

Ontario Judgments

Ontario Superior Court of Justice

St. Catharines, Ontario

W.L. MacPherson J.

Heard: November 30, December 1-3, 6-8 and 10, 2010.

Judgment: June 23, 2011.

Court File No. 455/08

[2011] O.J. No. 2860 | 2011 ONSC 3905 | 204 A.C.W.S. (3d) 311 | 2011 CarswellOnt 5351

Between The Children's Aid Society of the Niagara Region, Applicant, and T.B., M.B., W.B., Respondents

(266 paras.)

Case Summary

Family law — Child protection — Circumstances — Abuse or neglect — Neglect and deprivation — What constitutes — Protective agencies and institutions — Supervision or guardianship — Considerations — Condition of child — Required medical treatment — Parents' ability to provide stable environment — Permanent appointment or Crown wardship — Status review application by Society for order making three older children Crown wards with parental access and three younger children Crown wards without access allowed — Children ranged in age from five to 14, all with special needs — Children apprehended for lack of parental supervision, parents' convictions for animal cruelty, deplorable home conditions and children's behavioural problems — Parents refused to accept children's developmental problems, were unable to meet their needs and were not co-operative with Society — Return to parents not in children's best interests — Access to younger children not meaningful or beneficial and they were candidates for adoption.

Status review application by the Society for an order making the three older children Crown wards with parental access and the three younger children Crown wards without access. The respondent parents wanted all children returned to their care. The biological father of the older children wanted access. The Officer of the Children's Lawyer opined that the oldest child should be returned to the parents pursuant to his wishes but supported the Society's position on the other children. The children were found in need of protection in 2008. The parents consented to two kinship placements but the children were placed in foster care when the placements deteriorated. The children ranged in age from five to 14. The 14-year-old had some difficulty with speech and school work but had the fewest special needs and was doing well in foster care. The 13-year-old struggled in school and had cognitive and social defects. The 10-year-old exhibited fire-setting behaviour and very low cognitive and emotional functioning. The eight-year-old had communication problems, ADHD and did not listen to directions. The seven-year-old had significant developmental delays and displayed autistic traits. The five-year-old was non-verbal and functioned at the level of a one-year-old. The Society became involved in 2000 because of lack of parental supervision, children's behavioural problems, the parents' convictions for animal cruelty and the filthy and unsafe housing conditions. The parents consented to the kinship placement in 2008 but continued to believe they were doing a good job raising the children. The parents, particularly the father, were not actively engaged during access visits and were hostile to support workers. The parents did not appreciate the children's special needs and began to cancel meeting and visits in 2010.

HELD: Motion allowed.

The children clearly remained in need of protection. While the parents had improved their home conditions and

financial situation, their parenting abilities remained deficient. The parents ignored the children's developmental problems and blamed others for their shortcomings. The parents were unable to meet the children's needs and were uncooperative with the Society. It was not in the best interests of any of the children to be returned to the parents. All six children were made Crown wards. The parents and biological father were granted access to the three older children. Access to the three younger children was not meaningful or beneficial and they were good candidates for adoption, so access rights were terminated.

Statutes, Regulations and Rules Cited:

Child and Family Services Act, [R.S.O. 1990, c. C.11, s. 1](#)(1), s. 1(2), s. 37(3), s. 59(2), s. 59(2.1)

Court Summary:

Issues dealt with as identified by the Judge releasing the decision:

- * Child protection. Crown ward with access (3 older children). Crown ward without access (3 younger children). Children with special needs. Parents had no ability to meet those needs now or in foreseeable future

Counsel

David N. Sider, for the Applicant.

Edwin W. Paget, for the parents, T.B. and M.B.

Erik Grinbergs, for the children, D.W.B., M.M.M. and D.L.L.B.

Claude Leduc, for the children, D.C.T.B., M.R.A.B. and M.R.B.

W.L. MacPHERSON J.

1 The Children's Aid Society of the Niagara Region is requesting that D.W.B., M.M.M. and D.L.L.B. be made Crown wards with access to their parents and that D.C.T.B., M.R.A.B. and M.R.B. be made Crown wards without access for the purpose of adoption.

2 The parents, M.B. and T.B. are opposed to the Application and request that all or some of the children be returned to their care subject to supervision.

3 The biological father of D.W.B. and M.M.M., W.B., is not opposed to a Crown wardship Order but requests that he and his mother, C.S., be granted access to them.

4 There are two representatives from the Office of the Children's Lawyer, Eric Grinbergs for the three older children and Claude Leduc for the three younger children. On behalf of the oldest child, D.W.B., Mr. Grinbergs takes the position that he should be returned to his parents' care subject to supervision. With regard to M.M.M. and D.L.L.B., he acknowledges that given their special needs and the length of time that they have been in care, neither a further Society wardship order nor a supervisory order are possible, and that Crown wardship with access is the only option.

5 Mr. Leduc, on behalf of the three youngest children, supports the Society's position that these children should be made wards of the Crown with no access.

6 The primary issues to be determined by the Court are:

- (i) What disposition is in the best interests of each of the children?
- (ii) If any of the children are made wards of the Crown, should there be any access orders made?

THE LAW

7 This is a Status Review Application pursuant to section 64 of the *Child and Family Services Act* [R.S.O. 1990 c. C.11](#), as amended. It is clear from the case law that a status review application is not to be treated as a rehearing of the original order. As set out by the Supreme Court of Canada in *Catholic Children's Aid Society of Metropolitan Toronto v. C.M.* [\[1994\] S.C.J. No. 37](#):

The examination that must be undertaken on a status review is a two-fold examination. The first one is whether the child continues to be in need of protection and, as a consequence, requires a court order for his or her protection. The second is a consideration of the best interests of the child, an important and, in the final analysis, a determining element of the decision as to the need of protection ...

8 D.W.B., M.M.M. and D.L.L.B. were found to be in need of protection on September 9, 2008. D.W.B. was placed in the care of C.G. and R.G. subject to supervision while M.M.M. and D.L.L.B. were made Society wards. D.W.B. was removed from the kinship placement in January 2010 and placed in the temporary care of the Society.

9 D.C.T.B., M.R.A.B. and M.R.B. were found to be in need of protection on September 29, 2008. They were placed in the care of E.F. and A.B. subject to supervision. They were removed from the care of these kinship caregivers on August 5, 2010 and on consent of the parents were placed in the temporary care of the Society.

10 Under section 65, there are four possible dispositions - a supervision order placing the children with a parent or another person; Society wardship; Crown wardship with or without access; or consecutive orders of Society wardship and supervision. In reality, all four of those options are only available regarding D.W.B., D.C.T.B., M.R.A.B. and M.R.B.

11 Given the length of time that M.M.M. and D.C.T.B. have been in care, the only options regarding these two children would be to return them to their parents and terminate any Society involvement or to make them wards of the Crown, with or without access.

12 In determining what disposition is the most appropriate in any given situation, the court must keep in mind the paramount purpose of the *Child and Family Services Act* as set out in section 1 as follows:

1.(1) The paramount purpose of this Act is to promote the best interests, protection and well being of children.

1.(2) The additional purposes of this Act, so long as they are consistent with the best interests, protection and well being of children are:

1. To recognize that while parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit, and, wherever possible, be provided on the basis of mutual consent.
2. To recognize that the least disruptive course of action that is available and appropriate in a particular case to help a child should be considered.
3. To recognize that children's services should be provided in a manner that,
 - i. Respects a child's need for continuity of care and for stable relationships within a family and cultural environment,

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- ii. Takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children,
 - iii. Provides early assessment, planning and decision-making to achieve permanent plans for children in accordance with their best interests, and iv. Includes the participation of the child, his or her parents and relatives and members of the child's extended family and community, where appropriate.
4. To recognize that, wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences.
 5. To recognize that Indian and native people should be entitled to provide wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

13 In determining the best interests of the child, section 37(3) of the *Child and Family Services Act* provides as follows:

Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she determines relevant:

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

14 What is being requested by the Society - a Crown wardship order - is the most serious intervention by the state into a family. Given that the legislation directs the court to consider the least disruptive course of action that is consistent with the children's best interests, it is clear that a Crown wardship order should only be made after a Court has considered the merits of all of the plans that have been presented and determined that none of the proposals submitted can adequately protect the children.

15 In the event that Crown wardship is ordered, there is a presumption against access unless the parents can

show that their relationship with the child is beneficial and meaningful to the child; and the access will not impair the child's future opportunities for adoption. (Section 59 (2)(2.1) *Child and Family Services Act*, *Children's Aid Society of Niagara Region v. J.C.*, [2007] O.J. No. 1058 (Ont Divisional Ct))

EVIDENCE CONCERNING THE CHILDREN

16 Having reviewed the applicable legal principles, I now turn to the evidence and history that was heard over the course of this eight day trial.

17 In this status review application, I cannot lose sight of the fact that I am dealing with six individual children, each with their own unique and special needs. I am not simply dealing with one package of six children or even two packages (the oldest three and the youngest three) of children. Instead the focus must be on the individual personalities and needs and difficulties faced by each of these six children and, in essence, it is really six separate cases that must be determined by the court.

D.W.B.

18 D.W.B. was born April 9, 1997 to T.B. and W.B. They lived together from early 1997 until 1998, separating when D.W.B. was about 9 months old. D.W.B. remained with his mother and has lived with his step-father, M.B., since some time in 1998 until March 19, 2008.

19 The Society had been involved with the family on a voluntary basis since April 2007. In March 2008, there was a concern that the situation was not improving and rather than have the child apprehended, D.W.B. was placed with his maternal Aunt C.G. and Uncle R.G. subject to supervision. This placement broke down in January 2010 when the G.s requested that D.W.B. be removed and he has been in the same foster home as M.M.M. since coming into care. On March 5, 2010, after a contested motion, D.W.B. was placed in the temporary care of the Society.

20 There does not appear to have been much involvement with community resources while in the parents' care. D.W.B. does have difficulties with his speech although to a lesser degree than the other children. There was reference in a report to considerable absences from school and although the evidence was contradictory as to the number of schools (Dad - 6 schools; Heidi TeBrake - 7 schools; D.W.B. - 8 schools), it was clear that he had been in many different schools during his young life.

21 Dr. Maureen Joyce was retained during the course of this proceeding to prepare a Psychological and Psycho-Educational Assessment of D.W.B. and each of his siblings. Specifically, she was asked to do a cognitive, academic and emotional assessment of each of the children to assist in understanding each of their needs. This was requested as part of the parenting capacity assessments of the parents (T.B. and M.B.) and their ability to parent and meet the individual needs of the six children.

22 Dr. Joyce conducted the assessment of D.W.B. in December 2008 and February 2009, with her findings being set out in a Report dated June 21, 2009 (Exhibit 1, Tab 4). D.W.B. was 11³/₄ years of age at the time.

23 As far as cognitive functioning, she found D.W.B. to be in the average range at the 25th percentile. She noted that in overall verbal comprehension, he was at the 10th percentile for his age and that his understanding of social expectations and consequences were well below his age. He tends to give his responses without a great deal of reflection.

24 Academically, he was two grades below his grade level in reading comprehension, word reading and spelling. He was only slightly behind in his understanding of numerical operations. She noted that he was not able to accurately evaluate himself as he indicated that he struggled with math but did well in reading.

25 Dr. Joyce confirmed that there was no evidence of ADD, ADHD or ODD.

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26 On an emotional level, she found that in uncertain or emotionally charged situations, he would tend to be cautious because he has not developed adaptive skills to deal with stress. He has poor social skills which makes him uncomfortable in peer relationships. He is not reflective nor is he able to think about his own behaviour or how others interact with him. He does not show initiative but just allows things to happen. He tends to take his cues from his environment.

27 She noted that there was evidence of a damaged relationship with a maternal figure. This came out in a story telling task where there was the sense that maternal figures are nurturing, but if he doesn't say that he needs something, the caregiver is not attuned to his needs and it seems that has been his experience.

28 In addition to the professional assessment, there was evidence provided about D.W.B. from other witnesses.

29 D.W.B. is in Grade 8 at Princess Margaret School. He is in a regular class with modification for math as he is a grade below, for which he receives Intensive Support Plan Teacher. He also receives accommodation in literacy although he is at grade level. The rest of his subjects are at grade level. His teacher, Dean Warkentin, confirmed that there are no behavioural issues with D.W.B. He has a very easy going demeanour and he gets along well with his peers. His strengths are that he approaches new tasks with optimism and he has a great sense of humour. His weaknesses are in the area of academics - but with the supports he is progressing well in all subjects as reflected in his latest report card.

30 M.B. described D.W.B. as being shy at first but having an excellent personality. When asked about friends - he said they were the same ones as M.M.M. He noted that his strength is that he is good on the computer, but he likes to think that he is the boss. His only weakness is that he mopes if he does not get his own way.

31 T.B. describes her eldest son as being friendly and playing well with others, although he doesn't jump right in - he tends to stand back for a few minutes and then he is fine. He wakes up happy, but he whines if he doesn't get his own way. She noted that his behaviour is good and if you ask him to do something, he does it.

32 C.S. (paternal grandmother to D.W.B. and M.M.M.), confirmed that she had contact when D.W.B. lived with his parents and for a short time after his parents separated, but she stepped away in 1998 when T.B. and M.B. asked her to do so. In 1999, she attended Court with her son, W.B., when he was granted some access to D.W.B. and M.M.M. and, as the supervisor of the access, she was able to have some regular contact with the children. She acknowledged that W.B. did not regularly attend due to his schizophrenia. Ms. C.S. backed away again in 2000, when T.B. insisted on referring to her as "C.S." rather than as "grandma" and she had no further contact with the children until 2008 after learning of the involvement of Family and Children's Services and the publicity surrounding the animal abuse case.

33 When she became reacquainted with D.W.B. in 2008, she described him as being very emotional and that he would "cry at the drop of a hat." She also confirmed that he was immature for his age. He was very shy and had some speech problems. She noted that over the last two years she has observed that D.W.B. has grown up a lot. He now talks non-stop and no longer cries.

34 D.W.B. is doing very well in his current foster home where he has been since January 2010. Mr. Lillico, his Child Protection Worker, confirmed that he made an easy transition into the placement. He is somewhat immature for a 13 year old. He noted that D.W.B.'s speech has improved. There are no behavioural difficulties. He has begun to speak up for himself and is starting to develop his independence skills.

35 D.W.B. is open and warm with the foster parents and he gets along well with them and with the other foster children. If D.W.B. were made a Crown ward, the foster parents are prepared to keep him with them on a long term basis and are committed to do so but they are not prepared to adopt him.

36 D.W.B. has stated that he would like to return to the home of his parents. If he is not able to do that, he has

indicated that he would like to remain with his current foster parents and if that is not possible then he would like to return to live with A.B. and E.F.

M.M.M.

37 M.M.M. was born on August 14, 1998 to T.B. and W.B. His parents had already separated prior to his birth. He lived with his mother and his step-father, M.B., until March 2008. He initially resided in a kinship placement with his Uncle A.B. and Aunt E.F. but was apprehended in July 2008 when the parents advised that they no longer wanted him to remain with kin. On September 9, 2008, he was found to be in need of protection and a Society wardship order was made. He has been in the same foster home since then.

38 In addition to difficulties with speech shared by all of these children, it was evident from the school records that M.M.M. has struggled at school. Until recently, he had been in a regular classroom with additional supports to address his cognitive and socialization deficits.

39 M.M.M. attends James Morden Public School and is in Grade 7 of a Special Needs class. His teacher, Russell Paxton, testified that M.M.M. is on an Individual Educational Program. He confirmed that in Math skills, M.M.M. is at an Early Grade 3 level, in Language he is at Mid Grade 2 level and in Arts he is around Grade level. He confirmed that there are no behavioural issues with M.M.M. Socially, there are no problems and he has quite a few friends in the classroom. He identified his strengths as his love for science and that he is very artistic. He also noted that he is curious.

40 Dr. Joyce conducted a psychological assessment of M.M.M. in December 15, 2008 and February 5, 2009 and her findings were set out in a Report date June 19, 2009 (Exhibit 1, Tab 6). M.M.M. was 10 years at the time of the assessment.

41 Dr Joyce found M.M.M. to have an overall intellectual functioning at the 1st percentile with a diagnosis of Mild Intellectual Impairment. He had particular difficulty in the area of verbal comprehension, but had difficulties in all areas of academic functioning. Although he was in Grade 5, on academic achievement he scored between Grade 1:0 to Grade 1:9.

42 As far as emotional functioning, Dr. Joyce found M.M.M. to be a concrete thinker and noted that "Because of the lack of reflection, he has little idea of what is going on, why or what is going to or could happen based on what is occurring at the present time." "He does not try to figure things out as he has little expectation that he will be able to do so" [he verbalized this repeatedly on a variety of tasks].

43 Dr. Joyce indicated that M.M.M. is highly dependent on others to direct and guide him. If there is a lack of structure or chaos, behaviourally one can expect him to be poorly controlled and somewhat impulsive. Given structure and direction, he is more likely to be appropriate in behaviour and response as he will reflect his environment.

44 Other witnesses provided evidence regarding M.M.M. Mr. M.B. confirmed that M.M.M. is polite and he does his school work without being asked. As a weakness, he noted that M.M.M. gets very frustrated with his speech impediment and when people make fun of him. Ms. T.B. described M.M.M. as waking up happy. He likes to watch movies and to make stuff. She noted that a weakness is that he gets frustrated when people cannot understand him or if people touch his stuff without asking. She noted that he gets along good with his brothers for awhile and then he goes off on his own.

45 C.S. (paternal grandmother) confirmed that for the reasons set out above, she ceased having any contact with M.M.M. when he was about two years of age and only became involved in M.M.M.'s life in the Fall of 2008. She attended visits with her son, W.B., and the children at the FACS office for the first six months and at her home on an ongoing basis after that.

46 When she first began to visit with M.M.M., she found that he showed a lot of the same behaviours as W.B. did as a child. Although he is only one year younger than D.W.B., she found him to be much younger in his actions. She recalled that M.M.M. had significant speech problems and that she had difficulty understanding him. She testified that he also engaged in self-harming behaviours such as banging his head against the wall.

47 When asked to confirm her present observations, she confirmed that the self-harming behaviours do not happen as much now, unless he gets angry about something. She finds it much easier to understand his speech. He continues to be very much a loner and loves to do things such as crafts on his own.

48 Stephen Lillico has been M.M.M.'s Child Service Worker since August 13, 2009. He confirmed that given M.M.M.'s significant speech delays he would often need him to repeat what he was saying. However, he noted that there has been some gradual improvement. He is scheduled to begin speech therapy in March 2011 initiated by the school.

49 He confirmed that although M.M.M. likes to play on his own, he has established a close friendship with the foster parents' grandchild. He also noted that as a result of attending summer camps, one of which was a special needs camp through Tim Horton's Summer camp program, M.M.M. seems to have made some improvements at socializing with others. He confirmed that M.M.M. "lit up like a Christmas tree" when talking about this experience.

50 Mr. Lillico confirmed that M.M.M. wishes to return to live with his mother and stepfather. If that is not possible, then he is prepared to remain with the foster parents. He has been at this home for over two years and in a stable placement. The foster parents are totally committed to provide for his long term care.

51 It was also noted that D.W.B. began living in the same foster home with M.M.M. in January 2010 and M.M.M. has expressed that he does not want D.W.B. to stay there as he very much prefers to be there on his own.

D.L.L.B.

52 D.L.L.B. was born April 18, 2001 to T.B. and M.B.

53 D.L.L.B. had been in a kinship placement with his Uncle A.B. and Aunt E.F. from December 14, 2007 to February 22, 2008 due to concerns regarding fire-setting behaviour and lack of supervision by the parents. He had been returned to his parents care, but returned to the care of his aunt and uncle on March 19, 2008 when the Society required the parents to make kinship arrangements for the children. When the parents indicated that they no longer wanted the children with kin, D.L.L.B. was apprehended on July 21, 2008. D.L.L.B. was found to be in need of protection on September 9, 2008. He was made a Society ward and since that date has been in one foster home which specializes in dealing with high needs children.

54 A number of agencies and professionals have been involved with D.L.L.B. as he is a child of considerable special needs.

55 D.L.L.B. has been diagnosed with severe ADHD and ODD. He is under the care of Dr. Yu-Saoi (Child Psychiatrist) who sees him every three months to monitor his psychotropic medication and his condition.

56 There have been concerns about his fire-setting behaviour which first began when he was four years old. His father confirmed that he likes to play with lighters and matches and that he has twice set the shower curtain on fire, once while the parents were home and once while the child was being cared for by a babysitter. Mrs. T.B.'s understanding of these behaviours was that the first time that the shower curtain caught fire, D.L.L.B. was scared by this. He would find lighters around and so they got help for him and he did not even touch lighters for a long time afterward. Then, it started up again when they were at the laundromat.

57 Michelle Pharand (a therapist at Niagara Child and Youth Services in their High Risk Services program)

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confirmed that she was involved with the B. family at the end of 2007. Ms. Pharand learned from the Society worker (not the parents) about an incident in August 2007. The family had been at the laundromat and Mrs. T.B. was putting two of the children in the car, while Mr. M.B. was carrying the laundry to the vehicle. He thought that D.L.L.B. had gone around to get in the other side, but he was in fact placing a lighter up to the gas tank of the family vehicle. It was as a result of this incident that Niagara Child and Youth Services was able to prioritize him into the TAPP-C program which is specifically designed to help with fire-setting behaviours and to minimize the risk to the child and their families.

58 The first meeting was missed by the parents due to a mix-up on dates. On December 11, 2007, only Mr. T.B. attended. Ms. Pharand confirmed that he seemed to understand the concern about D.L.L.B.'s behaviours. The next meeting on December 18, 2007 was attended by Dad, D.L.L.B. and his aunt and uncle (E.F. and A.B.) as D.L.L.B. was living with them temporarily due to concerns about his fire-setting behaviour. It was learned that D.L.L.B. watched a lot of scary movies many of which involved fires/explosions and violence. Ms. Pharand explained that there was a correlation between violence and fire-setting behaviour and that this should be closely monitored. There was also a need to closely monitor the home for any lighters. At the next meeting, in January 2008, only the Aunt and Uncle attended with D.L.L.B. Due to delays in D.L.L.B.'s verbal and language skills, he could only be partially assessed as he was not able to complete the standardized assessment tools and she determined that he would have great difficulty benefitting from the treatment component of the TAPP-C program due to difficulty understanding and generalizing the treatment methods used.

59 A letter was sent to the parents confirming that it was critical that D.L.L.B. be supervised closely and that he have no access to any ignition sources. In her testimony, Ms. Pharand confirmed that what stood out for her was that while D.L.L.B. did admit to playing with lighters and having an interest in fires, he minimized this and had a real aversion to talk about it, as he understood that was the reason that he was at Aunt E.F.'s house. What stood out for her about the parents was that, based on the Connors Rating Scale, they did not seem to view this behaviour as problematic.

60 D.L.L.B. was also reported to have considerable difficulty at school. His behaviours included violent outbursts and extremely difficult behaviours. In addition to speech language difficulties which were shared by all of the children albeit to different degrees, it appeared that D.L.L.B. was significantly delayed academically and emotionally.

61 Dr. Joyce completed a cognitive, academic and emotional assessment. D.L.L.B. was seen by her December 15, 2008 and February 5, 2009 and her Report dated June 19, 2009 was filed at Exhibit 1 Tab 8. D.L.L.B. was 7 years 7 months at the time of the assessment.

62 In overall intellectual functioning, D.L.L.B. was in the low end of the average range at the 27th percentile. Despite an average cognitive ability, he struggled with all of the academic tasks, with the result that on word reading, reading, spelling and numerical operations, he was a year and a half or more below grade expectations. She noted that such a great variation was indicative of emotional issues interfering with his ability to perform at his cognitive level.

63 She found that he had difficulty with abstract thinking. He was a concrete thinker who could not look beyond the surface of a situation.

64 Although he had been diagnosed with ADHD and was on medication for same, Dr. Joyce noted that the teacher did not identify the symptoms of hyper-impulsive but rather sees the behaviours (temper tantrums, explosive and unpredictable behaviour) as emotionally based. Dr. Joyce indicated that she agreed that it seemed to be more anxiety related.

65 She found that he had difficulty in all but one area of adaptive behaviours and that he is functioning well below his chronological age. As a result, he is a youngster who is seen to be in need of supervision, direction and

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guidance around all areas of adaptive and executive functioning. Given his cognitive level she testified that he should be functioning better than he is.

66 With regard to emotional functioning, Dr. Joyce found that D.L.L.B.'s reality testing and judgment are poor. He jumps to conclusions based on limited information and his conclusions are based on his feelings and impressions rather than concrete reality.

67 He is very disorganized in his thinking. There is evidence of considerable inner tension that appears to be related to significant feelings of being damaged and a need to be vigilant for indications for harm in his environment. There are intense feelings of neediness and a wish for care and affection, but no real expectation that it will occur.

68 A CAP (central auditory processing) assessment was conducted in March 30, 2009. While this confirmed that D.L.L.B.'s hearing was normal it also confirmed that he does have a problem processing auditory information in the areas of auditory memory and sound blending which could result in part of the message fading from memory before it is processed. This would present as D.L.L.B. forgetting instructions, having poor reading comprehension and expressive language difficulties.

69 D.L.L.B. is in a Grade 3 / 4 class at Steele Street Public School. The Court heard from D.L.L.B.'s teacher, Elizabeth Bauer. He is in a regular class but the teacher receive extensive supports in school - in the morning there is an Educational Assistant for D.L.L.B. and two other students - on Monday, Wednesday and Friday there is a Learning Resource Teacher - and high school students act as a mentor when the LRT is not present.

70 D.L.L.B. is on an IEP and in most areas he is at grade level, the exception being in the language arts where he is at Grade 1 or 2 level. Ms. Bauer has had him in her class for two years in a row and has seen a real improvement over that time.

71 Behaviourally, she has also seen much improvement over the past two school years. At first, he had many emotional outbursts. Although this still happens once in awhile, he has learned to de-escalate his emotions and is able to go to a safe area and calm himself down. Socially, he now has friends in the class. He has some difficulty with not being able to trust people and this has caused some issues in him being able to get along with others.

72 Each of the parents also gave evidence concerning their son, D.L.L.B. Mr. M.B. indicated that they call him "the Golden child" because of his cute dimples. He can be shy. He always asks first to go outside to play with friends in the complex. He can become very emotional if something has upset him at school or at the foster home. He does eat constantly, more than the other children. He noted that his behaviour generally is pretty good, except when he plays board games as he cannot sit for long.

73 Mrs. T.B. noted that D.L.L.B.'s behaviour has improved and that he does not throw fits in their house. He is happy when he wakes up. She confirmed that one of his weaknesses is his lying and that he does not like to be confronted about this. They are trying to get him out of that habit. She also commented that they have to watch him around food as he will gorge. She described him as a bubbly loveable child, but if he is not in a good mood, he can be a little bit harder to handle but he comes around with a bit of time.

74 Mr. Lillico, the child protection worker noted that D.L.L.B. needs to be constantly supervised for a number of reasons. At school, he will take things from other students. As weight can be an issue for D.L.L.B., he gorges on food. Given the concerns about fire-setting behaviour, it is necessary to ensure that he has not found a lighter or other fire source. As a result, the foster parents need to know where he is at all times and they are constantly checking his pocket, his backpack and his room. Buzzers have been installed on the bedrooms of the home to ensure they alerted to any of the children's movement at night and D.L.L.B. sleeps on the same floor as his foster parents to ensure close monitoring. He is walked to and from school by older students.

75 Mr. Lillico confirmed that D.L.L.B.'s behaviour can be great one minute - and then he will grab something or say some totally inappropriate things. He reported several incidents of bizarre behaviour while at summer camp

(urinating and defecating) but D.L.L.B. had no ability to understand how the behaviour was offensive and unacceptable.

76 Mr. Lilloco is aware from the foster mother that she has a very structured home - set routine of daily tasks, meals, bedtimes and D.L.L.B. has done well in that environment. He also confirmed that the foster parents are committed to providing a home for D.L.L.B. on a long term basis.

77 D.L.L.B. has clearly expressed that it is his wish to return to live with his mother and father. If he is unable to do this, then he wishes to remain in the same foster home and to have access with his parents.

D.C.T.B.

78 D.C.T.B. was born to T.B. and M.B. on May 17, 2003.

79 D.C.T.B. lived with his parents until March 2008 at which time he was placed in a kinship placement with his paternal uncle A.B. and aunt E.F. He was found to be in need of protection on September 29, 2008 and remained with his aunt and uncle subject to supervision. D.C.T.B. was removed from that placement in August 2010 at the request of the kinship caregivers. On the consent of the parents, he has remained in the temporary care of the Society.

80 Like his brothers, D.C.T.B. had communication difficulties as a result of his speech problems. The school had noted some developmental delays. He had been diagnosed with ADHD by Dr. Mak. Prior to the commencement of these proceedings, he had not been involved with any other community resources.

81 D.C.T.B. was assessed by Dr. Joyce on December 8, 2008 and February 8, 2009, with her Report dated June 6, 2009 being filed at Exhibit 1 Tab 10. D.C.T.B. was 5 years 7 months at the time of the assessment.

82 D.C.T.B. was found to have an overall intellectual functioning in the low end of the average range in the 25th percentile for his age. Academically, D.C.T.B. was functioning at both a grade and age appropriate level. The difficulties for him related to organization and planning and being able to initiate an activity, particularly one that is unfamiliar to him. Contrary to school reports, she did not find that he was developmentally behind as far as it related to his cognitive functioning.

83 Based on the Connors Rating Scale completed by the Aunt and school teacher and her testing, Dr. Joyce found that D.C.T.B.'s behaviours did not meet the criteria for a diagnosis of ADHD. While there is some evidence of restlessness and impulsiveness, these behaviours tend to take place in situations which are unstructured or unfamiliar and are more likely as a result of being anxious, immature and lacking self-confidence.

84 D.C.T.B. is in the average range of adaptive functioning. Dr. Joyce noted that in contrast to the aunt's rating, the father rated D.C.T.B. as substantially higher in all areas of functioning resulting in an overall score of 75th percentile. She noted that this did not fit with her own rating and the child's cognitive level and attributed this to the father not being adequately aware of appropriate behavioural expectations for a child of D.C.T.B.'s age or that he sees D.C.T.B. as more capable than he actually is.

85 As far as emotional functioning, Dr. Joyce found that D.C.T.B. is able to think logically and be attentive to his environment, but he has a mistrust of others. Given his tendency to be rigid in his thinking, he can encounter difficulties as he feels a need to be cautious. She noted monsters figured prominently in his ideas and that his anxiety related to a feeling of not being safe and not being able to rely on others to keep him safe.

86 D.C.T.B. is in Grade 2 at Crystal Beach Public School in Kathleen Goodwin's class. He is at mid Grade 1 level for reading and is at Grade level for math and other subjects. She confirmed that Math is a strength for him but he is on an IEP for language arts. From a behavioural point of view, there are no difficulties. He is outgoing and has made a lot of friends.

87 On questioning from the court as to what is expected to be done at home to assist with his language arts, Ms. Goodwin confirmed that she works with the foster mother by sending different sight words home and each night she practices those words with D.C.T.B.

88 M.B. confirmed that D.C.T.B.'s strengths are that he can sit and do large puzzles on his own and with Mom. His speech impediment is not as bad as the other children, but he gets upset easily because of where he was placed before he was in the foster home [referencing E.F. and A.B.'s home] and because he had his own toys, now he won't share his toys and has to be told. As far as his behaviour - he commented that he "has his moments" and attributed this to when he was with E.F. and A.B. because they would be rough with him.

89 Mom noted that D.C.T.B. makes friends easily. He gets a little frustrated if others cannot understand what he is saying. He does not like anyone to touch his toys, but she thought he was getting better about this. She did note that he does not like M.R.B. - but he will now play with him for short periods of time.

90 Amanda Webb has been the Children's Services Worker for D.C.T.B. since he was removed from the kin placement in August 2010. From her involvement, she noted that D.C.T.B. has no concept of safety as he would ride his bike on the road and driveway and needed constant reminders about this. She confirmed that the foster mother indicated that D.C.T.B. would not stay in the backyard, refusing to listen to the babysitter and that he struggles to tell the truth. The foster mother also confirmed that D.C.T.B. does not like M.R.B.

91 Ms. Webb confirmed that D.C.T.B. has expressed that he would like to live with his mom and dad.

M.R.A.B.

92 M.R.A.B. was born on September 18, 2004 to T.B. and M.B.

93 M.R.A.B. was placed with his aunt and uncle in March 2008 and remained with them until this placement broke down, when the kin caregivers requested that he be removed from their care in August 2010. The initial foster home placement broke down fairly quickly, but he has remained in the second foster home with his brothers, D.C.T.B. and M.R.B., since the end of August 2010.

94 M.R.A.B. was initially screened in July 2006 for delayed speech and language development and was placed on a waiting list. He was seen several times and services included a parent-child language stimulation program, home programming to develop expressive language skills and individual therapy. He was reassessed in August 2008 and the speech therapist, Robert Water, noted that he presented with borderline-normal receptive language development, significantly delayed expressive language development, poor speech intelligibility and significant motor speech disorder. In his report dated February 12, 2009, Mr. Waters noted that despite multiple individual and pair therapy sessions, there had been little improvement in his speech intelligibility which remained severely impaired. M.R.A.B. would frequently use single words and gestures to communicate. He was referred to the Communication Assessment Support Team (CAST) at the Niagara Peninsula Children's Center.

95 M.R.A.B. had also been referred by his family doctor (Dr. Girard) to Dr. Wang-Cheong Mak for a developmental assessment in April 2007 due to his speech delay and concern about autism and absence seizures. He was referred to Dr. Snyder in July 2007 for further assessment, with a follow-up appointment scheduled with Dr. Mak for September following the assessment by Dr. Snyder. In her assessment in July 2007, Dr. Snyder noted M.R.A.B. to have significant development delay, speech and language delay and minimal autistic traits. M.R.A.B. did not attend the follow-up appointment with Dr. Mak and the office could not contact the parents due to a change in their telephone number. When Mrs. T.B. was asked by the court about this, she confirmed that they did change their phone number and then she had lost the phone number for the doctor's office.

96 As part of her assessment in July 2007, Dr. Snyder had referred M.R.A.B. to Bethesda for a Child Development Team Assessment. This assessment took place in the Fall of 2008 which included a clinic observation and a school

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visit. It was noted that the original referral had been made one year earlier, but it had been difficult to track the family down to make the first appointment. In the report summary, the team did not observe any evidence of autism or developmental delay. Expressive language was the main area of concern as M.R.A.B. was unable to articulate words and he presented with some visual-motor skill difficulties. Some hyperactivity was noted in the clinic play session which may require future monitoring. It was recommended that a follow-up be done with Niagara Peninsula Children's centre for speech and occupational therapy services.

97 M.R.A.B. was assessed by Dr. Joyce on December 8, 2008 and her report dated June 5, 2009 was filed at Exhibit 1 Tab 12. M.R.A.B. was 4 years and 2 months at the time of assessment.

98 Dr. Joyce indicated that due to his speech difficulties it was very hard to understand M.R.A.B. She did the verbal task tests in the usual standardized way, but also did them a second time with the father and Aunt E.F. present although there was no noticeable improvement in the responses. She noted that this was made even more difficult by the fact that throughout much of the process M.R.A.B. had his thumb in his mouth - this was a 'soother' for him. M.R.A.B. became frustrated when she could not understand him.

99 From the testing, she found that M.R.A.B.'s intellectual functioning to be in the borderline range (6th percentile) with functioning ranging from adequate for his age to markedly deficient. While he could do quite well to understand the meaning of words, it was harder for him to assess a wealth of information (about one year below grade level) and had a very hard time to perform word reasoning - matching the animal and the sound that it makes. He tested in the borderline range in graphomotor skills and was quite awkward on all paper and pencil tasks.

100 His communication skills were at the 10th percentile for his age. He was identified as having at least 50 recognizable words (less than his younger brother) and to be a "one word kid." He did not know his age, he could say his first name but not his last name, and he did not know the alphabet.

101 Interpersonal relationships were an area of weakness and in socialization he was functioning at the 1 year 5 month level. Many of these difficulties were seen as being language based as he is unable to communicate with his peers. With regard to maladaptive behaviours his score was elevated as he displayed such behaviours as poor eye contact, sucking his thumb, lacking emotional control - cries and laughs too easily, and blames others for things that occur.

102 Dr. Joyce found the speech difficulties to be a major concern that will require speech therapy for an extended period of time. While there was some identified inattentive or hyperactive behaviour, this was not at a clinical level. At times, he could be impulsive but it appeared to be because he did not know the response and was trying to meet expectations.

103 She also highlighted that there was some evidence of emotional and cognitive immaturity. Throughout the assessment, he sucked his fingers and chewed his sleeve both of which were suggestive of oral neediness, which was not surprising given the history and indications of deprivation and lack of adequate stimulation, structure and routines.

104 At the time of trial, M.R.A.B. was attending school at Niagara Peninsula Children's Centre. There was no evidence provided as to his progress there.

105 M.B. described M.R.A.B. as shy, but lovable and cuddly. He confirmed that it is difficult to understand him, which upsets M.R.A.B. He does suck his thumb when he is tired or while watching a movie. He commented that his behaviour is good and that it is not as bad as it used to be.

106 T.B. described M.R.A.B. as fun, loving and active. She noted as a strength that he wakes up happy. She stated that his weaknesses were his speech and sucking his thumb. She indicated that there is not much issue with his behaviour, except that if he thinks he is in trouble he will cry.

107 The Child Protection Worker, Amanda Webb, confirmed that she has a difficult time to understand M.R.A.B., often having to ask him to repeat what he is saying. When he first came into foster care, M.R.A.B. did not eat with utensils, but for the most part he does now. M.R.A.B. had no concept of boundaries and safety and she referenced a visit where she observed M.R.A.B. riding his bicycle without a helmet and on the road and only stopped after several reminders.

108 Ms. Webb confirmed that M.R.A.B. had settled in at the foster home, appearing to be comfortable there and showing the foster mother affection.

M.R.B.

109 M.R.B. (M.R.B.) was born on October 23, 2005 to T.B. and M.B.

110 M.R.B. had been voluntarily placed in a kinship placement in March 2008. When this placement broke down in August 2010, he was placed in a foster home with D.C.T.B. and M.R.A.B.

111 The first foster home placement broke down quickly as the foster mother found that with the children's high needs and high energy, they could not be left alone and had to be constantly supervised. M.R.B. and his brothers were placed in another foster home at the end of August 2010, where they remained at the time of trial.

112 M.R.B. was screened by Speech Services Niagara for language and speech difficulties in June 2008. He was noted to use only three words and to grunt and point to get his needs met. He was assessed in October 2008 and found to have delayed speech development and significant delays in receptive and expressive language development which would require weekly speech therapy.

113 Dr. Joyce conducted a Psychological Assessment of M.R.B. She saw him on December 8, 2008 when he was 3 years 1 month of age. Her report dated June 4, 2009 was filed at Exhibit 1 Tab 14.

114 Dr. Joyce had obtained background which indicated that when M.R.B. came into care, he was essentially non-verbal, he was not toilet-trained, he did not feed himself and he was still using a pacifier.

115 Dr. Joyce found him the most difficult child to assess as he wandered constantly and would not sit in the chair. However, although there was evidence of distractibility and restlessness - these behaviours were not at a clinical level and he was considered too young to be diagnosed as ADD or ADHD.

116 His overall cognitive functioning was in the 5th percentile or mid borderline range. His receptive vocabulary was deficient for his age, with overall verbal skills ranging from the 4th to 8th percentile. He exhibited delays in both expressive and receptive language.

117 Socialization and motor skills which include interpersonal relationships, play and leisure time, coping skills and gross and fine motor skills were in the moderately low range - with functioning ranging from 1 year 4 months to 1 year 11 month level. He could not draw anything recognizable and tended to scribble - which was below age expectation.

118 There was also evidence of immaturity and oral neediness, as well as indications that M.R.B. was prone to being emotional, having a poor self-competence and to be withdrawn. Dr. Joyce noted that this was not unexpected given the history of his care prior to March 2008.

119 M.R.B. is in Senior Kindergarten at Crystal Beach Public School. He is in a regular class but academically he is functioning at an early Junior K level. There are numerous accommodations that have been put in place for him. He receives assistance from an Educational Assistant. Due to concerns about his interaction with the other children (putting his hands on other students, swiping papers off the table and making rude gestures) his school program

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was modified such that he would only attend school in the morning and would attend Crystal Beach daycare in the afternoon. This began in October 2010 and the school time had gradually increased so that as of December 7, 2010 he was attending full days at school (Monday, Tuesday and Thursday) but still only half days on Wednesdays and Fridays. It was hoped that he would be attending school full-time sometime in 2011 unless some modification to his schedule was still needed.

120 His teacher, Ms. Henninberger, noted that he is a happy energetic boy who is always smiling. She commented that his behaviours are his weakness as he can be disruptive, impulsive and non-compliant. She noted as well that as the school year has progressed, there have been significant improvements in his behaviours and that with supports in place he is making better choices and getting along better with his peers. However, she was clear that if she did not have an Educational Assistant, it would be a major challenge to handle his behaviours.

121 M.B. described his youngest son as being "another D.L.L.B." He confirmed that M.R.B. does things without help and is independent. A weakness is that because of the situation where he was at (reference to kinship placement), he would say "NO" and be put on a time out and would kick and scream. Mr. M.B. noted that he does not misbehave like that at their house. Later, he indicated that M.R.B. does not like to be told what to do and he explained that he would hold him on his lap for a timeout. He acknowledged that he does have problems with speech, but he can understand him.

122 Mom described M.R.B. as a friendly, sweet little boy who is happy when he wakes up. She confirmed that he does try to test them by arguing back or hitting. She confirmed that she does have to use time-outs with him and that he becomes upset when people do not understand what he is saying.

123 Amanda Webb, the Child Protection Worker, also confirmed that M.R.B. was friendly with her, noting that he seemed to lack physical boundaries wanting to sit right beside her on the couch. While he can be difficult to understand, he is not as difficult to understand as M.R.A.B. She confirmed that the foster mother reported that M.R.B. can be a good worker around the house. However, the foster mother also confirmed that, of the three youngest children, M.R.B. is the most difficult to handle. He is very active and needs constant supervision. Ms. Webb also confirmed that M.R.B. had no concept of safety or appropriate boundaries.

124 Ms. Webb confirmed that he has had considerable difficulties at school as he was considered a flight risk (he would attempt to run out of the classroom) and he was aggressive (punch, kick, slap other students). M.R.B. began seeing Dr. Yu-Saio (child psychiatrist) in October 2010 and will continue to see her every three months. He is on the wait list to attend Play Therapy at Niagara Child and Youth Services for behavioural counselling. He was also on wait list for Community Care Access Center for speech therapy which was expected to commence in January 2011.

BACKGROUND PRIOR TO PROTECTION APPLICATION

125 T.B. is the mother of all six children involved in this proceeding. She is 36 years of age. She is the middle of three children having been raised in Niagara Falls. She has a Grade 12 education. She has been employed as a cashier at a souvenir store on a seasonal basis for more than 15 years.

126 W.B. is the biological father of D.W.B. and M.M.M. Mr. W.B. did not testify, but his mother, C.S., did and she confirmed that her son had been diagnosed with schizophrenia a few years ago. Although he has improved with taking medication, he will never be able to live on his own and he presently lives with Ms. C.S.'s mother.

127 M.B. is 35 years of age. He is the biological father of four of the children, D.L.L.B., D.C.T.B., M.R.A.B. and M.R.B. He has been the stepfather to D.W.B. and M.M.M. since 1998.

128 Mr. M.B. is the oldest of two children. When he was younger, he had worked in a funeral home and obtained his mortician's license, but allowed that to lapse. He then worked cleaning carpets, which he did for more than five years. Most recently, he had worked driving school bus until his health required that he give up that employment in 2007. He has been in receipt of ODSP since some time in 2008.

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129 Mr. M.B. and Mrs. T.B. met in 1998 and began living together that same year and were married in 2000. Mr. M.B. confirmed that over the course of their relationship to and including the time of trial, the family had moved 9 times. Mr. M.B. confirmed that as a result of these various moves, D.W.B. and M.M.M. had attended 6 different schools.

130 The Society first became involved with the family in 2000. This related to a lack of supervision by the parents and a report that the children were playing on the road. Both parents confirmed that a FACS worker did attend at the home and advised them to fix the latch on the gate. It was their clear recollection that the two children (D.W.B. and M.M.M.) were playing in the backyard and although M.M.M. did get out of the gate and go toward the road, one of the parents prevented that from happening. The Society and the parents confirmed that the file was closed shortly thereafter. Mr. M.B. stated that there was no issue about their supervision of the children - but rather that this situation arose as the neighbour did not like coloured people and had called the Society on them.

131 The next Society involvement was in July 2005 when the family were attending at Optimist Park. M.M.M. and D.L.L.B. were engaged in some horseplay; M.M.M. pushed D.L.L.B. causing him to fall and hit his head. The parents took him to the St. John Ambulance, who then called FACS and the police became involved as it was alleged that Mr. M.B. had assaulted the child. This was not verified and after being interviewed by the police and the Society, the file was closed in October 2005.

132 The Society next became involved in August 2006. D.L.L.B. was playing in the front of the house and he cut his foot on glass on the sidewalk. The mother stated that it was summer time and he probably was dirty from playing outside. When the parents took him to GNGH, an orderly called FACS alleging that because he was dirty, they were not taking care of the children. Both parents noted that in 2006, they were living on Symmes Street where they had encountered problems with the neighbours who did not like children, complaining that they were too loud and they blamed D.L.L.B. for everything. Ms. T.B. stated that this particular neighbour called FACS all the time and made false statements and watched from her porch when the Worker would attend at the home. The file was closed at the end of September 2006.

133 The next opening was in April 2007 and the file remained open from then on. The concerns included lack of supervision and neglect of six children with speech and developmental delays, concerns about the home environment and parenting capacity.

134 A subsequent concern arose when the B.s were charged with cruelty to animals in September 2007. Todd Menard, an Animal Control Officer with the Lincoln County Humane Society, testified that he was involved in an animal safety investigation with the B.s in September 2007. On September 25, 2007, Mr. M.B. had presented two shepherd mix dogs as strays that he had found. The dogs were in immediate distress being dehydrated and severely malnourished to the point that they were unable to hold their own heads up. Mr. Menard confirmed that the usual weight for that breed of dog would have been between 60 and 70 pounds, but they weighed around 30 pounds each. The photos taken and filed as Exhibit 3 confirmed the emaciated condition of the dogs. Mr. Menard testified that it was the worst case of animal starvation that he had ever seen.

135 As Mr M.B. had denied that he owned the dogs, the media were informed in an effort to locate the owners. This search confirmed that the dogs had been in the care of the B.s while they lived on Symmes Street in Niagara Falls, but had been abandoned by them when the family moved to St. Catharines in September 2007. The pictures (Exhibit 4 a - f) that were taken by the Humane Society officer showed the squalor in the home (filth, excessive amount of junk, dog hair and feces). The B.s were charged with cruelty to animals and Mr. M.B. was charged with public mischief for having been untruthful about finding the dogs as strays. Mr. Menard confirmed that during his investigation neither of the B.s had indicated that arrangements had been made for someone else to feed the dogs, nor did they indicate that they had fallen on hard financial times as an explanation for the condition of the dogs.

136 On July 7, 2008, the B.s pled guilty to two charges each of causing unnecessary suffering to their dogs and

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were sentenced to three years probation, including attending financial management counselling and other counselling as required by their probation officer. They were banned from owning any pets for five years.

137 Mr. M.B. testified that he had purchased these two dogs in March or April 2007. At times, they did not have money to buy dog food and so sometimes the dogs were only fed every other day and would be fed table scraps. He confirmed that he did notice the dogs were losing weight and he thought about finding them another home, but he wanted to keep them. He had been raised around dogs and he loved animals. When asked why he didn't take them when they moved, he said that they had to organize the house and he expected to be able to bring them there in one or two weeks, but it ended up being longer. He testified that he did check up on the dogs once a week, but he did not feed them as his cousin had said that he would do that. He confirmed that he had confronted his cousin about taking better care of the dogs.

138 When Mrs. T.B. was asked what had happened with the dogs, she stated that she thought her husband's cousin was feeding the dogs. She confirmed that when they picked up the dogs from Symmes Street, they were in bad shape. She testified that she told her husband to tell the Humane Society the truth, "but he went with what his cousin had said - that he had found them." She commented on the pictures taken by the Humane Society and that what had been left in the home was only junk and they had planned on coming back to do a "dump run" but did not get around to doing that. Mrs. T.B. confirmed that she felt really bad about the dog incident and she was visibly upset when testifying in Court.

139 To assist the family with the identified protection concerns, a Family Service Worker, Child Protection Worker and Child Protection Support Worker were assigned to assist the parents with parenting strategies and in acquiring appropriate services to address the children's needs.

140 As set out above, these services included assistance in accessing services regarding their speech and language delays, assessment at Bethesda (CDAS) and to address D.L.L.B.'s fire-setting behaviours through Niagara Child and Youth Services. Given concerns regarding the lack of supervision, D.L.L.B. had been placed in a kinship placement with Uncle A.B. and Aunt E.F. (December 21, 2007) and on the day that he returned to the family home (February 22, 2008) Sharon Morabito was assigned to the family as a Child Protection Support Worker. She testified that her role was to work with the family on implementing structure and routine, ensure the safety of the home environment and to advocate for the family by contacting Niagara Regional Housing Authority to ensure the property maintenance repairs were completed for the safety of family.

141 The property maintenance concerns related to extensive water damage to the kitchen ceiling as a result of a toilet leak; the front door would not open; mould was present in the bedroom and on the basement floor. The parents were directed to contact the local Fire Department as the door was a serious safety issue. Mrs. T.B. had stated that she had called and sent multiple letters to the property manager, but had received no response, noting that she did not get along with Alf Sacco. On behalf of the B., Ms. Morabito contacted Mr. Sacco and he confirmed that the repairs would be taken care of, but he noted that none of these environmental issues had been in existence when the B.s took possession in September 2007.

142 Ms. Morabito also offered suggestions to the B.s concerning financial issues as they could not pay their hydro and telephone bills and the services were going to be disconnected.

143 As she noted a lot of sibling conflict, she provided suggestions for sharing time on games and computer. She also provided alphabet and math cards.

144 M.R.B. was observed to constantly have a soother in his mouth and to hold another soother in his hand for comfort. On the last day that the children were in their parents' care, Ms. Morabito observed that M.R.B.'s thumb nail was black in colour and appeared to be rotted. Mr. M.B. suggested that it was a hang nail and he had been seen by a doctor. (In cross examination by Mr. Leduc Mr. M.B. contradicted himself and indicated that M.R.B. had slammed his finger in a door).

145 Ms. Morabito testified that she gave ongoing direction as to how to maintain the home in a sanitary and hazard free condition. As she described it, the home condition was filthy and absolutely horrendous. Despite repeated suggestions on how the clutter should be picked up and laundry and dishes should be done on a regular basis, there was minimal improvement. She noted that the parents did not recognize the unsafe conditions that the state of the home posed for the children.

146 On March 18, 2008, as an explanation for the condition of the home, Mr. M.B. had told Ms. Morabito that the previous day, they had left all six children in the care of a 16 year old neighbour and Ms. T.B. confirmed that she was upset that the home was a "disaster" when they had returned. Mr. M.B. indicated that the kids had gotten into his tools and electrical cords and one of kids had turned off the hot water tank valve. In addition to laying the blame for the home conditions on someone else, they had no appreciation for the poor judgment and potential risk of harm by leaving all six special needs children with a 16 year old babysitter.

147 Even on the day (March 19, 2008) that the children were placed by the parents in two kinship placements and the home was found to be in an unsafe and hazardous state, it was Mr. M.B.'s view that the only reason that it was in such a state was that he had provided care for three children who lived in the complex and he was just in the process of cleaning up when the Society had arrived for an unscheduled visit.

148 Ms. Morabito's evidence was that Mr. M.B. presented as confrontational and resentful of the Society, and that he felt the Society was responsible for everything that had happened.

149 Despite having worked with the family since April 2007, the Society had determined that given the poor condition at the home, the children could not remain there and the parents needed to contact family members to have the children placed with them or more intrusive action would be taken.

150 The parents voluntarily placed the six children in two separate kinship placements: on March 19, 2008 - D.W.B. was placed with Mrs. T.B.'s sister, C.G. and her husband, R.G., and the other five children were placed with Mr. M.B.'s brother, A.B., and his partner, E.F.

151 In June/July 2008, the parents indicated that they wished to have the children returned to their care. They refused to continue to work cooperatively with the Society and withdrew their consent for the children to remain in the kinship placements.

POST-PROTECTION APPLICATION HISTORY

152 On July 21, 2008, M.M.M. and D.L.L.B. were apprehended from the care of E.F. and A.B. and were placed in the temporary care of the Society. A Protection Application regarding all six children was commenced in July 2008.

153 On September 9, 2008, the court found D.W.B. to be in need of protection and he was placed in the kinship care of C.G. and R.G. This placement broke down in January 2010 at the request of the kin caregivers and D.W.B. came into care on January 29, 2010. On March 5, 2010, an order was made for D.W.B. to remain in the care of the Society.

154 On September 9, 2008, M.M.M. and D.L.L.B. were found to be in need of protection and were made Society wards. They were placed in two separate foster homes where they have remained.

155 On September 29, 2008, D.C.T.B., M.R.A.B. and M.R.B. were found to be in need of protection and initially they were placed in the care of kinship caregivers, A.B. and E.F., subject to Society supervision. This placement broke down when the children were removed from the kin caregivers on August 5, 2010 at the request of the caregivers, and, on October 6, 2010, an order was made that the children would remain in the temporary care of the Society.

156 The status review application is a review of these two protection orders. As such the main focus is on what has happened since September 2008 forward. There has been a great deal of evidence led concerning the events prior to these orders, and although the correctness of these protection orders cannot be disputed, the evidence concerning the earlier events does provide a context for the subsequent events, and permits the Court to put these events in some perspective in order to assess whether there are continuing protection concerns.

157 It should also be pointed out that neither of the parents believed that the children were in need of protection when the Society intervened in March and September 2008. Both of them testified that they were "doing a good job of raising the six children" and that any problems were only minor in nature. The home was a bit messy but they had no difficulty to clean it up, it just was not always done on a daily basis.

158 In August 2008, Sharon Morabito became involved with the family again as she was assigned to supervise the access visits which took place in the B. home. The access varied over time as to the number of children and the length of the visits.

159 Ms. Morabito testified that initially the visits were for three hours each and involved only three children at a time. On September 3, 2008, the Society attempted to implement a visit with all six children, but it was so chaotic, as the parents were not adequately supervising the children and there were safety concerns, the number of children was reduced to two and the time was also reduced to an hour and a half. By early October 2008, the access visits included three children, alternating between the three older ones and three younger ones at each visit.

160 In addition, by November 2008, the parents had access with all six children for a four hour period on the last Sunday of each month. Initially, these visits were supervised by E.F. and A.B. As of July 2010, these visits were supervised by C.C.

161 Ms. Morabito ended her role in supervising the visits in December 2008 as the parents requested that a new worker be assigned to their case. When asked whether she had observed any improvements in the parenting skills between August and December 2008, Ms. Morabito confirmed that:

- a) There had been some attempts to implement the parenting strategies but this was not done on a consistent basis.
- b) The children continued to do whatever they wanted without boundaries being set or any attempt by the parents to redirect them. She gave as examples, the children climbing on chairs/couch and on kitchen table and wearing roller blades in the house. She referred to them as "parenting from a chair" rather than being actively engaged with the children.
- c) Initially, the parents did not speak with the children to provide cognitive and language stimulation but with her encouragement and direction, they did begin to do more of this.
- d) At first, M.R.B. would not say any words but would gesture and pull her hand or point if he wanted something. By the end, he was saying 2 or 3 words but it was still difficult to understand him. He constantly had his thumb in his mouth and she confirmed that she had never seen a nail so badly rotted as his was.
- e) At first, M.R.A.B. would only make repetitive grunting sounds (as she commented "It was sad") and although he was saying a couple of words by the end of her involvement, he was significantly delayed in his speech.
- f) During one visit, when all six children were present, Mr. M.B. asked her to watch the children as his blood sugars had dropped and he had to lay down.

162 Ms. Morabito indicated that she thought that she had a positive relationship with the B.s and that she was determined to work with the family. However, she noted that Mr. M.B. had become hostile and resentful of her,

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accusing her of giving contradictory information and she thought it best to terminate her services as Mr. M.B. had become resistant to the Society's involvement.

163 The next Child Protection Support Worker assigned to the family was Yvonne Kulawic. She took over the role of supervising the access visits and teaching the B.S. about parenting skills and accessing community services. She confirmed that by March 2009, the access period was increased to three hours each with the three younger children coming to their parents' home on the Mondays and the three older children attending on Wednesdays.

164 She also confirmed that the parents appeared to have learned about timeouts from Ms. Morabito and most of the time they were effective in disciplining the children. However, they did need to be reminded of the proper techniques and parenting practices. She also noted that Mr. M.B. seemed to be the parent to discipline the children as Mrs. T.B. struggled with consistency and follow through. As of May 2009, the supervision was done on an intermittent basis such that the worker would stop in for only 30 minutes of the three hour visit.

165 By November 2009, alternating weekend access began with the three younger children coming one weekend from Saturday at 4:30 p.m. until Sunday at 2:00 p.m. and the three older children coming for the other weekend.

166 As the midweek access was becoming confusing for the foster families, the volunteer drivers, and interfered with the children's school week - it was determined that the midweek access would be eliminated and that the weekend access would be extended from Saturday at 10:30 a.m. until Sunday at 2:00 p.m. This took place in July 2010 and effectively since that date, there has not been supervision of the weekend access, save and except when all children are in attendance.

167 Mr. Lilloco the Child Services Worker for the three older children confirmed that there had been some discussion about expanding the weekend access to include the Friday evening, but this was never implemented.

168 The access has been exercised regularly and consistently by the parents. There have not been any community reports while the children have been in the parents' care on an unsupervised basis.

169 Brenda Shaw has been the Family Services Worker for the B. family since July 2008 and she gave evidence on these matters. One of her responsibilities has been to supervise the access visits with the B.s and the children. She shared this duty with the various Child Protection Support Workers and the Children Services Workers. Ms. Shaw confirmed that it was her observation that Mr. M.B. and Mrs. T.B. could parent the children for short periods of time and they made some effort to apply the parenting strategies provided by Ms. Morabito. Even though there were only three children in their care at a time, she noted challenging behaviours displayed by the children, especially from M.R.B. and M.M.M. She described the access visits as busy and somewhat chaotic.

170 Ms. Shaw indicated that the parents did not seem to appreciate the special needs of the children. In particular in December 2008, Mr. M.B. denied that the children had any special needs and as proof relied on the Bethesda Report which confirmed that M.R.A.B. was not autistic and was not developmentally delayed. He did not seem to understand that the speech and language impairments were also special needs and that there were behavioural and emotional issues to be addressed.

171 Ms. Shaw also noted that there was a clear pattern that developed of Mr. M.B. being "absent" during the intermittent supervised access periods. On some occasions, he would be in the washroom and only attend as she was departing; on other occasions he was ill and was lying down; on yet other occasions he remained in another part of the home, with no explanation being provided. Mr. M.B. testified that he had on a couple of occasions had to excuse himself to use the washroom, but that it was due to medication that he was taking. He confirmed that he had a good relationship with Ms. Shaw until the end of the supervision of the access and then she would go on "power trips." When asked to explain, he confirmed that they would make certain requests and then she would talk to her supervisor and it was always "No."

172 Ms. Shaw indicated that since May 2010, it has become impossible to make arrangements to meet with the

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B.s at their home as they would cancel scheduled meetings, deny that they had received her phone message or they would not call to reschedule and, most recently, they simply indicated that they were not prepared to meet with her at all.

173 In July and August 2010, the B.s requested through her supervisor, Mr. DaRocha that Ms. Shaw be removed as their worker. Ms. Shaw indicated that she overheard Mr. DaRocha speak respectfully to Mr. M.B. when he was advised that she would remain as the Family Service Worker and yet Mr. M.B. alleged that Mr. DaRocha had been "pretty rude" and told him there was a "fat chance of him getting another worker."

174 In their testimony, both Mr. M.B. and Mrs. T.B. confirmed that they would now be prepared to work cooperatively with the Society if the Court were to return any of the children to their care under a supervision order.

175 As to the home environment, the consistent evidence from the parents, their neighbours and friends who testified and the Society workers was that the home is neat and tidy. For more than two years, they have lived in a four-bedroom townhouse that provides suitable accommodations for the children. If any of the children were returned to their care, the parents would keep the children in their current schools, rather than move them yet again.

176 Sharon Morabito confirmed that in September 2008, she had recommended that the parents attend at the 1-2-3 Magic program. The parents did not attend this program. However, Mrs. T.B. testified that in 2008 they did attend a course entitled Creative Parenting Without Anger. Ms. T.B. explained that this was a seven week program with each session lasting two hours. She indicated that they had only missed one session due to Mr. M.B.'s health. Brenda Shaw testified that this was an eight week course and that she had been advised by the group leader that the B.s had missed half of the sessions. She acknowledged that the B.s did receive a certificate confirming completion of this program.

177 Mrs. T.B. confirmed that they also attended a three hour evening session at the Niagara Falls Library on dealing with the Explosive Child, which she confirmed was to assist in dealing with children with ODD and ADHD. Ms. Shaw indicated that she had not been provided with a certificate confirming attendance at this program.

178 The clear impression from the parents was that they did not believe that any other parenting classes were necessary as they were not really having any major difficulties in caring for the children before March 2008 and that they are effectively applying the parenting strategies that they already know.

179 The B.s confirmed that they have attended Financial Counselling consistently on a monthly basis since September 2008. They acknowledged that this was a term of their probation as a result of the animal cruelty charges.

180 They have not attended any other counselling. Ms. Shaw's evidence (which was not disputed by the B.s) was that attempts were made by their Probation Officer, Mr. Sargeson, to have them attend with a psychologist, but they had missed both meetings.

181 The evidence from the parents and Ms. Shaw was that Mr. M.B. and Mrs. T.B. have attended at most of the children's medical appointments. They had also recently attended at a school meeting concerning M.R.B.'s behaviours. They had not been able to attend many of the speech language appointments as they did not always have gas to get there and it sometimes conflicted with other appointments.

182 In addition to the testimony of Mr. M.B. and Mrs. T.B., the Court heard from three community supports who testified that they are willing to assist these parents if any of the children are returned to their care.

183 A.S. confirmed that she has known Mrs. T.B. her entire life and has known M.B. for the 12 years that they have been together. She sees her role as helping them out in keeping the house clean and the laundry done and getting them into a routine so that the house remains spotless. In addition, she would be willing to take some of the children

for sleepovers or to watch them while the parents do errands. In the past, she had no concerns with the cleanliness of the home or with the care provided by the B.s.

184 P.C. has known M.B. since he was a teenager and she has known T.B. for about four years. She is involved with Fallsview Brethren in Christ Church where the B. family has attended for the past couple of years. The children have been involved in the youth program, the Vacation Bible School and the Sunday school. She confirmed that recently it has only been T.B. and the children attending Church. Her understanding of the reason that M.R.B. is not actively involved is that he was disappointed about not being able to take over the Youth Leader role in September 2009. She confirmed that he was also frustrated by the fact that Police Checks were required and given the ongoing child protection case, the Pastor determined that it was better that he not work with children. She confirmed that she has never discussed this with him as he was hurt and he just pulled away from everybody. She also did not want to jeopardize their friendship.

185 Mr. M.B. admitted that he was upset that the Pastor wanted him to be supervised around other children. But he stated that he was not angry. He confirmed that he did attend Church less after that, but when asked if there was a correlation between his attendance and what had happened with the Youth Leader role, he was evasive - saying "Yes" and "No." He then testified that the reason that he does not go to Church every Sunday is that because he has not been feeling well.

186 The third community support who testified was C.C. She lives two doors away from M.B. and T.B. and she has known them for five years. She indicates that she is at their home as often as twelve times a week. She also confirmed that she presently supervises the access that takes place with all six children on the last Sunday of each month.

187 Ms. C.C. confirmed that the home is tidy and geared to the children with appropriate bedrooms as well as plenty of toys, games and puzzles. She has never observed any problems with the B.s' ability to care for all six children.

188 If any of the children were to live with their parents, she would provide assistance in a number of ways such as: help to manoeuvre the School Board system as to how to implement recommendations in the reports and how to work with teachers (she confirmed that she has four special needs children of her own); babysit for several hours for appointments and to provide respite care as often as needed; act as a "big stick" when the children do not listen to their parents - she confirmed that when she barks at the children, this usually results in immediate capitulation; and she would also intervene - if Dad was upstairs with one child Mom in kitchen with a couple of kids and two kids are fighting in another room - she would ensure that they were following the rules.

189 Ms. C.C. confirmed that she had reviewed the children's Psychological reports and the Parenting Capacity Assessments and that she took several days in the Fall 2010 to review them with the parents. She was not concerned about the B.s' ability to parent the children and she felt that both parents had a basic understanding of what the reports said.

THE EXPERTS

190 Dr. Maureen Joyce was retained by the Society to prepare Psychological Assessments and Psycho-Educational Assessments of each of the children. Dr. Joyce has an M.A. and PhD in Clinical Psychology. She is also a member of the College of Psychologists of Ontario. On consent of all counsel, Dr. Joyce was qualified as an expert as a clinical psychologist with a specialization in child psychology. From reviewing her curriculum vitae and the information provided to the Court, I had no difficulty in qualifying her as an expert in that area.

191 As part of each of the psychological assessments that she completed for these six children and in her testimony at trial, Dr. Joyce summarized what a caregiver would need to be able to provide for each of the children.

192 With regard to D.W.B. her recommendations were as follows:

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D.W.B. is a youngster who reflects his environment because of his tendency to take his cue from the environment ... he will do best in an environment which is reasonably structured, consistent and predictable.

Because of his lack of reflection, hesitancy, lack of assertiveness and lack of an adequate sense of self, he is dependent on his environment to provide him with opportunities to develop an understanding of areas of competency and interests ...

He needs assistance in trying new things and developing a willingness to take a risk and try new things. Without this, he is likely to function below his potential. He will stick with what is easy and where he feels comfortable rather than develop areas of competency and adequacy.

He will benefit from being involved in socialization experiences where there is an adult who is psychologically aware and can help him to learn how to reflect on experiences and to strategize and problem solve.

Caregivers will need to advocate for him and encourage him to think about what he wants as well as about what the impact of his behaviour is on others and how they relate to him.

193 Dr. Joyce concluded in the Psychological Report about M.M.M. that:

His poor adaptive and coping strategies in conjunction with his poor cognitive skills and his need for stimulation, structure, direction, support and guidance require a caregiver who is very aware of his strengths and weaknesses, able to provide him with a nurturing caring environment which is reasonably structured, consistent and predictable ...

Without structure one will likely see an increase in anxiety which will likely take the form of poorly controlled or inappropriate behaviour ...

A caregiver will need to be continually re-evaluating M.M.M.'s needs in order to ensure that he is being provided with appropriate stimulation ...

Caregivers will need to understand his need for and be able to provide him with stability in his living and academic environment.

194 In the Psychological Report concerning D.L.L.B., Dr. Joyce concluded that:

The difficulties with which D.L.L.B. presents are long-standing ...

Because his behaviour can be difficult and he can be seen to act out in a manner which is vindictive, it is likely that caregivers would need to understand his behaviour and try to redirect and contain it rather than react in a harsh and negative manner.

He is in need of an environment where he feels safe and secure and where he has an opportunity to develop relationships with individuals who can provide him with sufficient structure, containment, guidance and direction as well as affection and the meeting of his needs for nurturance, safety and security.

Caregivers need to be psychologically minded and able to strategize and develop alternate approaches to assist him. (In her testimony she explained that this meant someone who would not react to behaviour but would try to understand why the behaviour is taking place - not become angry or blow up - but be able to deal with the behaviour).

195 With regard to D.C.T.B., Dr. Joyce noted that:

He is quite reliant on his environment to provide direction and guidance ...

He will do best in situations where he has a caregiver who understands his behaviour, is able to put in place the kinds of supports that he requires, is able to make expectations clear and understood and provides him with positive reinforcement and support.

He is a youngster who needs caregivers who have an understanding of his strengths and his challenges and the need for adequate flexible structure and opportunities to internalize structure ... This will require that those involved with him not be extreme in their reaction but be thoughtful and caring.

196 In her report Dr. Joyce noted regarding M.R.A.B. that:

... he will need to be followed closely to ensure that he has the supports needed to encourage development of all cognitive functioning with particular focus on his speech and development of language skills and his visual motor integration and graphomotor skills.

A caregiver needs to have adequate understanding of his needs so that they can provide him with many opportunities for incidental learning through daily activities. They also need to provide considerable positive reinforcement and encouragement ...

A caregiver will also need to advocate for him and obtain supports that he requires ... for the foreseeable future.

197 Finally, and with regard to M.R.B., Dr. Joyce concluded that:

[He] is at risk of having difficulties in learning. In addition to assistance with his speech development, he needs opportunities to be involved in play activities which encourage the development of his receptive and expressive language skills ...

A caregiver needs to have an adequate understanding of his needs so that they can provide him with many opportunities for incidental learning through daily activities as well as considerable positive reinforcement and encouragement to focus and attend to tasks and expectations ...

Within the home he needs routines, consistency and a reasonable amount of structure and containment. A caregiver will also need to be able to advocate for him and obtain the supports that he requires [to access] community programs.

198 Given Dr. Joyce's expertise as referred to above, I have no difficulty accepting her findings as set out earlier in this judgment and in accepting her conclusions. I have set out these recommendations in some detail as they are not only relevant to the court's determination of the needs of the children and how those needs can best be met, but these recommendations were also a significant factor in the parenting capacity assessments of Dr. Amitay.

199 Dr. Oren Amitay was retained by the Society to prepare a parenting capacity assessment of T.B. and M.B. Dr. Amitay has an M.A. and PhD in Clinical Psychology from York University. His research focused on such areas as parenting behaviours, parent-child dynamics and child development. He is a member of the College of Psychologists of Ontario. In addition to his clinical practice, he has taught a number of university psychology courses. He was called as an expert as a clinical psychologist with an expertise in families and parenting capacity assessments. Although all counsel agreed that Dr. Amitay was an expert in this area - it is clear from his curriculum vitae and the information provided by him regarding his background and experience, the Court had no difficulty in ruling that he be qualified as an expert in the area of parenting capacity assessments.

200 Dr. Amitay's evidence was extremely helpful to the Court. He was able to explain in a straightforward and easy to understand manner the testing conducted, why he used a particular test, what the tests revealed and the basis for the conclusions reached in his report. His findings were consistent with the evidence presented to the Court and with comments and behaviour shown by the parents during trial and as such I accept his evidence.

201 Dr. Amitay prepared two parenting capacity assessments. The report for M.B. dated July 6, 2009 was filed at Exhibit 1 Tab 17 and the report for T.B. dated July 5, 2009 was filed at Exhibit 1 Tab 18. He conducted six psychological tests which were a combination of self-report and projective evaluations. As he explained to the Court, about 80 per cent of the assessment is based on the psychological testing and 20 per cent is specifically about parenting. What is derived from the testing is a psychological profile - how a person deals with emotions, how they relate to other people, their thought processes, their perception of themselves and their perception of society - all of which are relevant to one's parenting capacity.

202 Dr. Amitay commented that the parents' test results were remarkably similar and that although it might appear that the two reports were "cookie cutters" of one other, there was a reason for that.

203 On the intelligence scale, the father tested in the 4th percentile. The mother was slightly higher in the 6th percentile. However, both of them were extremely low in their ability to determine what is relevant and to determine what is going on in their environment. They both have only a very basic understanding of how society works.

204 Both Mr. M.B. and Mrs. T.B. were very concrete and rigid in their thinking and were unable to think flexibly. In the case of the father, Dr. Amitay confirmed that the test results suggest that he distorts what is actually going on around him - he sees things the way that he needs to see them rather than what is really happening. He cannot take responsibility for his own mistakes. He works hard to keep emotions out of his life because he does not have the capacity to regulate them - which makes it virtually impossible to connect with and understand other people's emotions. There is a real tension because he wants to be with people but he does not do it well as he has only a limited ability to manage relationships in a comfortable and rewarding manner.

205 Similarly, the mother becomes overwhelmed with information and is unable to recognize what is important and just shuts down emotionally. As Dr. Amitay explained, if she were to look realistically at herself, and see that she is not doing very well, she might feel depressed or hopeless. The other option is to go the route of fantasy and distort her experiences. In her case, if she was overwhelmed by her circumstances and did not know how to take steps to improve things, her response would be to tell herself that things are better than they really are - rather than take steps to improve it.

206 Both parents tended to present themselves in an overly positive light. In the case of Mrs. T.B., this invalidated her scores on two of the tests despite being told by Dr. Amitay to be as honest as possible. This also resulted in Mr. T.B.'s test scores being invalidated on one of the tests that he was administered.

207 When there are problems that one is not able to fix, there is a tendency to externalize blame - everyone is against me. Dr. Amitay found that for both parents there was an underlying resentment and hostility. Rather than deal with this emotion, they feel that they have to keep it hidden which only takes away from their ability to focus on what is going on around them and focus on and interpret what others need. When asked to explain what impact this would have on one's parenting, Dr. Amitay indicated that the inability to connect with one's own emotions and to understand the reality of your situation could play out in one of two ways. It could be exhibited as anger and hostility - with the children getting the brunt of that - but he confirmed that there was no evidence that this has happened. The other way is because you're not able to deal with problems - even if serious issues are happening around you - you just neglect them - tell yourself they're not that bad - and if someone tries to tell you it is bad, you get defensive and see constructive criticism as harsh judgment against you.

208 It was also evident that even if the parents started to take steps to address certain issues, they would only be able to do that for a short time. Dr. Amitay noted that a person who is able to think flexibly if they were to receive feedback from a report and some training, they might then be able to use that to improve and make changes. In contrast, in the case of these parents who have concrete and rigid thinking, they are not really capable of taking in the feedback and then making such changes.

209 One of the tests that were very telling was the Parent Awareness Skills Surveys. When administering this test, Dr. Amitay provided a number of scenarios regarding different aged children. He confirmed that he was not looking for the perfect answer, but after the parents had given their response, he would ask questions to guide them to the right answer.

210 While Mr. M.B. was able to address immediate concerns, when it came to dealing with deeper issues, a real deficit was apparent. He often just made wrong assumptions. He would only see the situation from his perspective and not from the child's perspective. Dr. Amitay noted that this is as a result of his rigid and inflexible way of thinking.

211 He also made note of the father's manner of speaking which was to digress and mumble and go off on tangents. Dr. Amitay commented that this would have limited his ability to convey things in a way that the children could understand and may have influenced the children's difficulty with language.

212 On the PASS test, the mother was far below the father. Dr. Amitay referred to two examples that as a mother of six children, Mrs. T.B. would have had to deal with. The first was a three year old with a newborn child and when asked how she would introduce the new baby to the family, her response was very concrete without any ability to understand how the three year old would feel. She displayed a lack of empathy for the older child. The other example was a seven year old child in a special class and despite efforts to lead her to a more appropriate response about how the child might feel, she showed a lack of connection to child's emotional needs and was not able to take the child's perspective. He found as well that the mother had very little understanding of a child's developmental stages and missed the questions which required recognition of psychological, neurological or physical problems in children. As a parent of children with special needs, she would need to be even more attuned to their needs and she was not.

213 Dr. Amitay then conducted three observation sessions with the parents and the six children. The first one which took place on December 5, 2008 lasted an hour and a half and involved only the three youngest children, D.C.T.B., M.R.A.B. and M.R.B.

214 Dr. Amitay described this session in detail in his report, but when he testified he noted that this was one of the busiest sessions that he has ever written up - he writes what he observes. "The children were out of control, almost the whole time. They were just running around, were not listening to their parents ... The overall impression - chaos."

215 The next observation visit did not take place until February 18, 2009. Dr. Amitay explained that the B.s had cancelled two meetings. On that day, there was an initial hour long observation with the parents and the three older children, D.W.B., D.L.L.B. and M.M.M. Dr. Amitay commented that D.W.B. was leading the visit being the mediator between D.L.L.B. and M.M.M. and Mrs. T.B. Neither parent moved much. The children would come to them and they would interact at that time. The father did a better job of interacting with the children when they did come to him. M.M.M. became upset toward the end of the visit and neither parent could soothe him. He noted numerous efforts by the father to apply time outs and administer discipline, none of which were effective.

216 Dr. Amitay also noted his concern about D.L.L.B. from this observation visit. As he described it - "His eyes looked dead. I cannot put it any blunter than that. There was no affect ... these are the kind of things you would normally see with a child who later develops anti-social personality disorder, if not psychopathy. It's just that coldness." Yet, when he saw D.L.L.B. in October 2009 (during the parenting capacity assessment of E.F. and A.B.) after the child had been in care for a longer period of time, "He was a totally different child ... He was active. He was smiling. He was a different person." What he concluded from that was that the parents did not understand D.L.L.B.'s deficits and they lacked an emotional connection to the child and to his needs. In cross-examination, he confirmed that this made sense as it would be expected that if D.L.L.B. is in a secure and structured environment where he learns to put proper control on his emotional functioning, he is on proper medication and receives supportive therapy he would expect there to be improvements in his academics and behaviours.

217 On the same day, but following the observation of the three older children, Dr. Amitay then observed the parents with all six children. As he explained, the common wisdom would be that this visit would be more difficult to manage than a visit with three children. While the three younger children were still very active, the older children and in particular D.W.B. really contained the younger ones and he was pretty attuned to their needs - to give them a snack or to play with them. This was in stark contrast to the mother who he found was not attuned to anything - "If the children came to her, she would play with them. After they left, she'd be playing by herself with the game that she had started." The children would call to their mother to try to get her attention, but a couple of times she didn't even respond.

218 Dr. Amitay noted that the visit took place in a small contained area - and that if the children were in a larger space - with stairs, in different rooms - one or more of the children would be completely out of view and he doubted that the parents would be able to split their attention (This speculation was certainly borne out by other evidence, including Sharon Morabito and Brenda Shaw who described the difficulty encountered by the parents in keeping an eye on all of the children while in their home; the comments of the first foster mother who could do nothing else but watch the children given their high energy level; and even by C.C. as to how she would assist the B.s.)

219 When asked about reaching his conclusion about the capacity of the parents to care for these six children, he stated that his opinion that they were not able to parent was based mostly on the test data. He was also clear that he never considered that D.L.L.B. or M.M.M. could return to live with their parents because of their special needs. However, he did speculate that with the other four children being in kinship placements, where the kin could be the primary caregivers and could be heavily involved in any reintegration process, there might be some possibility to permit one or more of the children to return.

220 When asked about a comment attributed to him in a Case note of Yvonne Kulawic dated April 23, 2009 (filed as Exhibit 6) "He is thinking the children should be returned gradually with lots of support." Dr. Amitay clarified that it was a conditional statement and that he had not yet reached his final conclusion. He confirmed that at that time, the indication was that the parents were starting to understand the high needs of the children; they were making some improvements in their parenting strategies and were working cooperatively with the Society - which was a huge consideration in his mind. He also confirmed that at that time, Dr. Joyce had not yet completed her Psychological Assessments of the children.

221 In his testimony, Dr. Amitay was adamant that once he saw Dr. Joyce's reports regarding the deficits in the children's functioning, how they had got there when in the parents care and the type of environment that the children required to meet their special needs, it was quite clear that the parents that he had assessed could not provide the type of environment that the children needed and that it was not possible for these parents to parent these children on a full-time basis.

222 He had been asked to summarize what was most significant about Dr. Joyce's assessments in relation to his parenting capacity assessment and he stressed that it was the consistency of the deficits in the children. The language difficulties was the obvious one, and while there could be some biological or hereditary element to that, it was clearly compounded by what Dr. Joyce identified as the lack of stimulation in the children's early years and the lack of attunement to the children's emotional needs which was revealed in the fear, anxiety and lack of self-confidence in all of the children. As he stated it, the speech issues got compounded by the environment being lack of attention to the children's emotional and developmental needs.

223 Dr. Amitay confirmed that while the parents might be able to provide a stable and secure environment for the children for the short term such as they had been doing during the access visits, this was not the same as being able to parent the children on a full-time basis, nor would it be expected that they could do it for the long term given their history and the test results.

224 Dr. Amitay confirmed that these parents are not attuned to their own emotional functioning and that prevents them from being able to address the special needs of the children. When asked what would be required for them to change, he noted that the parents would have to be highly motivated and would require long term intervention in the form of psychotherapy given their complete lack of insight, their defences against introspection and their limited ability to look inward. He stressed that this was not a matter of taking some parenting classes as that is not going to change who they are. It is the parents' inability to connect with their own emotions that prevents them from meeting the emotional needs of the children.

225 In his report, Dr. Amitay was not asked to specifically assess whether the B.s were able to care for one or two or three of the children. However, in cross-examination, Dr. Amitay was asked to consider a hypothetical situation where D.C.T.B. was returned to his parents, without kinship support, but with community and Society support. Dr.

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Amitay confirmed that while he could never say that would be impossible, based on the test results and his observations and the needs of the child, the risk of instability and prolonged instability would be too great. It was clear that when he was in his parents' care, his needs were not being met. While he was living with his Aunt and Uncle, it was better, but they were still not attending to his needs. If the child is doing well now, that is a reflection of his current environment. Unless there was some indication that the parents had made significant changes, he would be hesitant to place D.C.T.B. with them.

226 Dr. Amitay was also asked specifically about D.W.B. While he acknowledged that his needs were not as high as the other children, he had awkwardness about him and also had some needs that were not being met. When asked if he would be surprised if D.W.B. was doing quite well now, Dr. Amitay was clear that if the kin placement had broken down and D.W.B. was in a stable foster home that would make sense as he will take his cues from the environment. However, if D.W.B. had been placed with the parents and was now doing well, that would surprise him.

227 Dr. Joyce had also been asked about D.W.B.'s needs and she did acknowledge that of the six children, D.W.B. had the least number of special needs, but that in addition to the speech difficulties, his emotional functioning was a special need. As she explained, given a structured environment with routines, he'll be engaging and cooperative. He is perceived as being low functioning, but that it is not the case rather it is the passivity which results in him waiting to be told what to do rather than taking the initiative.

228 When it was suggested by Mr. Grinbergs that this lack of initiative was not uncommon for teenage boys, Dr. Joyce indicated that she had seen a lot of adolescents, but had never seen any who were so dependent on their environment to structure them. While she acknowledged that her report was based on her assessment of the child some two years prior, she was clear that if others testified as to improvements in this area for D.W.B., then it would be as a result of being in a predictable and stable environment.

229 Dr. Amitay was also asked specifically about the capacity of the B.s to parent any of the three youngest children, D.C.T.B., M.R.A.B. and M.R.B. It was suggested by Mr. Paget that since the Society had not been involved between 2000 and 2005, that this was indicative of the fact that the parents were managing the children without the Society's involvement. Dr. Amitay strongly disagreed with this pointing to the significant deficits in each of the children. It was his strong opinion that there was no way that these parents had the capacity to parent the three younger children such as to adequately address the children's special needs.

230 Dr. Amitay did acknowledge that there were some positives as noted in his report - that the parents did appear to love all of the boys and they wanted the best for them. Mr. M.B. tried very hard to attend to their emotional needs. It had been reported that it appeared they had a better understanding of the children's deficits, seemed to be better at applying parenting strategies and they were cooperating with the Society at that time. But even with these factors, given their psychological make-up, this was not enough to change his opinion as to the B.s' capacity to parent these children.

THE PLANS PRESENTED

231 The initial plan of the Children's Aid Society of the Niagara Region was to request that all six children be made Crown wards without access. At the commencement of the trial, this position had changed such that they were requesting that the older three children (D.W.B., M.M.M. and D.L.L.B.) be Crown wards with access. D.W.B. and M.M.M. reside together in one foster home (D.W.B. having been there since January 2010 and M.M.M. having been there since July 2008). They are committed to provide for their care on a long term basis. D.L.L.B. is in a separate foster home where he has been since July 2008 and the foster parents are also committed to have him in their care for the long term.

232 The Society's position regarding the three younger three children (D.C.T.B., M.R.A.B. and M.R.B.) is that it is in their best interests that they be made Crown wards without access.

233 Heidi TeBrake, an adoption worker with the Society, provided evidence concerning the future placement plan for the children. In her affidavit filed in the Affidavit Brief (Exhibit 5 Tab 6), she had dealt with all six of the children being made Crown wards without access for the purpose of adoption. When she testified, the Society's position had changed to request Crown ward no access only regarding the three youngest children. It was Ms. TeBrake's evidence that if D.C.T.B., M.R.A.B. and M.R.B. were made Crown wards without access, the Society would be able to find permanent adoptive homes for them.

234 T.B. and M.B. request that all children be returned to their care. If that is not possible, then they ask that some of them be returned. It was conceded by their counsel that M.M.M. and D.L.L.B. would likely not be able to be returned to their care, given their high level of special needs and the length of time that they have been in care. However, it was their position that D.W.B., D.C.T.B., M.R.A.B. and MR.B. - or some combination of them over a period of time could gradually be returned subject to supervision by the Society.

235 W.B. is consenting to an order that D.W.B. and M.M.M. be Crown wards with access. He is requesting that the current access continue, which occurs each Monday from 4:30 p.m. to 7:30 p.m. These visits are currently supervised by C.S., the paternal grandmother, but she confirmed that she is not able to offer a kinship placement for either of them. She has requested that there be the opportunity for additional access to permit some one-on-one time with each of the boys such as every third weekend to have an overnight visit from Saturday afternoon until Sunday morning.

CONCLUSIONS BASED ON EVIDENCE AND THE LAW

236 After a careful review of all of the evidence, I have no hesitation in concluding that these six children continue to be in need of protection.

237 There have clearly been some significant improvements in the home situation. In contrast to the deplorable conditions when the children were first removed in March 2008, the cleanliness of the home has improved and the safety hazards have been removed. The parents have attained some stability as they have lived in one residence (McLeod Road) consistently since July 2008.

238 The B.s have continued to attend financial counselling on a monthly basis for more than two years. Whether they have been able to apply what they have learned has not really been tested as the children have not been in their care since March 2008. It does appear that the financial circumstances of Mr. and Mr. M.B. have stabilized from the perspective that Mr. M.B. is now receiving ODSP and Mrs. T.B. is continuing to work on a seasonal basis.

239 It was submitted that Mr. M.B.'s health has stabilized and that his diabetes is more under control. There was no medical evidence led by the father as to the current state of his health. I would note that he was ill and absent from court at least two days of the trial. When he did testify he was hoarse and advised that this was still being investigated by his family doctor. There were times during the access visits that he was unable to participate due to his health. All in all, on the evidence before me, I had little doubt that the father's health would continue from time to time to impair his ability to care for some or all of these children. To the extent that he is slightly better in some areas of parenting (discipline, showing affection) than Mrs. T.B. and could be absent without warning, is a concern.

240 But even if I were to accept that there had been improvements in the father's health and in the overall home situation of the B.s since the protection application was commenced in July 2008, the issue before me is not simply whether the original concerns have been addressed, but whether there continue to be protection concerns and whether a Court order is necessary to address those concerns.

241 I accept the submission by the parents' counsel, Mr. Paget, that aside from the animal cruelty charges, neither of the parents has a criminal record. There has been no domestic violence between the parents. There have been no issues of alcohol or drug abuse. Neither parent has been diagnosed with any psychiatric difficulties.

242 While those may be difficulties facing many parents involved in protection proceedings, there are numerous other reasons that children may be in need of protection. In this case, the main impediment to any of the children being returned to the care of Mr. and Mrs. T.B. is their significant deficits in parenting ability.

243 The evidence of Dr. Joyce was overwhelming that the needs of the children were not being met while in the care of the parents. There was a lack of stimulation and structure which compounded the language deficits and resulted in a uniform neediness, insecurity and lack of confidence. The description of M.R.A.B. and M.R.B. who were 3 1/2 and 2 1/2 years of age in March 2008 - being non-verbal, grunting, still eating with their hands and not being toilet trained - speaks volumes about the deficits in the parenting.

244 This was also clear from the delay in ensuring that M.R.A.B. had access to the services that he so desperately needed. Despite a referral for a developmental assessment in April 2007, this was not given any priority by the parents and it took another 18 months until the assessment process was undertaken. Mrs. T.B.'s explanation to the Court displayed a complete lack of understanding of the needs of this young child.

245 I accept, as submitted by Mr. Paget, that in March 2008 and probably for some considerable time prior to that, these parents were overwhelmed in having to deal with these six high needs children. However, in line with Dr. Amitay's testing, rather than feeling hopeless about their situation, they simply created a fantasy world that there were no problems and ignored the clear and obvious signs that the children were struggling. Even as of the date of the trial, neither Mr. M.B. nor Mrs. T.B. was prepared to accept that they were having any major difficulties in raising these six children.

246 The other prevalent behaviour in both parents was their tendency to blame others for any of the difficulties that they did have. It was not a lack of supervision on their part, but the fact that the neighbours did not like children or the colour of Mr. T.B.'s skin that brought the Children's Aid Society into their lives. They had no major difficulty in keeping the home clean and safe - it just happened that the Society worker had come over after three other children had been there or the day after a 16 year old sitter had cared for these six children - that was the reason that the house was in a messy state. It was the fault of the Child Protection Support Worker Ms. Morabito that the children were taken into care - she had set them up. The children did not have significant behavioural issues - and if they did, it was as a result of what happened to them while in the care of the kin caregivers or the foster homes.

247 The most glaring example of this behaviour was evident in relation to the animal cruelty charges. The dogs were in such a terrible state because Mr. M.B.'s cousin neglected to feed them. Mrs. T.B. even blamed the cousin for telling Mr. M.B. to lie to the Humane Society about where he found the dogs. There was no acceptance of responsibility for their role in deciding to acquire these two large dogs, failing to tend to their needs while in their care and then abandoning them for many weeks. These dogs did not get into the emaciated state depicted in the pictures over a few weeks; it was months of inadequate attention to their needs.

248 As noted by counsel for the Society, there were many parallels between the protection concerns regarding the children and the neglect of the dogs. There was limited knowledge of the needs; a failure to ensure the needs were met; and willingness to lie/deny that there were difficulties in providing the necessary care to meet those needs.

249 With regard to the children, the refusal to acknowledge the deficits in themselves and in their parenting capacity is a cause for concern for another reason. If there had been some acknowledgement of the problems that they were facing and some appropriate steps had been taken to address them, then that could be a factor to be taken into consideration. Dr. Amitay's evidence was that the steps that needed to be undertaken were not some parenting classes, but intensive psychotherapy to address their own deficits in that neither parent had developed a healthy adult child dynamic as part of their own personal development which in turn prevented them from being able to be attuned to the emotional needs of their children.

250 The parents submit that if there are any protection concerns that these can be alleviated by the involvement of

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the three community supports that testified and by their willingness to cooperate with the Society. I am not persuaded by this argument.

251 With regard to the community supports, it was evident that none of them had any understanding of the significant needs of the children and the limited capacity of the parents to meet those needs. While the B.s have been able to provide adequate parenting for short periods of time that does not equate with them being able to parent any of the children on a full-time basis.

252 All of the support persons who testified were in the B.s' lives prior to the Society involvement and it is difficult to see how without understanding the issues, they would be able to assist in addressing the protection concerns. The B.s require much more than a neighbour to drop by or to provide respite care from time to time.

253 The other concern is that given the history and the psychological profile, it is unlikely that they would be able to work with these supports in a cooperative manner for the long term, particularly if one of them were to "go against" them. The situation with P.C. was telling as it highlighted Mr. M.B.'s inability to deal with his emotions over not being able to continue with the youth group and rather than deal with his frustration, he simply withdrew from the Church entirely.

254 The history of and reasons for the breakdown in the relationships with the kin caregivers, was somewhat ambiguous. It was evident from Dr. Amitay's assessment of E.F. and A.B., that there were serious issues with their ability to care for the three youngest children. It was their decision to withdraw their plan rather than take only one child and to focus on their own child. Similarly, it was the G.s' decision to have D.W.B. removed from their home. The B.s certainly confirmed that their positive relationship with Mrs. T.B.'s sister and Mr. M.B.'s brother and his partner, had turned negative but they attributed that to the involvement of the Society. While the court did not hear from any of the kin caregivers, the perception was that the breakdown fit the pattern of the parent's inability to deal with criticism and their tendency to blame others.

255 However, the evidence as to the parents' ability to work with the Society was crystal clear. Although the parents have indicated that if any of the children are returned to their care subject to supervision that they will now work cooperatively with the Society, based on the evidence of Dr. Amitay and the parents' history with the Society, I have no confidence that they would suddenly acquire the ability to do that. I agree with Mr. Leduc's theory that the Society workers that the B.s did get along with were the ones that did not "go against" them. Anyone who challenged the B.s or said no to their requests was asked to be removed from their case.

256 Turning now to each of the children, D.W.B.'s counsel, through the Office of the Children's Lawyer and counsel for the parents, submitted that, given his age, his wishes and the fact that his needs were less severe than the other children, he could be safely returned to his parents with supervision or made a Society ward with a plan to have him eventually returned to the care of his parents.

257 Although I accept that D.W.B. has fewer special needs, he does still have special needs for his speech and for his emotional functioning. These needs are no less important than cognitive, physical or behavioural ones. It is evident that when his needs are met, he will do quite well. As confirmed by his teacher and his worker, since coming into care, D.W.B. is reaching his full potential. In contrast to the parents who found as a weakness that D.W.B. wanted to be the boss and get his own way, Mr. Lillico identified him taking the important steps toward independence and showing initiative. It is clear that to return D.W.B. to the care of his parents would not be in his best interests.

258 It is apparent given the length of time that M.M.M. has been in care and his special needs arising from his speech impediment, cognitive deficits and emotional functioning, and the level of care required to meet those needs, it is not in his best interests to be returned to the care of his parents.

259 With regard to D.L.L.B., he is also a high needs child as evidenced by his behaviours and speech difficulties. He is of average cognitive functioning, but due to his inability to monitor his emotions, he has considerable

behavioural issues including fire-setting and acting out behaviours. He requires constant supervision and monitoring and that is not something that his parents are capable of doing. It would not be in his best interests to be returned to the care of his parents.

260 With regard to the three younger children, it is apparent that they all are high energy, high needs children. While the improvements in the home situation may address the children's physical needs, Mr. M.B. and Mrs. T.B. are no better equipped now than they were in March 2008 to address the emotional, behavioural and speech language needs. Without an understanding of the children's needs and without even an acknowledgement as to the significant changes that the parents would require to begin to meet those needs, there is no prospect that the ability of these parents would improve or that they would be able to meet the children's needs at any time in the near future. To return any of these children to their parents' care would not be in their best interests.

261 Accordingly, the only option that is in the best interests of the children is for all of them to be made Crown wards. I have considered the possibility of returning some of the children to Mr. M.B. and Mrs. T.B., but in light of their limited capacity to parent as evidenced by Dr. Amitay's reports and testimony, the needs of each of the children as set out in the Psychological Assessments by Dr. Maureen Joyce, I find that there is simply no realistic possibility that they will be able to adequately provide for the care of the children in the reasonable future.

ACCESS

262 The second issue to be determined is whether or not the parents should have access to some or all of the children. Under the legislation, there is a presumption against access once a Crown wardship order has been made. The onus is on the person who wishes to have access to satisfy the court on the balance of probabilities that the criteria in s. 59(2.1) are met.

263 Although the Society's initial position was that there should be a "no access" order with regard to all of the children, at trial they took the position that the ongoing access should continue with regard to D.W.B., M.M.M. and D.L.L.B. I am satisfied on the evidence that such an order would be appropriate and would be in the best interests of the three older children. They will have the substantial benefit of the structure and supervision in a foster home, while maintaining contact with their parents.

264 With regard to the three younger children, D.C.T.B., M.R.A.B. and M.R.B., there was very little evidence led that would support a finding that the access was meaningful and beneficial to any of these children. I have no doubt that the parents love all of their children. There was also nothing to suggest that the children did not enjoy the time spent with their parents. But that does not mean that the relationship is necessarily meaningful and beneficial to the children.

265 The undisputed evidence is that permanent adoptive homes can be found for these three children, despite their individual and special needs. Given their young ages and that the parents are not likely to be in a position in the near future to provide for those needs, they require permanency and stability in their lives. An access order would impair the future opportunities for adoption and would not be appropriate in these circumstances.

THE ORDER

266 This court orders that:

- 1) The current Society wardship orders are terminated;
- 2) D.W.B., M.M.M., D.L.L.B., D.C.T.B., M.R.A.B. and M.R.B. be made wards of the Crown and committed to the care of the Children's Aid Society of the Niagara Region;
- 3) There shall be access to D.W.B., M.M.M. and D.L.L.B. by T.B. and M.B. as arranged by the Society and supervised in its reasonable discretion;

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- 4) There shall be access to D.W.B. and M.M.M. by W.B. and C.S. as arranged by the Society and supervised in its reasonable discretion;
- 5) There shall be no access to D.C.T.B., M.R.A.B. and by T.B. and M.B.

W.L. MacPHERSON J.

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