prescribed Oxycotin for pain and recorded as reporting a childhood history of sexual, physical and emotional, psychological abuse.

[57] In March 2012 the mother was identified as having an Oxycotin addiction. The records confirm that there was a treatment plan agreed upon, between the mother’s criminal counsel and the police, to address the issue of the mother improperly acquiring prescription pads from 2 different doctor’s office and been improperly augmenting her supply of Oxycotin for a few years. Treatment recommendations were made with respect to the mother’s drug abuse and her major mental disorder. Additional records including results from the mother’s testing for opiate dependency as well as the progress notes from her drug screening appointments confirm that she has been drug-free of Oxycotin since about 2012 or 2013.

[58] Prior to the commencement of the Protection Application, R. had been seen by Dr. Lisa Weiser for individual therapy in July 2015 to address the self-regulation problems and the relationship issues with her mother. The Toronto Mediation Centre was involved in November 2015, R. and the mother also saw a social worker at the North York General Hospital in June 2016 and the Youthdale Mobile Crisis Team was involved in April 2016. In addition, the mother was attending regularly with her psychiatrist. But despite the interventions of psychiatrists, counsellors, a parent co-ordinator, social workers and the police the situation did not improve. The society took the position that placing both R. and J. with the father was the least disruptive placement that would be protective of the children.

4. History of court proceedings and events subsequent to commencement of Protection Application

[59] In view of some of the evidentiary issues that arose and to understand the context of the current motion, it is important to review the history of the court proceedings.

[60] The Protection Application was issued on October 14, 2016 with a Notice of Motion for a temporary order placing both R. and J. in the care of the father subject to terms of supervision and with access by the mother to be in the discretion of the society. The order as requested was made on a temporary without prejudice order basis.

[61] On November 7, 2016 the society filed a Notice of Motion for R. to be placed into the care of the society as her placement with the father had broken down. R. had returned to her mother's home as she reported that B. had told her that he will "do anything to get me out of here." R. also reported that B. was rude to her, that he did not want her living there and that her father and B. spoke poorly of her mother in R.'s presence. R. then disclosed an incident of B. touching her in a sexual manner. Although several family members offered to care for R. but as she only wished to return to live with her mother, the society obtained an order that R. be placed in their care on a temporary without prejudice order basis.

[62] On November 16, 2016 an order on consent was made for the production of police records including occurrences reports with respect to the mother and the father. The temporary care and custody motion was scheduled for December 22, 2016.

[63] On December 22, 2016 all counsel agreed to proceed with a case conference instead of the temporary care and custody motion. The society indicated that it would be seeking an assessment of both the mother and R. The parents agreed that the society could explore a placement for R. with family members and community members. The parties agreed to return for a further case conference but leave was given to bring a motion on any issues not on consent.

[64] On March 8, 2017 a further case conference was held. All counsel agreed to a section 54 psychiatric risk assessment of the mother to include psychological testing. It was agreed that Dr. Maurice Siu and Dr. Angela Carter would conduct the assessment. On a without prejudice order basis, the mother agreed to pay the cost and on that undertaking the society indicated it would not pursue a payment from her for retroactive support for R. The father and the society agreed to pay for the cost of R.'s psychological assessment and the father agreed to pay for R.'s counselling.

[65] The formal endorsement and order for the section 54 assessment was submitted by Form 14B and was made on April 6th. The endorsement included the issues to be addressed, the contextual background information, the records and court documents to be reviewed and suggested people to be interviewed. It was agreed that the assessment would be completed by June 2017.

[66] The society was ordered to circulate a draft Statement of Agreed Facts to determine if a consent finding of need for protection could be made and counsel were to provide their input by April 19th.

[67] At the same court attendance, the mother's psychiatrist Dr. Karl Farcnik attended pursuant to a summons. He was questioned about his record keeping and the issue of the mother's request to make changes to her medical records and how the records might have been affected. Dr. Farcnik had revealed that he had provided the mother with a copy of his notes as she wished to review and annotate the notes before they were be released to the society. Dr. Farcnik stated that he did this as an exercise in rapport-building with his patient. The mother had been provided with a copy of all of her records and she had made about 170 comments and footnotes to the original records. During the questioning it was agreed that society counsel would arrange for an

independent third party printer to attend at the doctor's office for the purpose of reproducing all of his records.

[68] On April 25, 2017 only counsel for the society attended to advise the court that Dr. Siu had reviewed the section 54 assessment questions and felt some of the questions were not within his expertise and the society was waiting for further clarification from him. The court was also advised that R. was testing out a placement that she had proposed with a friend's family. Society counsel also advised that a draft Statement of Agreed Facts with respect to a finding had been sent to all counsel in accordance with the order of March 8th but counsel had still not responded. Counsel for the parents were ordered to provide their response to the draft Statement of Agreed Facts within 7 days.

[69] On May 11, 2017 counsel for the mother was given leave to bring a motion to be removed as solicitor of record. However, the issue was resolved and the mother signed a Notice of Change in Representation and retained her current counsel Edwin Flak.

[70] On May 19, 2017 a form 14B was submitted to advise the court that the section 54 endorsement had been amended as requested by Drs. Siu and Carter to conform with their areas of expertise namely, forensic risk assessment, by removing questions that dealt too closely with the question of parenting capacity. All counsel except the mother agreed to the changes but the mother advised that due to her impending change in representation she was not prepared to consent to the modifications until her new lawyer who at the time was not identified had reviewed the endorsement. The society counsel had advised the doctors of the delay and was unable to confirm if the doctors were still available to conduct the assessment beyond the May-June timeline originally set.

[71] On June 13, 2017 the parties were short served by counsel for the mother with a motion returnable on June 15th seeking an order to set aside the order of April 25th for a section 54 assessment and another motion to appoint the mother's step-father as the access supervisor, if necessary and to place the children with the maternal grandparents with the mother living at their residence. These motions had not been filed with the court but counsel advised the court about the motions at the June 15th court attendance that had been scheduled for a case conference.

[72] On the basis that mother's counsel had not sought leave of the court to schedule a motion and due to the short service, the motion was adjourned to be argued on its merits. A motion date of July 19th was set for argument on the motion to set aside the section 54 assessment and a further date of September 7th, 2017 was set for the temporary care and custody motion. Timelines were set for the serving and filing of materials for both motions.

[73] Also on June 15, 2017 a consent temporary without prejudice order was made placing R. in the home of the V.-J. family. R. had been living with the V.-J. family since early April on an extended visit and although all other parties agreed to a formal order placing her there, the mother had not previously agreed. At the court attendance, the mother stipulated that she agreed to the order as it was on a without prejudice basis

and subject to arguments on its merits. It was the mother's position that she wished R. placed in her care with her parents as supervisors.

[74] On July 10, 2017 an Amended Notice of Motion² returnable July 19th was filed by mother's counsel seeking an order to set aside the section 54 assessment. The grounds it had been made based on mistakes of science thought to be facts, relied on the expertise of Dr. Siu and Dr. Carter who were unqualified, uses unclear and confused language and that the assessment unfairly subjects the mother and not the father or the children to the assessment despite the fact that the whole family had been negatively impacted by the father's knocking out the mother's teeth with a phone, choking her and physically hurting R. and J. and exposing them to his violence against their mother. The Notice of Motion also sought costs and that if the court considers it appropriate that the section 54 assessment be amended by means that include accurately stating the mother's position on the issues.

[75] On July 10th, mother's counsel also filed another Amended Notice of Motion³ returnable on September 7th, for an order pursuant to FLR 42 (8) to change the order made on April 25, 2017 to set aside the section 54 assessment order made on April 25, 2017 and for an order that that the mother's step-father be appointed as an access supervisor and that R. and J. be placed with him and his wife with the mother residing in their home.

[76] A flurry of Form 14B's were received by the court dealing with counsel for the mother's request to vacate the motion date of July 19th regarding his motion to set aside the section 54 assessment on the basis that a consent had been reached with the society which was disputed by the society. The motion was ordered to proceed unless a written consent was filed and mother's counsel was not permitted to file any further motion materials except in accordance with the previous timetable. On July 18th a further request for an adjournment was requested and was again denied. All counsel were required to attend court.

[77] On July 19th, on the consent of all parties an amended section 54 endorsement was filed and another order made for a section 54 assessment. The Amended Notice of Motion to set aside the April 25th order was therefore not argued. An order was made that only society counsel would be permitted to contact Dr. Siu and Dr. Carter to arrange to reschedule the assessment. Counsel for the mother did not pursue his motion for the step-grandfather to be an access supervisor or that the children be placed in the care of him and his wife with the mother residing on their home.

[78] The court was advised that the Statement of Agreed Facts regarding the finding had been signed by the father with counsel for the children taking no position. Mother

² The original Notice of Motion was served on counsel but not filed with the court. The Amended Notice of Motion does not underline or otherwise indicate what changes or additions were made to the Notice of Motion.

³ This was another instance of mother's counsel serving but not filing motions. The original Notice of Motion was not filed and the Amended Notice of Motion does not underline what has been changed or added. Further FLR 42(8) is only applicable to the Family Case Manager in the Family Court of the Superior Court of Justice in Ottawa.

had still not responded. The society was ordered to send the Statement of Agreed Facts to mother's counsel again and the mother was given a further 21 days from receipt to provide her response. Counsel for the mother raised the issue of production of the notes of the supervised access visits and was given leave to bring a motion for production if this was an issue as society counsel assured the court that production of the notes was not an issue. Mother's counsel did not bring such a motion but during submissions argued that the society had only given him disclosure about a month ago.

[79] A Form 14B was submitted by society counsel for an extension to file its updated affidavit for the temporary care and custody motion scheduled for September 7th. It was explained that the extension was required as counsel had been dealing with the issues regarding the section 54 assessment. All counsel, except mother's counsel, agreed to the extension. In granting the extension, I indicated in the endorsement that it was vital for the court to have all of the evidence before making a decision with respect to placement of R. and/or J. The endorsement further noted that the delay in moving forward had been as a result of the mother changing counsel and refusing to agree to the section 54 assessment that was consented to in April and that then needed to be "renegotiated" over the last several months.

[80] On September 6th, 2017 a form 14B was filed indicating that mother's counsel was unexpectedly out of the province due to a personal matter with no details being provided. The court and other counsel had no option but to consent to a new date for the temporary care and custody motion. The endorsement also indicated that as November 9th was the first available date when all counsel could attend, the temporary care and custody motion would proceed unless the mother consented to R. remaining in the care of her current caregivers. Further, the endorsement stated that if questioning was desired it should be arranged between counsel. Counsel were also advised that if a Statement of Agreed Facts was not filed either before or on the return date that the court would set a date for a focused hearing or a summary judgement motion for the finding. Counsel were also prohibited from filing any further motion materials without leave of the court.

[81] On September 27th, a Form 14B was submitted by the society seeking that the court set time limits for questioning as mother's counsel was seeking to question Ms Khaitman and Ms Ansell for 8.5 hours and Ms Hart for 4 hours. Despite an endorsement sent to mother's counsel and a follow-up telephone call by court staff, no submissions were received from mother's counsel by the deadline set by the court. There was urgency to release an order as the society was closing for religious holidays on September 29th at noon and the first questioning was scheduled for October 2nd.

[82] An order was made limiting the times for questioning in accordance with the objective of FLR 2(2) for the need to deal with cases justly including saving expenses and time and in dealing with a case in ways that are appropriate to its importance and complexity and pursuant to FLR 1 (7.2) (e) that specifically permits the court to set such limits. Time limits of 2.5 hours were set for mother's counsel to question each of the society workers and the father. Further all questioning was to be limited to the issues relating to the temporary care and custody motion.

[83] Counsel for the mother also insisted that the society produce an Affidavit of Documents prior to his questioning of the society workers. Counsel for the society also sought clarification in the society's Form 14B that pursuant to FLR 19 (1.1) the society is exempt from providing an affidavit of documents. An endorsement to this effect was also made by the court.

[84] Mother's counsel filed a further Notice of Motion returnable on November 9, 2017 (the Amended Notice of Motion returnable on September 7th was not withdrawn) seeking on a "temporary, but ideally, finally [final] basis" that R. live with the mother full-time on terms that supervised access be decreased gradually and that the mother and the society share the cost of supervision. The Notice of Motion also requested that a hearing be set in March 2018 and if the court is satisfied that R.'s experience since November has been satisfactory free of safety situations that the society would withdraw its Application and there be no costs payable by anyone. The Notice of Motion also provided that R. would continue to see her therapist, that the mother would continue to see her psychiatrist and that R. and the mother would engage with Marci Goldhar in mother-daughter therapy.

[85] The temporary care and custody motion was finally heard on its merits over 3 half days on November 9, 10 and 17, 2017.

5. Legal considerations and applicable Law

[86] As there appears to be some confusion as to the nature and issues to be determined on this motion I will briefly review the relevant legislation and case law.

[87] Temporary care and custody hearings are determined pursuant to s. 51(2), (3), (3.1), and (3.2) of the *CFSA*. The relevant portions which state as follows:

Custody during adjournment

51 (2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

(a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;

(b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate;

(c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate; or

(d) remain or be placed in the care and custody of the society, but not be placed in,

(i) a place of secure custody as defined in Part IV (Youth Justice), or

(ii) a place of open temporary detention as defined in that Part that has not been designated as a place of safety.

Criteria

(3) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that the child cannot be protected adequately by an order under clause (2) (a) or (b).

Placement with relative, etc.

(3.1) Before making a temporary order for care and custody under clause (2) (d), the court shall consider whether it is in the child's best interests to make an order under clause (2) (c) to place the child in the care and custody of a person who is a relative of the child or a member of the child's extended family or community.

(3.2) A temporary order for care and custody of a child under clause (2) (b) or (c) may impose,

(a) reasonable terms and conditions relating to the child's care and supervision;

(b) reasonable terms and conditions on the child's parent, the person who will have care and custody of the child under the order, the child and any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child ; and

(c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or to purchase any goods or services . 2006, c. 5, s. 8 (3).

[88] The onus is on the society on a temporary care and custody hearing to establish, on credible and trustworthy evidence, that there are reasonable and probable grounds to believe that there is a real possibility that if the children are placed in the care of their pre-apprehension caregiver that it is more probable than not that the children will suffer harm. Further, the onus is on the society to establish that the children cannot be adequately protected by terms of conditions of an interim supervision order.⁴

[89] The court must make an order that is the least disruptive placement consistent with adequate protection of a child in accordance with subsection 1(2) of the CFSA.⁵

[90] The degree of intrusiveness of the society's intervention and the temporary protection ordered by the court should be proportional to the degree of risk.⁶

[91] Exposure to a pattern of domestic violence has been accepted as creating a risk of emotional harm to children.⁷

[92] Subsection 51 (7) of the CFSA permits the court to admit and act on evidence that the court considers credible and trustworthy in the circumstances. In determining what evidence the court considers to be credible and trustworthy, the evidence must be viewed together. Evidence that may appear not to be credible and trustworthy when

⁴ *Children's Aid Society of Ottawa-Carleton v. T.*, [2000] O.J. No. 2273 (SCJ).

⁵ *Children's Aid Society of Hamilton v. B.D. and F.T.M.*, [2012] O.J. No. 1775 (SCJ)

⁶ *Children's Aid Society of Toronto v. J.O.I.*, [2012] O.J. No. 2016 (OCJ)

⁷ *Children's Aid Society of Toronto v. M.S.*, [2010] O.J. No. 2876 (SCJ)

viewed in isolation might reach that threshold when examined in the context of other evidence.⁸

[93] A society seeking an order at this early stage of a case has only to demonstrate that it has reasonable grounds to believe that there is a protection risk for the children that justifies society intervention⁹. The burden on the society at this stage does not go as high as showing that on the balance of probabilities there is an actual risk to the children in their caregivers' care.¹⁰

[94] The onus of proof or criteria are the same when the society is requesting a non-removal order pursuant to clause 51 (2) (b) of the CFSA or a removal order pursuant to clauses 51 (2) (c) and (d) of the CFSA. The issue to be determined in making the non-removal order under clause 51 (2) (b) is whether or not the society has reasonable grounds to believe that there is a probable risk that the children will suffer harm if reasonable terms and conditions of a supervision order are not imposed.¹¹

[95] Subsection 51 (5) of the CFSA provides that where an order is made under clause 2 (c) or (d) of subsection 51 (2), the court may order access on any terms that it considers appropriate. In determining what order is appropriate, the court should consider the paramount purpose of the CFSA, as set out in subsections 1 (1) and (2) namely, being the best interests, protection and well-being of children and the secondary purposes of maintaining the integrity of the family unit, assisting families in caring for their children and recognizing the least disruptive action consistent with the best interests of the children. In assessing best interests, the court should consider the relevant factors set out in subsection 37 (3) of the CFSA.¹²

6. Evidentiary issues

a) Scope of the temporary care and custody motion

[96] At the commencement of the temporary care and custody motion, Mr. Flak on behalf of the mother submitted that it was his understanding that the temporary care and custody motion only pertained to R. and that a separate date should be set for a temporary care and custody motion for J. He submitted that in his out of court questioning of the society witnesses and the father he confined his questioning to issues pertaining only to R. and the mother would be prejudiced if the motion proceeded with respect to both children.

[97] As outlined in brief oral reasons, the society's Notice of Motion for a temporary care and custody order was returnable October 13, 2016 at which time a without prejudice order was made. Despite the passage of time it is still that motion that needed to be adjudicated. Most of the subsequent endorsements refer to the fact that a temporary care and custody motion had not been scheduled. It is possible that as a

⁸ *Family and Child Services v. R.O.*, [2006] O.J. No. 969 (OCJ)

⁹ *L.D. v. Durham Children's Aid Society and R.L. and M.L.*, [2005] O.J. No. 5050 (Div.C.)

¹⁰ *Children's Aid Society of Toronto v. M.L.R.*, [2011] O.J. No. 5552 (OCJ)

¹¹ *Children's Aid Society of Halton Region v. Z. (T.A.)*, [2012] O.J. No. 786 (OCJ) at par. 20.

¹² *Jewish Child and Family Services of Greater Toronto v. H.B.S.*, [2012], O.J. No. 5055 (OCJ).

result of counsel for the mother filing another motion with respect to only seeking that R. be returned to the mother's care that counsel somehow felt that it was his option to proceed in such a bifurcated manner. However, the court and all other counsel correctly understood that the temporary care and custody motion related to both children.

[98] The court must also consider that the primary objective of FLR 2(2) is to deal with cases justly which includes saving time and expense and dealing with a case in ways that are appropriate to its importance and expense. It would be a waste of the court's resources to permit a temporary care and custody motion for each child to be argued separately. Although much of the focus has been on R., it is the effect on J. of the verbal conflict and physical altercations between R. and the mother that underlie the risk of harm to him. Further, contrary to the submissions of mother's counsel, he asked questions that related to J. of the society workers and in particular of the father. The questions pertained to potential risk factors and the ability of the father to parent J. in a safe environment.

[99] Accordingly, I find that the temporary care and custody motion pertains to both R. and J. and there is no prejudice to the mother in proceeding with respect to both children.

b) Objections to hearsay

[100] Counsel for the mother spent a great deal of time submitting that there was impermissible hearsay in the affidavit of Ms Khaitman sworn October 13, 2016 in support of the temporary care and custody motion. Ms Khaitman deposed that she was the first worker to investigate the most recent opening of the case on January 12, 2015 and as the current worker Marice Hart was out of town she was overseeing the file. She deposed that Ms Hart provided her with an overview of the case and that she reviewed the relevant case material. She further deposed that the information in her affidavit is either based on her direct knowledge or that contained in the society file which she verily believed was true and when she received information from a third party which was Ms Hart she deposed that she believed that information to be true. In reviewing her affidavit I note that the third parties from whom the society received information are named.

[101] Counsel for the mother cites the case of *Children's Aid Society of Toronto v. A.M. and S.T.*¹³ a decision of Justice Katarynych where she found that the society's evidence in that case did not rise to the level of being "credible and trustworthy" evidence and some of it was not even evidence. She stated at paragraph 16 that an investigation is seldom complete at the time of the motion hearing and that, "What appears to be credible and trustworthy at an early stage in the investigation may be found, on closer scrutiny, to be speculation, innuendo, conjecture or simply mean-spirited gossip."

[102] However, in that case, the temporary care and custody motion was heard within a month of the apprehension of a new born baby and the society relied on an affidavit with case notes of a shelter worker where the mother had resided and the affidavit did not identify the source of the third party information or that the affiant believed that

¹³ 2002 CanLII 45665

information to be true. Although the general proposition of the quality of evidence that should be presented on a temporary care and custody motion is a standard that the court would adopt, I fail to see the applicability of that proposition to the affidavit material filed by the society in this case.

[103] Counsel for the mother objected specifically to the background information as outlined in Ms Khaitman's affidavit. However, information taken from a society's records that are kept in the ordinary course of business are prima facie reliable. It would be impractical to have each worker involved in the events that pre-dated the society's current involvement to swear affidavits with respect to a temporary care and custody motion. Further, it would focus undue attention on the past events as opposed to the current issues that resulted in the society commencing this Protection Application.

[104] Unlike other temporary care and custody motions that proceed shortly after a child is apprehended, on this motion there is a great deal of information before the court due to the passage of time and the fact that the information has been tested due to the questioning of the deponents. In this case, Ms Hart who subsequently swore several affidavits relied upon on this motion repeated the background information outlined in Ms Khaitman's affidavit and both Ms Khaitman and Ms Hart were questioned by mother's counsel. I find that the background information and third party information as outlined in both Ms Khaitman and Ms Hart's affidavits has not been discredited. Almost all of the background information was also corroborated in the police records, the medical and counselling records that were also produced. Nor does the mother in her affidavit disagree with any specific background information as outlined by the society workers.

[105] Counsel for the mother made the same arguments with respect to background information and third party information contained in the affidavits of Ms Hart and Ms Ansell. For the same reasons I find no merit in these submissions. I find that the evidence in the affidavits of the society workers to be credible and trustworthy for the purpose of this motion and can be relied upon by the court.

[106] Counsel for the mother did not object to the background information outlined in the father's affidavit. In the father's affidavit of August 30, 2017 he outlines and attached as corroboration copies of medical and other reports and also an affidavit of the family nanny. I find any of the third party information in the father's affidavit to also be credible and trustworthy for the purpose of this motion and can be relied upon by the court.

[107] It should be remembered that this is not a trial and the onus is only on the society to prove on credible and trustworthy evidence that there are reasonable and probable grounds to believe that there is a protection risk to the children. The burden at this stage is not as high as on a balance of probabilities to prove that there is an actual risk.

c) Inferences to be drawn from the section 54 assessment not proceeding

[108] Subsection 54 (6) of the CFSA permits the society to draw an inference from a party's refusal to participate in a section 54 assessment.

[109] In this case, on April 6, 2017 there was an order made on consent for a section 54 forensic psychiatric risk assessment of the mother. At the time the mother was represented by Steven Cudas, an experienced counsel in child protection proceedings.

It was the position of the society that in order to assist in planning for the return of R. to the care of the mother the society needed to assess if the mother suffered from a mental health disorder and, if so, what supports could be put in place to support her and her children. It was hoped that the assessment would help shed light on the root cause of the violent pattern of conduct between the mother and her two older children.

[110] The assessment was ready to proceed with some minor refinements to the issues to be assessed. All counsel were agreeable to the changes and the assessors were ready to arrange appointments for May and June.

[111] However, in June 2017, the mother retained new counsel, Edwin Flak who brought a motion to set aside the order for the assessment.

[112] The motion to set aside the section 54 assessment did not proceed as counsel were able to negotiate changes to the background information and the questions to be asked of the assessors. A new order for a section 54 assessment was then made on July 19, 2017.

[113] However, with the passage of time and the summer holidays that intervened, the assessors advised that they were not longer able to undertake the assessment.

[114] The society immediately proposed the name of another qualified psychiatrist, Dr. Hy Bloom, who was available to conduct the assessment and to start in November. All counsel, except for the mother, agreed that society counsel could share information with Dr. Bloom. Counsel for the mother advised during submissions that he had a conflict with Dr. Bloom. The nature of the conflict except a vague reference that it involved another case was not explained. The society subsequently advised Dr. Bloom that the assessment would not be proceeding.

[115] It is submitted by mother's counsel that the mother has not refused to participate in the assessment but that there has simply been a set of unfortunate circumstances that prevented it from proceeding.

[116] However, in the mother's affidavit she deposes that her former lawyer never explained the assessment to her so she did not know what she was consenting to. But then she does not explain why she consented a second time to the amended order for the assessment with her current counsel. The mother deposes that there is a problem with the assessment only being conducted on her rather than both parents. She further deposes that she has been "saved" as she has conducted her own research into the gold standard of assessment known as meta-analysis, which she deposes that Drs. Siu and Carter could not have known about when they accepted the case and may still not know about. For 5 pages of her affidavit, the mother discusses her concerns with risk assessments and deposes that she has read multiple articles and based on her research there are serious concerns about the validity of risk assessments. I place no weight on either the mother's own "research" or the articles she attaches to her affidavit. Such evidence might be relevant to the weight that the court may have attached to the assessment or could have been a proper area for cross-examination of the assessors. But as the assessment did not proceed, the mother's justifications for not proceeding with the assessment based on their general unreliability are not relevant.

[117] It is submitted by mother's counsel that no negative inference should be drawn from the fact that the section 54 assessment did not proceed and although the mother was responsible for some delay there were other factors that contributed to the delay.

[118] However, I find based on the mother's own affidavit that she was not prepared to participate in the assessment as she has outlined various excuses for not doing so. I find that the mother has derailed the assessment process. Although there is no outright refusal, the mother by her actions and statements has effectively refused to participate. As a result there is a lack of information as to the issues that prevent the mother from effectively and safely parenting her children and what treatment is necessary to assist her so that the children can be placed in her care.

[119] I agree with the submissions of counsel for the society and counsel for J. that inferences should be drawn as a result of the mother's effective refusal to participate in the section 54 assessment. I accept the submissions of society counsel that an examination of the issues that the assessors were asked to explore should be the basis for the types of inferences to be drawn from the mother's refusal. If no inferences were drawn then a party could simply ignore the court order with no consequences. As this is a child protection proceeding and the court is mandated to consider the best interests of children, section 54 (7) is an appropriate potential sanction if a parent refuses to participate in an assessment.¹⁴ The mother's refusal in this case is especially egregious as the mother consented twice to participate in the section 54 assessment that had been amended in accordance with her insistence.

[120] I find that this is a proper case where negative inferences should be drawn from the mother's effective refusal to participate in the section 54 assessment.

[121] I draw the following inferences:

- a) The mother feared that the results of the risk assessment would raise concerns about her present mental health and the risk of current or future violent or anti-social behaviour;
- b) The mother has a lack of respect for court orders;
- c) The mother wishes to conceal the true state of her mental health;
- d) The mother is unable to take ownership and responsibility for her own conduct;
- e) The mother is unable to recognize the deleterious effect of her behaviour on others;
- f) The mother is unable to show empathy for others;
- g) The mother's self-reporting is not reliable as she refused to have her version of events scrutinized; and

¹⁴ See also *Huron-Perth Children's Aid Society v. J.B.C.L.*, 2015 ONCJ 649 at paras. 34-37.

- h) The mother will not be a reliable or co-operative partner with the society in a supervision order.

7. Summary of relevant evidence with respect to R.

[122] Since the break-down of R.'s placement with her father, R. has been consistent that her first preference was to be returned to the home of her mother. She was more comfortable in her mother's home and was embarrassed to tell her friends that she could not live at home.

[123] The society arranged for a psycho-educational assessment of R. by Dr. Larry Danilewicz that was conducted in February and March of 2017. The referral was made to determine R.'s social-emotional resources, intellectual capacity and range of academic skills and to ascertain what treatment and placement options should be considered for her. The background information was obtained from the society workers, the parents and R. The foster parents also provided information about R.'s functioning in the foster home.

[124] R.'s academic skills were found to be average or above average but there were some concerns about her weak listening and comprehension skills and recommendations were made for some accommodations by the school board and specific educational strategies.

[125] It was the clinical opinion of Dr. Danilewitz that R. continues to display signs of being emotionally distressed. Although not overwhelmed by symptoms of anxiety or depression which interfere with her daily functioning, R. continues to cope with the aftermath of the family's breakup, the separation from her primary caregiver and her younger brother as well as the impact of the traumatic experiences (domestic violence, physical abuse, possible sexual interferences¹⁵) that took place over the years prior to her being placed in foster care. Further, although R. has unwanted thoughts and memories about past adverse-traumatic experiences in the family, her daily functioning is not impaired by these negative thoughts and the diagnosis of post-traumatic stress disorder did not apply. But Dr. Danilewitz found that R. is preoccupied with anxious thoughts regarding her future and her wish to be reunited with her mother and younger brother.

[126] In her interviews R. disclosed a traumatic history of physical conflict in her home. She disclosed memories of physical aggression by her father and consistently took on the blame and responsibility for the physical altercations with her mother. R. did not rate herself as being a verbally or physically aggressive person. But she recognized that at times she lost control of her temper. She acknowledged that prior to November 2016, little things triggered her episodes of aggression directed at her mother. It was Dr. Danilewitz's opinion that within the context of the family's history of domestic violence, and the mother's mental health problems, the mother-daughter roles may have been

¹⁵ R. acknowledged that she had been sexually interfered with by another person but would not discuss this. R. did state that on one occasion her older brother B. hit her face when she touched his game and that B. had pushed her and J. on many occasions.

reversed and this likely led to R. feeling entitled to her wishes being granted from her mother without out delay.

[127] It was Dr. Danilewitz belief that R.'s perception of the family's functioning prior to her separation from her mother and J. in 2016 was "quite skewed". He states as follows:

She appears to idolize her mother, a caregiver whom she perceives to be caring, protective and responsible. It is questioned whether her inability to control her anger directed at her mother was also influenced by the blurring of roles in the family prior to foster placement. This refers to the dual role adapted by R., which included protecting the mother and at the same time expecting the mother to provide her with a safe and emotionally secure experience at home. The role confusion, coupled with the allegiance to the mother, likely made it very difficult for her to be parented by the same caregiver. This would have been evident when the mother attempted to set limits and was experienced as the withholding parent.

R.'s inability to separate from her mother must be seen within the context of a history of family based trauma. Whereas the mother is perceived to be the protector and, at the same time, the caregiver in need of emotional support, the father is viewed as the aggressor and the parent responsible for the break-up of the family. Although R. has acknowledged being sexually interfered with by a male figure, she was unwilling during the assessment period to discuss this matter.

[128] Dr. Danilewitz concluded that:

Placement in the home of the mother needs to be considered at a later stage once the emotional needs of both the mother and the daughter have been addressed in their respective individual therapies. R.'s placement in the home of a trusted friend is supported as an interim step in the direction of her returning to her mother's home once certain conditions have been met. This will be influenced by her commitment to individual therapy, as well as the progress made by both the mother and daughter in the relationship based therapy. This may need to follow the individual work or take place concurrently once both persons are ready to commence with this therapeutic step.

[129] Based on his assessment, Dr. Danilewitz recommended that relationship therapy between the mother and daughter was necessary and should be a step before placement in the mother's home.

[130] He further recommended that R. enter individual therapy to strengthen her emotion regulations skills, explore her relationships with both caregivers and work through her traumatic experiences of her past and to address the relationship with her older brother who she perceives to be an aggressive and abusive person.

[131] Dr. Danilewitz stated that the mother's individual therapy will give her an opportunity to become emotionally attuned to her daughter's needs and learn to balance this with creating a secure structure in the home that sets limits and respect.

[132] He recommended that group therapy be considered for teens exposed to traumatic family experiences and/or parents with mental health issues. He also recommended that a psychiatric consultation to be considered if R.'s adaptive functioning decreases and she displays symptoms of a mood or anxiety disorder and that involvement in pro-social activities should be encouraged.

[133] On April 26, 2017 a feedback session was held with R. and her child care worker Dr. Danilewitz explained that both R. and her mother needed to work on their individual issues in therapy before they could consider living together and he tried to help R. understand that some of the interactions that happened in her family and between herself and her mother were not normal.

[134] The society followed up on the recommendations. In April 2017, R. began to attend individual therapy sessions with a society counsellor, Sari Goldman. R. was offered but was not interested in group therapy. The school was advised of the assessment recommendations regarding R.'s school programming. R. was participating in activities and she has continued to function fairly well. During the questioning of Ms Hart she testified that R. functioned well at school and "did not act out in the foster home in any way shape or form and attended camp successfully." She testified that R. was holding it together despite being unhappy.

[135] Instead of the mother addressing the issues raised in the assessment and beginning to focus on the parenting issues, counsel for the mother expressed concerns that R.'s disclosures, as set out in Dr. Danilewitz's report, about verbal and physical aggression towards her and the mother by the father prior to the 2012 separation had not been properly reported by the society pursuant to subsection 72.1 (1) of the CFSA. That section requires a society that obtains information that a child in its care may be or may have suffered abuse report the information to a Director.

[136] Ms Ansell followed up and it was determined that since the society first became involved with the family in 2012, none of the concerns regarding the father's use of physical force prior to the society's involvement were verified.

[137] Further, based on the society's files, on April 29, 2015 the then family service worker, Sheldon Howard met with the mother and R. as R. discussed similar allegations pertaining to her father. R. disclosed that for her "entire childhood" her father had severely and routinely beat her, including punching her and banging her head on the floor, as well as her mother and her two brothers. Given the inconsistencies in her stories, the allegations were not verified. It was believed that R.'s allegations were disingenuous and consistent with her ongoing hostility towards her father at the time.

[138] R. also disclosed an incident that she said occurred on Good Friday 2014 at which time she had a "huge fight" with her father at his home, was thrown down the stairs and was aggressively thrown out of the car and almost run over. This was the first such disclosure by R. and no disclosures had been made by the mother, B. or J. When Mr. Howard asked specific questions about individual incidents, R. gave conflicting or otherwise difficult to comprehend responses such as sitting in the back seat of the car and yet her father was able to reach back and throw her out of the car.

[139] Mr. Howard spoke to the father who denied the allegations. Mr. Howard also noted R.'s extreme hostility to her father. There was no corroboration and no reports of these disclosures to other adults, nor did anyone report any bruising which would have been expected from beatings as severe as reported by R. The allegations of physical abuse were not verified. As these historic allegations had already been investigated,

the society advised that no further steps would be taken to investigate and no further reporting was required.

8. Summary of relevant evidence and findings with respect to mother since with the commencement of the Protection Application

[140] Based on the evidence of the mother's conduct since the commencement of this Protection Application, I find the following issues to be a significant concern in considering the viability of the mother's plan for the care of the children:

a) Lack of support to R. regarding a family or kin placement:

[141] When R.'s placement with her father broke down in October 2016, the society was prepared to place R. with a family member namely, her step aunt and uncle or her maternal grandparents. However, R. was resistant as she expressed that it was her belief that her mother would be displeased if she proceeded with a kin plan. But within weeks, there are numerous incidents of R. yelling and screaming at her mother and crying hysterically that if she could not go home, she wanted to stay with the family or friends. The mother did not appear to agree with R.'s request but only said that she would speak to her lawyer.

[142] Several weeks later, R. met with a society worker to discuss a kin plan and she was agreeable if she could not go home. However, the society learnt about a text message written by R. to her mother expressing a serious sense of depression and suicidal ideation. In the text R. remarked that her mother had told her "to act depressed" but that she no longer needed to act as she was depressed. Despite concerns about R.'s mental health and her unhappiness in foster care, the mother never gave R. permission to go stay with family or friends. R. stated that her mother did not want her to go so she was prepared to choose her mother's happiness over her own. In late November and December 2016 there were other access visits in which R. continued to cry and ask her mother why she could not go home. R. then explained that she was fine staying in foster care as the lawyers had told her that this "would only be four months and only one more month, so she may as well make her mother happy". R. did not identify which lawyers told her this.

[143] Finally in April 2017, R. identified a friend that she would be willing to stay with and began a trial period of staying there. Instead of readily agreeing to the placement, it was not until a case conference in June and with some pressure being placed on the mother that she finally agreed to a formal order that R. reside with the V.-J. family.

[144] Recently, the mother has made serious allegations about R.'s placement with the V.-J. family based on statements she alleges were made by R. The society has investigated those concerns and although it confirms that R. is unhappy staying with the V.-J. family, no safety concerns were verified.

[145] There is reason to question the mother's credibility as for example, she stated that R. is forced to sleep on the floor whereas there is evidence that the father purchased a bed for her when she moved to the V.-J. home. This appears to be another attempt by the mother to disrupt R.'s placement as she early attempted to do when she told R. to "act depressed" while in foster care.

[146] I find that after R.'s placement with the father broke down, instead of positively supporting R., to be placed with family or a friend, the mother put her own needs and her own agenda before R.'s needs and as a result R. remained in foster care for many months that was entirely unnecessary.

- b) Concerns related to the reports of the mother's improvements as a result of treatment for her mental health issues

[147] The mother has been under the care of her psychiatrist Dr. Farcnik since 2012 and sees him weekly. In his earliest report dated November 23, 2013 he concluded that the mother did not have post-traumatic stress disorder but suffered from major depressive disorders, generalized anxiety disorder, attention deficit disorder, unresolved personal family issues, problems with self-perception and anger. At the time he was not aware that the mother had stolen prescription pads and written prescriptions for Oxycotin. Nor had the mother reported to him the incident at the cottage in July 2012.

[148] In Dr. Farcnik's report dated August 23, 2016¹⁶ written to the mother's previous counsel he describes the mother as having major depressive disorder, significant generalized anxiety disorder with panic attacks, post-traumatic stress disorder, mild attention deficit disorder, as well as problems with self-esteem, self-confidence, self-perception and anger. Dr. Farcnik identified that the trauma in the mother's marriage and divorce as the cause of her instability and outlined several incidents that the mother reported serious violence to herself by the father. He described the mother as being "in crisis" and that "given the current psychiatric conditions in conjunction with an unpredictable family environment, it is my opinion that at this time Mrs. N. is unable to work either in a part-time or full-time."¹⁷

[149] In the updated report of June 8, 2017 Dr. Farcnik describes his efforts to "to help [the mother] ameliorate her hyper-alert, depressed and anxious symptoms". He describes improvements in the mother's emotional self-regulation and stress tolerance as a result of weekly therapy sessions and also over 20 sessions where she participated in a Mindfulness Mediation course. He also notes that she is using a post-traumatic stress disorder coach. He states that it is now his opinion that the most significant diagnoses would be made under the umbrella of post-traumatic stress disorder that is related to childhood trauma and the physical and emotional abuse she suffered during the marriage.

[150] He attributes the great improvement by the mother to the pro-active involvement of her parents and credits the mother with reading books to augment her therapy. He recommends the maternal step-grandfather as an "excellent" supervisor and that his management strategies to deal with managing R.'s most difficult moments are

¹⁶ The report has the words "draft" written on it and was attached to the affidavit of the society worker Ms Ansell. In a subsequent report Dr. Farcnik refers to his report of August 28, 2016 but that was not produced by the mother. It is therefore not clear if changes were made to the report of August 23, 2016.

¹⁷ There is an ongoing court proceeding with the Superior Court of Justice with respect to financial issues and it appears likely that this report given the reference to ability to work may have been prepared or used in that proceeding.

impressive. He further opines that the mother has developed a better understanding of her children's personalities and needs and that the quality of her relationship has improved greatly over the last 6 months.

[151] However, Dr. Farcnik does not reconcile or discuss the long standing history of chronic conflict and dysfunctional relationship between the mother and her mother and step-father and how or why that relationship has now changed. On November 18, 2016 Ms Hart reported that Dr. Farcnik told her that the mother functioning as a parent could be improved if the external stresses were removed and she had a more supportive family. At that time Dr. Farcnik seemed to be indicating the step-grandfather and grandmother were not supportive.

[152] He also does not discuss nor did he ever report to the society the serious concerns expressed by both the step-grandfather who reported that the mother was "terrorizing the children" and the maternal grandmother who is a psychologist about her concerns regarding the mother's overall unacceptable behaviour, her yelling at R. and demanding obedience from her, R.'s fears of being physically punished and the overall chaotic and stressful home environment.

[153] I find that despite the mother being under the care of her psychiatrist since 2012, concerns about her emotional stability, self-regulation, and mental health did not improve and certainly her relationship with R. decreased significantly.

[154] I agree with the concerns expressed by Ms Ansell in her affidavit of August 23, 2017 with respect to the June 8th, 2017 report of Dr. Farcnik with respect to factual inaccuracies and the complete reliance on the mother's self-reporting without any corroboration from the society. For example, he states that the mother had no prior warning of the apprehension of the children that is clearly inaccurate. He makes statements about the children, their attachment to the mother and the improvements in the mother's relationship with the children without ever having observed any access visits or spoken to the society workers.

[155] I find that Dr. Farcnik's report about the mother's improvements in therapy cannot be relied upon even at this stage of the proceedings, as he has become an advocate for the mother as opposed to a neutral treating psychiatrist. He has provided opinions that are beyond his expertise and ventured into the realm of assessing parenting capacity and attachment. In addition, the fact that he permitted the mother to review his notes so she could modify or add comments raises concerns about what influence the mother may have had in revising his earlier report of August 23, 2016 and his report of June 8, 2017.

c) Ongoing concerns about the mother's mental health

[156] The mother has a long history of mental health issues and has been seeing psychiatrists since 2005 with respect to diagnoses of generalized anxiety dating back to her teenage years, panic attacks, depression and obsessionality and an inability to cope on a day to day basis with parenting the children.

[157] Despite the reports of Dr. Farcnik with respect to improvements in the mother there have continued to be incidents of the mother's lack of self-control and self-regulation.

[158] The mother has continued to feel overwhelmed and in need of significant support. The mother continues to externalize blame on others. For example, on January 26, 2017 the mother was very tearful and told Ms Hart that this was a very stressful time for her and she only spoke about what other people have done to her as opposed to speaking about what she is going to do to demonstrate that she has taken ownership of past events and is working towards being a different type of mother.

[159] On February 27, 2017 after leaving Ms Hart a voice message the recording continued and the mother is heard wailing, screaming and crying:

"No! Why, why? Help me! I can't take this anymore please help me. Somebody help me! Why? (inaudible) Who's going to help me? Marice, please (inaudible).

Ms Hart recorded hearing Hebrew, the microwave beep, silence, then inaudible wailing and crying again. Then she heard, "What did I just do? – screaming – "Offer to Settle".

[160] When Ms Hart followed up with the mother she said that she sometimes screams and yells but does not do this in front of the children. The mother confirmed Ms Hart's assessment that she sounded desperate and the mother confided that she has been having a difficult few months.

[161] On December 1, 2016, the mother sent Ms Hart email stamped at 12:11 a.m. with the title "R. etc" and the content only said, "Are we golden?" On December 13, 2016 another email was time stamped 11:52 p.m. with a title of "deprived" and no content. The mother does not explain these strange emails.

[162] As recently as October 2, 2017 the mother she sent her sister-in law a nasty, angry email accusing her of doing the "devil's work", calling her a "monster" who was consumed with bitterness and self-loathing and accuses her of stealing her children. This apparently relates to the fact that 2 years ago the sister-in law reported her concerns to the society.

[163] On October 10, 2017 the mother entered into father's home to drop off a sweatshirt for J. without prior authorization of the father and while the father was not in the home. The father reported that the mother walked into the home and insisted on seeing J. although B. asked her to leave. B. was upset and reported the incident to his counsel.

[164] I find that the mother's lack of ability to control her emotions and her unpredictable behaviour raise concerns about her emotional stability. Further as previously outlined, the mothers refusal to follow through with the section 54 assessment raises concerns about the actual state of her mental health as assessment by impartial professionals.

d) Mother's lack of steps to improve parenting

[165] Although the mother has continued to attend with Dr. Farcnik on a weekly basis, this is the same psychiatrist she was seeing over the recent years that her relationship with R. has seriously deteriorated.

[166] With respect to any new counselling or programs, Dr. Farcnik and the mother in her affidavit refer to a mindfulness program the mother attended but according to the evidence of the society the mother attended such a program in 2012. If the mother has attended any further mindfulness programs or other programs or therapies she has not provided the society with that information or consents to speak to the therapist or facilitators who conducted the program. The mother has also not provided any reports or certificates that she attended or completed any such programs.

[167] Ms Hart made several offers to the mother to participate in programs and therapies through the society, but the mother did not taken those steps. The mother reported that she was reading a number of books to assist her with how to be a different kind of mother.

[168] I find that there is no evidence before the court that the mother has taken any concrete steps to improve her parenting style or her relationship with R. I also find that reading some books is not sufficient given the serious dysfunction in her relationship with R.

[169] The report of Dr. Danilewitz was received in June 2017 and outlined steps that the mother and R. needed to take for R. to be reunified with the mother. Instead of pro-actively following through and discussing the recommendations and concerns raised in the report with Dr. Farcnik or accepting the offers of services and programs made by the society, the mother blamed the society and focused her energies on this litigation and her attempt to set aside or delay the section 54 assessment.

e) Pattern of conflict between the mother and the children

[170] Historically, there is evidence that the mother has had verbal and physical conflicts with all of the children.

[171] B. has made allegations of the mother's emotional abuse and physical altercations to the extent that there is no longer any contact between them. The maternal grandmother also expressed concerns about how the mother was treating B.

[172] The ongoing difficulties in the mother's relationship with R, are long standing and well documented.

[173] The case notes from the mother's psychiatrist indicate that as of 2014 the mother was also reporting that J. was being aggressive with her, hitting, kicking and being angry with her.

[174] Although the mother does not deny that she has conflicts and trouble managing all of the children, but she blames the children for all of the problems and does not take any responsibility for or show any insight into her role in the conflict.

f) Concerns with the supervised access visits

[175] The society's evidence of the mother's access reflect a great deal of inconsistencies in the quality of the visits depending on the mood of the mother and the children. They are described as unpredictable. There are times when the mother does not abide by the rules of supervision by speaking to the children out of the hearing distance of the supervisor, times when the mother becomes angry and swears at the children, times when she is unable to control the behaviour of the children and other times when the mother is appropriate and diffuses situations.

[176] For example, on February 5, 2017 the mother could not control J.'s unsafe and physically aggressive behaviour. He was walking on the handrail, banging his fist into the ground, kicking and punching the flat screen television and kicking a mirrored closet door until one door came off the track. The mother was not receptive to the supervisor's attempts to intervene. The mother walked into J.'s room and closed the door on the supervisor. J. later stated that his mother had thrown the iPad as well as a book.

[177] On March 4, 2017 the supervisor heard the mother swear at J. for spilling some of his tea they and R. were watching a movie. Another example, on May 3, 2017 R. became quite upset and yelled and called her mother "crazy" and continued to make hurtful statements, the mother locked herself in her bedroom. Although the mother showed restraint, she was unable to deescalate R. and provide support to her.

[178] Other times the mother was distracted and consumed by her legal and society issues and became tearful and needed to be refocused to spend time with the children

[179] There were times when arguments erupted between R. and J. and the mother was quick to react without taking the time to explore what actually happened. But there were also positive interactions when the mother was able to soothe the children.

[180] The visits appear to have improved since around mid-May. But the society was unable to determine if this was a result of R. calming down as she was placed with her friend's family or that the oversight and supervision by the access supervisors assisted as there were a number of times that the access supervisor needed to intervene to deescalate the situation to the point of terminating a visit given the mother's inconsistent ability to manage the children.

[181] I find that despite the high level of supervision there are still concerning events during the access visits. It is a positive sign that the visits have improved and if this improvement is sustained it may lead to the relaxation of the level of supervision needed and the possibility to transitioning to unsupervised access in the future.

g) Lack of respect for R.'s right to confidentiality

[182] In June 2017 when R.'s psycho-educational report prepared by Dr. Danilewitz was released to all parties. Ms Pacheco, counsel for R., reminded the society that R.'s counselling records needed to be safeguarded and that none of R.'s records should be released without prior consultation with her counsel.

[183] On July 14, 2017 counsel for the mother sent a letter to Dr. Danilewitz and society counsel requesting a copy all of the records and noted related to R.'s

assessment. After consultation with R.'s counsel a letter was sent to all counsel that any requests for R.'s counselling records should be directed to R.'s counsel Ms Pacheco.

[184] On October 30, 2017 Dr. Danilewitz contacted the society to report that he had received another request from mother's counsel for a copy of all of his notes with respect to his assessment of R. Society counsel again advised all counsel that before R.'s counselling notes are released R.'s consent must be verified by her own counsel.

[185] The society subsequently learnt from R.'s counsel that mother's counsel has also requested counselling records from Dr. Lisa Weizer and Adam Green. Both of whom had previously provided therapeutic support for R.

[186] On November 2, 2017 society counsel was again contacted by Dr. Danilewitz, who had received yet another request for the release of R.'s records from mother's counsel. This further request included an electronic authorization directly from R.'s email account authorizing the release of her records to her mother's counsel.

[187] Society counsel advised Dr. Danilewitz that that R. was represented by counsel who would be managing the issue of R.'s records. Ms Pacheco on behalf of R. also sent a letter to mother's counsel as it appeared that he was in direct contact with her client. The society had not yet been able to ascertain if R. has been similarly approached to sign authorizations regarding the release of any other of R.'s counselling records.

[188] The fact that the mother and her counsel would seek to intrude into R.'s right to privacy of her counselling records and to use those records for litigation purposes shows a concerning lack of respect and regard for R. and her rights. Further, there are concerning ethical issues raised in that R. has counsel and it appears that she may have been contacted by mother's counsel about writing an authorization for the release of her records thereby improperly involving her in the court process without first contacting her counsel.

[189] I agree with the society's assessment that this action on the part of the mother is a reflection of the unhealthy state of the mother-daughter relationship and the mother's need to exert control over R. to an excessive degree. The mother's need to review R.'s counselling notes is similar to her earlier need to edit her own psychiatric notes. I find that the mother's attempts to access R.'s counselling notes places R. at further risk of emotional harm.

h) Mother's refusal to provide copies to her text messages and emails to R.

[190] On October 4, 2017 R.'s counsel requested that mother's counsel provide her with copies of all of the text and email messages to R. In view of the actions of the mother and mother's counsel with respect to attempting to obtain R.'s counselling records it is understandable that counsel would be making this request.

[191] As of the date of the submissions made this motion that is, over a month later, those documents have not been produced nor has there even been a response to the request.

[192] I find that an adverse inference should be drawn against the mother as a result of her failure to produce those communications. The production of those communications would have been relevant to ascertain if the mother is influencing R. to make allegations against the V.-J. family so she can be placed in the mother's care in the same way that the mother previously told R. to "act depressed" and encouraged her not to live with family or friends so that R. would be placed in the mother's care.

i) Mother's vilification of the father and externalization of blame

[193] I find that it is necessary to review the mother's ongoing allegations of physical and verbal abuse by the father that she and her psychiatrist have deemed to be one of the main sources of the mother's current mental health difficulties. The mother deposes that she has suffered from Battered Woman's Syndrome and attaches an article about this syndrome to her affidavit. The court does not take accusations of domestic violence lightly.

[194] The mother has recounted a particularly serious incident at the family cottage in the summer of 2012 in her affidavit together with graphic photos and makes the same allegation to Dr. Farcnik who repeats the allegations as being the truth. However, there are some serious issues raised with respect to the mother's credibility regarding this incident.

[195] Not only does the father deny that he caused the mother's injuries, but he has attached a sworn affidavit from the family's nanny who was present at the time of the incident. The nanny deposes that the parents had an argument as the father believed the mother was having an extramarital affair and when he found out the male was texting the mother he picked up the phone to call the person, the mother grabbed his shirt and was pulling him all around room and started to grabbing the phone. The nanny deposed that the mother slipped, hit the corner of a door and hurt her lip and mouth. The nanny further deposed that the father did not hit or push the mother but that she lost her footing because she was "stoned". The nanny deposes that the mother had obviously used some drugs and was impaired. In the same affidavit the nanny recounts concerns about the mother's parenting and use of drugs.

[196] The mother did not mention this incident to Dr. Farcnik until a year later and then the only notation in the doctor's notes is that the mother said that "the phone hit her in the face". The incident has been embellished upon by the mother in subsequently.

[197] The mother mentioned this incident to the police several years later and when the police tried to follow up with her and tried have the mother make a formal statements she refused and said she lied. The police report notes that there were several discrepancies in the mother's story and assessed she was not credible. The mother deposes that she did not press charges as the father was helping her avoid criminal charges regarding the stolen prescriptions. Yet in spite of this help the mother blames the father for his manipulation and minimizes the serious offences committed by her by stating that she developed a tolerance for the drug [Oxycotin] and needed more of it to manage her pain so she "resorted to using a psychiatrist's prescription pap to write myself a prescription."

[198] I have no doubt that there may have been incidents of physical and verbal altercations between the parents and that either one or both were responsible given the high conflict over many years of what appears to have been a very problematic marriage. However, the mother's need to vilify the father and blame him for all that has gone wrong instead of focusing on what went wrong in her relationship with her older son B. and what is now going wrong in her relationship with R. shows a complete lack of introspection and acknowledgement of any fault by her. The mother cannot even take responsibility for her commission of serious criminal offences.

[199] The mother blames both B. and R. for the violence in her relationship with them. The mother reinforces R.'s belief that the breakdown in their mother-daughter relationship and in the current situation was R.'s fault. The mother also expresses the belief that R.'s violent behaviour is the father's fault as R. is just copying her father's aggressive conduct. But the mother cannot or will not see that R. only displays this behaviour with the mother and there are absolutely no reports of any concerning behaviour anywhere else or with anyone else. The mother deposes that she forgives R. for her violent behaviour and that it is R. who is always apologizing. The mother portrays herself throughout her affidavit as a victim.

[200] The mother's lack of insight is quite astounding. She fails to take any responsibility for the serious break-down in her relationship with her children. Although R. is desperate to come home and live with her mother and has become totally aligned with the mother, the mother does see the unhealthy situation she has created. The mother does not appreciate that she has created a situation where R. must also make allegations against her father, against B. and against the V.-J. family.

j) Lack of supports

[201] The mother currently does not appear to have any meaningful supports and has a history of difficulties with her family members. In the Amended Notice of Motion filed by the mother, originally returnable September 7th, 2017 and then adjourned to November 9th, an order was requested that her mother and stepfather be supervisors of the children and that she reside with them and the children. Then in the mother's affidavit sworn October 30th in support of another Notice of Motion returnable November 9th, the mother deposes that that her mother and stepfather have suffered from failing health over the summer and are no longer available to assist the mother.

[202] There was also an unfortunate incident in August 2017 when R. was to stay at her grandparent's home on her first Friday home from camp, but instead of sharing a meal with her they went out to the home of other family members where R. was not invited. They did not trust R. with a key to their home and R. accidentally locked herself out of their home. The grandparent would not give R. a key and instead of returning home immediately, they expected R. to wait outside until they returned home. Such behaviour was naturally incomprehensible to the society and the mother. R. has told the society worker that she did not wish her step-father or grandmother to be involved.

[203] A review of some of Dr. Farcnik's notes, makes it clear that there is a history of chronic conflict between the mother and her step-father and her mother over the years. Dr. Farcnik appears to gloss over this history of their relationship when he states in his

report of June 8, 2017 that they are strong supports for the mother. In a few short months they have gone from being strong supports to being no support.

[204] The mother does not name any other family members or friends that could assist her and the children. In fact, there is further evidence that she has had many disagreements with various other members of her family.

k) Mother's plan of care

[205] The society has expressed confusion about mother's plan of care as her outline of transitioning R. to her care is much more complicated than the proposal made by the society. The mother does propose that she would continue to attend with Dr. Farcnik, that R. would continue to attend with her counsellor and that she would engage in counselling with R.

[206] But in the mother's 23 page affidavit, she does not articulate any specifics of her plan with respect to having R. in her care. Her plan involves a gradual reduction of supervised access to unsupervised access and then with R. being placed in her care by March 2018.

[207] There are also no specifics with respect to J. other than a return to the shared parenting regime that existed prior to this Protection Application. There is no safety plan outlined if there are altercations between the mother and R. or between J. and R. or how J. would be protected from witnessing any altercations or disputes between R. and herself.

[208] The mother devotes most of the affidavit complaining about the unfairness of the section 54 assessment, the biased position of the society against her and in favour of the father, the past history between her and the father, how R. has learnt from her past behaviour and how unhappy R. has been because she was removed from the mother's care and R.'s complaints about foster care and her alleged complaints about her current placement with the V.-J. family.

[209] I find that the mother has not presented a plan that meets the needs of either R. or J. Nor does she explain how she will ensure that the problems that previously existed would be alleviated.

9. Society's plan of care with respect to R.

[210] Although the society does not accept or condone the mother's actions in derailing the section 54 assessment, faced with the reality of R.'s age, her strong wish to return to the care of her mother and the fact that R. has worked hard over the last year, the society sent correspondence to all counsel on September 27th, 2017 outlining a new plan for the reunification of R. with the mother.

[211] The society indicated that the clinical team had met with R. and her counsel and was impressed with R.'s courage and resilience in face of the many challenges she had to face over the last year. R. advised that she had been working on coping strategies to deal with conflict more effectively and would be willing to engage in family therapy with

her mother. R. expressed that she was confident that she and her mother could start to have unsupervised access.

[212] Despite R.'s very positive progress the society expressed concerns about unsupervised access due to the risks associated with the mother and that fact that although R. had shown insight and the capacity for growth her mother had not. The society proposed that it would consider a highly structured plan to include therapeutic support for R. and her mother, concurrent with a gradual and graduated transition from the current supervised access regime. Society counsel invited the mother and her counsel to provide the names of counsellors or therapeutic programs that would work with her and R. and the society would follow up to determine if these supports would be appropriate. Counsel for the society advised that they would need both parents' consent to reciprocally share information with these service providers. If the parties and most importantly the mother was in agreement the society would schedule a Group Planning Session for R. and the mother. Society counsel make it clear that the proposal was only with respect to R. and that there would be no change in the supervised access until a firm therapeutic plan was in place.

[213] Instead of immediately responding, agreeing to attend the Group Planning Session and working co-operatively on such a plan, it was not until 2 weeks later that mother's counsel responded with 4 names of counsellors all of whom were conflicted either because of past or current involvement with the family. The mother failed to understand that a fresh approach with someone not previously involved with the family would be beneficial.

[214] On October 16th during the questioning of Ms Ansell society counsel asked mother's counsel if the mother would agree to the society providing the names of qualified counsellors. On October 23rd, society counsel provided mother's counsel with the names of 2 therapists that were available and provided details regarding their fees and retainer arrangements.

[215] On October 24th, mother counsel's sent an email to society counsel requesting names of therapists (despite the fact that a letter had been sent the previous day) if the society was not agreeable to R.'s current counsellor conducting the mother-daughter therapy. Society counsel found it strange that the mother and her counsel would not appreciate that R.'s individual counsellor arrangements would create a conflict for her to also conduct the mother-daughter counselling. My own view is that this is another example of a fundamental lack of respect for R.'s right to privacy and a lack of boundaries by the mother. The letter also requested similar counselling arrangement for J.

[216] Society counsel immediately responded reminding mother's counsel that a letter had been sent the day before with respect to information about the counselors, that the society's transition plan was only with respect to R and emphasized the need for R. to have her own individual therapist.

[217] Over the next several days there was further correspondence between society counsel and the mother's counsel as the mother wished the society to agree to a trial period with Marci Goldhar, one of the proposed therapists, and the mother raised the

issue of the society sharing the cost of the therapy. Society counsel pointed out that the society had earlier agreed that it would not seek the retroactive support of \$6,000 that the mother owed to the society on the basis that she had agreed to be fully responsible for the cost of the section 54 assessment. But as that assessment was no longer going forward it was the society's position that the mother should be responsible for the cost of the mother-daughter therapy. The society proposed that the mother pay the 5 hour retainer and then it was prepared to negotiate the fees thereafter. Society counsel also pointed out that the further delay created by the mother was concerning as the sooner the mother committed to counselling the sooner the society could start working towards a transition plan and that R. had already committed to the process.

[218] On October 30th society counsel confirmed that the society was not prepared to agree to any trial period with Ms Goldhar. Society counsel sought the consent of the parents and other counsel to share information with Ms Goldhar. Consents were provided by other counsel but as of the first day this motion was argued on November 9th, the mother had still not provided her consent.

[219] Quite bizarrely on October 30th, the mother served her Notice of Motion returnable November 9th asking that R. live with her on a temporary but ideally, final basis with a detailed graduated plan for R. to have supervised and unsupervised time with her mother as well as regular visits by society workers. The plan also includes the mother and R. continuing with counselling and engaging in mother-daughter therapy with Ms Goldhar. The plan spans from November to February.

[220] I agree with the submissions of society counsel and the observation of the society worker Ms Ansell that one must question the mother's commitment to having R. in her care when as of September 27th a plan had been proposed that is far less complex than the plan now being proposed by the mother. The society's only condition with respect to R. transitioning back to her mother's care was for mother and daughter to engage in regular therapy with a systemic family counsellor and for R. to continue with her individual counselling. All that the mother needed to do for the transitioning plan to commence was to sign the necessary consents and commit to payment to get the therapy started.

[221] During the hearing of the motion, the mother finally provided her consent for the society to share information with Ms Goldhar. Further, it was only during submissions and in response to a question from the court that the mother agreed to commence counselling with R. on the terms requested by the society and to pay for the cost.

[222] I find that the mother created unnecessary obstacles and significantly delayed the therapy with R. I also find that there was no need for the mother to have even pursued this motion with respect to R. as the society's proposal had been made on September 27th and should have been immediately acceptable to the mother and her counsel. It was a waste of time and expense for the mother to pursue this motion and seems more designed as a forum to vent against the society and the father than to work co-operatively for the return of R. to her care.

10. Society's plan of care with respect to J.

[223] It is the society's plan that J. remain in the care of his father. The plan is supported by the father and J.'s counsel.

[224] Ms Ansell deposed that J. is doing well in his father's home where he has resided since October 2016. Ms Ansell has been in periodic contact with J.'s school principal, his teacher, his coach who is also his tutor and the director of the summer camp J. attended. Although J. had some difficulties last year engaging in school and could get angry very quickly, as of March 2017 his behaviour improved. There have been no safety concerns reported and J.'s teacher and his coach advised that the father is a wonderful parent and is in constant contact with the school.

[225] Ms Ansell also deposes that she spoke to J. who reported that things were going well at his father's home and he gets along well with his father and B. J. spoke positively about the time he spent with both of his parents. Ms Ansell also spoke to B. who reported that he enjoyed J. living with him and his father. B. also reported that although he does not have a positive relationship with his mother neither he nor the father speak poorly of the mother to J. he reported that the father always encourages J. to see the mother and speak to her on the phone.

[226] There have been ongoing concerns that J. is quite closed and is reluctant to talk about his feelings to either the society workers or his own counsel. Initially Ms Lisa Johnson was J.'s counsel and the mother contacted her on June 17, 2017 to advise that she had "spoken to J. and he is willing to express his feelings about wanting to live with me part time....he is willing to speak and have his voice heard." The mother suggested that counsel attend at her home the next day during the supervised access visit as time was of the essence. Ms Johnson advised the mother that she would not meet the next day and when she does meet J. it would be in private. She further requested that the mother not speak to J. about court or his living arrangements.

[227] Ms Ansell reviewed the access noted and deposes that there was no mention of such a conversation occurring. Ms Ansell expressed her concerns that the mother seemed to be placing J. in the position of having to choose his living arrangements and this was similar to the pressure she had been putting on R.

[228] Gary Gottlieb J.'s new counsel raised concerns about the lack of formal counselling for J. The society workers agreed with these concerns and contacted the father who has agreed to follow up with Dr. Helen Radavanovic to arrange for counselling for J.

[229] The mother raises concerns about J. living in the father's home with B. in view of the previous involvement of the police in 2015 due to the father and B. fighting and that on one occasion B. was taken to the hospital. In response to questions about B., the father stated that there had been 3 or 4 incidents of assault but none in the last 2 years and the last time B. yelled at his father was a year and a half ago. The father stated that B. has been diagnosed with anxiety, attention deficit disorder and emotional trauma related to the conflict he witnessed between his parents. He had a difficult few years but has connected with a new psychiatrist and he has continued to improve and he is now doing very well. Ms Ansell also spoke to B.'s psychiatrist and confirmed that he is doing well

[230] Despite the fact that there are no evidence of any further concerning incidents and despite mother's counsel's earlier submissions that the court should only act on "credible and trustworthy evidence" the court was asked to speculate that the father's home was not risk free. I find that the father has been able to provide B. with a stable home and provide him with the support and guidance he requires. There is no evidence that there are any difficulties between B. and J. rather the evidence is that they have a strong bond and enjoy living together.

[231] The mother's criticism of the father's care of both B. and J. is another example of her deflecting from her role and responsibility for the conflict in her own relationship with all of her children that eventually led to the need for the society to commence protection proceedings.

[232] The father in his affidavit sets out his daily routine with respect to J.'s care. The father has the assistance of the same nanny that has been with the children since 2011. The nanny picks up J. from school and is able to take him to his activities or access with the mother. When J. is not attending access visits, the father is home by 6:00 or 6:30 p.m., has dinner with J., assists him with his homework and then they spend the evening together. The father has arranged for a tutor for J. once a week and he is involved in extracurricular activities.

[233] There is clear evidence that the father has provided a stable and stress free home environment for J. for the past year. The father has encouraged contact with the mother and has ensured that J. attend access as scheduled and that he also speaks to his mother. The father's plan is to continue the plan he already has in place that is meeting all of J.'s needs.

11. Application of findings of fact to the applicable law

a) Are there reasonable grounds to believe that if R. and J. are returned to the care of their mother that they will suffer harm?

[234] It is submitted that the mother was the pre-intervention caregiver as the society as the children were removed from the care of the mother as the society supported an order that the children be placed in the care of the father subject to supervision. All counsel accepted this submission.

[235] I find there is overwhelming evidence that the society has met the first part of the test namely that there are reasonable grounds to believe that if either of the children were returned to the care of the mother that the children are likely to suffer harm.

[236] The test can be met simply based on the mother's own admissions in the months leading up to the commencement of the Protection Application namely, that she could not handle R. who she called her "abuser", she had kicked R. out of her home, she alleged that R. had physically assaulted her and destroyed property in the home. She also alleged that R. had hurt J., that J. had been present for the conflict between herself and R. and that J. was not safe when R. was present in the home.

[237] In addition to the mother's own admissions, it is also relevant to consider that the society has been involved with the family since 2012 and with an active ongoing file

since January 2015. There were reports from the police, community members and family members with respect to concerns about the mother's mental health, her past conflict with her older son B. and more recently with respect to conflict with R. The society outlined over 30 separate reports to the society from the police, the father, R. and the mother herself about violence between R. and the mother to which J. was often exposed and even directly involved in.

[238] Despite many interventions the same concerns continued to be present as did the same pattern of behaviour that is, R. and the mother being involved in verbal and physical disputes, R. staying somewhere else for a few days, apologizing for her actions and then returning to live with her mother.

[239] Despite the fact that the mother was under the care of a psychiatrist, the conflict with R. continued and there is no evidence that R. had these behavioural issues when residing with her father or elsewhere.

[240] Faced with the mother's refusal to agree that the children reside with the father, the society had no option but to commence a Protection Application as all other interventions had been tried and had failed to alleviate the risks to both R. and J. while in the mother's care.

[241] I find that the society has established on credible and trustworthy evidence that there was a real possibility that if the children are returned to the mother that they will suffer both emotional and physical harm.

b) Are there reasonable grounds to believe that R. and J. can be adequately cared for by either parent with terms of supervision?

[242] I find that any terms of supervision would not at this stage of the proceedings alleviate the many risks to R. and J. if they were placed in the mother's care.

[243] There is no evidence that the mother has made any significant progress in the management of her mental health or her parenting style. Over the last year, the same concerns that resulted in R. and J. being removed from the mother's care have continued. Based on the evidence of the society workers and the mother's own evidence it is clear that the mother has been unable to prioritize the needs of the children over her own needs to vilify the father, prove that the society was wrong and blame B. and R. for the serious conflict in the relationship between herself and her children.

[244] Frankly, if not for R.'s age, the court would not even be considering a reunification plan at this time as based on the many concerns outlined in this decision, the risk to R.'s physical and emotional well-being is still high. The mother continues to externalize blame onto R. and B. for the difficulties in her relationship with them, there are still concerns that her mental health has not stabilized and there are concerns that the mother has not made the necessary changes in her parenting style. The mother has also shown herself to be unable or unwilling to abide by court orders and has on occasion not been co-operative with respect to the terms of supervised access and or with the society workers.

[245] I find that with respect to R. and J. there are no terms of supervision that could alleviate the risk of harm to them if returned to the care of the mother.

[246] With respect to J., I find that there is no evidentiary basis to conclude that the father's home is not safe or that there is any risk of harm in J. remaining in the care of his father as alleged by the mother. The risk of moving J. to spend half time with his mother is still too high especially as there is no way of knowing how the proposed commencement of unsupervised access and then the reunification of R. and the mother will work.

[247] I therefore find that with respect to J. the society has met its onus to prove that J. cannot be protected in the care of his mother by terms and conditions of supervision. The risk to his physical and emotional safety remains too high at this time. The least intrusive plan that protects J.'s well-being is that he remain in the care of his father.

[248] The society did not make any submissions as to the terms of supervision for the father. I suspect that this is a result of the society having amended its Protection Application to seek a section 57.1 order with J. being placed in the father's custody. As the father has worked co-operatively with the society, I assume that any specific terms if necessary can be negotiated.

c) Should the current terms of access be changed?

[249] It is undisputed that both R. and J. do not wish access with their mother to be supervised. However, in the months leading up to the commencement of the Protection Application, the mother and R. were involved in physical altercations that required police intervention. The mother has never taken any responsibility for the violent conduct and has instead consistently blamed R. and has led R. to believe that the violent episodes are all her fault. A great deal is still unknown about the state of the mother's mental health. As the section 54 assessment did not proceed there is a lack of information about what supports would create a safe and conflict free environment for R.

[250] The presence of an access supervisor has served to stabilize, manage and defuse the escalated interactions between the mother and R. The access supervisors have been able to support that mother through challenging situations with J. or when other stressful situations arise. Although there have been some improvements, a continued order for the access to be in the discretion of the society will permit the society to test out loosening the level of supervision as needed.

[251] Ms Pacheco on behalf of R. made compelling submissions that R. should not be punished for the lack of improvement by the mother as R. has worked very hard over the last year and done what was expected of her and at the very least she should have unsupervised access with her mother.

[252] However, based on the risks outlined in my view unsupervised access should commence under the auspices of the therapy between R. and the mother and should only begin when that therapy has commenced. Perhaps this will also give some incentive to the mother to not further delay the commencement of the therapy between herself and R.

[253] It was also submitted on behalf of the mother that there is no reason to delay J. have unsupervised access to his mother especially if R. is not present during that access as the allegations of historical physical altercations only occurred between the mother and R. However, there is some evidence that the mother reported to her psychiatrist that she also had some problems managing J.'s behaviour. There is also evidence that even during supervised access the mother has had some difficulties managing J.'s behaviour. There is evidence of the mother not being able to control her verbal outbursts and she has exhibited some unpredictable behaviour such as recently barging in to the father's home. There is also evidence that the mother may be speaking to J. about where he wishes to live and in view of the pattern the mother has displayed with R. I have concerns that the mother may attempt to manipulate J. and involved him in this litigation if access is unsupervised.

[254] J. is stable and doing well under the current arrangement despite the fact that he has stated he does not like being supervised. J. has not yet begun his counselling which may assist him with learning coping strategies.

[255] It will remain important for the society to have the flexibility to arrange access both for R. and J. depending on the mother and the children's behaviour especially as the society begins to implement unsupervised access for R. and begins the process of R.'s return to the mother's home.

12. Statement of Agreed Facts

[256] After the temporary care and custody motion was argued, I was advised that the mother had signed the Statement of Agreed Facts for a finding that both children be found in need for protection pursuant to sections 37 (2) (b)(i) and 37(2)(g).

13. Conclusion

[257] The children in this family have been subjected to a history of parental conflict and ongoing conflict as a result of the parents' separation and divorce. They have been involved with multiple treatment providers, exposed to their mother's mental health issues and all of the children have been involved in verbal and physical conflict with their mother. The least disruptive alternative at this time remains that J. continue to reside with his father and that R. remain in the care of the society with a plan for reunification with her mother.

[258] There is no doubt that the mother loves R. and J. and that they loved her. R. has worked hard over this last year to learn better coping strategies demonstrated insight and taken responsibility for her own conduct. But it now time for the mother to begin to work towards reunification with R. by focusing on her role in their conflict and stop blaming other people or the society for the long standing difficulties the mother has experienced with both of her older children.

[259] There will be a temporary order as follows:

1. The child J.N. born [...] shall remain in the care of the father subject to the supervision of the Jewish Family and Child Service of Greater Toronto;

2. The child R.N. born [...] shall remain in the care and custody of the V.-J. family;
3. The mother shall have access to the children in the discretion of the Jewish Family and Child Service of Greater Toronto to include the frequency, location, duration and level of supervision, if any. The mother shall continue to be responsible for the cost of any supervised access;
4. The mother, if not already done, shall within 7 days of the release of this decision pay the retainer for the mother-daughter therapy to Marci Goldhar and be responsible for the cost of such ongoing therapy subject to further court order or agreement between the parties;
5. The mother and R. shall immediately contact Ms Goldhar to arrange for counselling to begin as soon as Ms Goldhar is available. The mother and R. shall attend and fully co-operate with their counselling as arranged by Ms Goldhar;
6. The father shall arrange for counselling for J. and use his best efforts to ensure that J. attends regularly;
7. R. shall continue to attend for individual counselling;
8. There shall be no communication by any person with R.'s treatment providers, such as medical doctors, therapists or counsellors, and as further defined pursuant to the *Personal Health Information Protection Act* and the *Health Care and Consent Act*, without the prior written consent of the Jewish Family and Child Service of Greater Toronto and counsel for R. or pursuant to a court order. For clarity this includes any request for the release of copies of reports, notes or other written or oral information about the R. from any of her treatment providers;
9. In accordance with the Statement of Agreed Facts filed, there will be the Statutory findings with respect to R. and J. and findings of need of protection pursuant to sections 37 (2)(b)(i) and 37 (2)(g) of the *Child and Family Services Act*.
10. The matter is adjourned to January 10, 2018 at 2:00 p.m. for a settlement conference with briefs to be filed. January 24, 2018 at 2:00 p.m. is tentatively reserved if any party needs to bring a motion;
11. If any party is seeking costs, brief costs submissions not to exceed 3 pages, with a Bill of Costs and any Offer to Settle attached, shall be filed with the trial co-ordinator's office within 30 days. Any response, not to exceed 3 pages, with a Bill of Costs, if desired, and any Offer to Settle to be attached to be filed with the trial co-ordinator's office within 30 days of receipt of any request for costs.

Signed: Justice Roselyn Zisman