

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. R.R.G.*, 2016 NSFC 15

Date: 2016-06-09

Docket: Pictou No. 092978

Registry: Pictou

Between:

Minister of Community Service

Applicant

v.

R.R.G. and M.R.

Respondents

Editorial Note: **Identifying Information has been removed from this electronic version of the judgment**

The Honourable Judge Timothy G. Daley

Judge:

Heard:

October 29 and November 12, 2015 and January 14, 2016, in Pictou, Nova Scotia

Counsel:

Spencer Dellapinna, for the Applicant
Pavel Boubnov, for the Respondent R.R.G.
Sandy MacKay, for the Respondent M.R.
Tammy MacKenzie, for the Guardian Jeffrey Reid

By the Court:

[1] This case is about a child, T.R.G., born November [...], 1999, and whether it is in his best interest that he be placed in the permanent care and custody of the Minister of Community Services (the Minister) or returned to the care of his mother, R.R.G.

[2] The Minister seeks an order of permanent care and custody pursuant to the *Children and Family Services Act* (the Act), based upon concerns that R.R.G. is unable to adequately and safely parent T.R.G., that she is unable to meet his needs, that she has exposed him to instability, violence, a chaotic home environment and that returning him to her care would expose him to the same challenges that he faced when taken into temporary care. The Minister notes that R.R.G. was offered a psychiatric assessment to assist her in gaining insight into her challenges and while she was at times agreeable, she never participated in such an assessment and has not gained the insight that would have been helpful to her. Given T.R.G.'s special needs, as described further in the evidence, the Minister believes that it is in T.R.G.'s best interest that he be placed in the permanent care of the Minister.

[3] R.R.G. opposes permanent care for T.R.G. She seeks the return of T.R.G. to her care and termination of the proceedings. She believes that she has received sufficient services to enable her to parent T.R.G. and is prepared to have T.R.G. attend special programming while in her care to address his needs. She feels that she can parent him in a safe and effective manner and there will be no risk to him in her care.

M.R. is the maternal grandmother of T.R.G.. She supports the plan and position of her daughter, R.R.G., and seeks the return of T.R.G. into her daughter's care and termination the proceedings. She does not believe that the Minister has been helping T.R.G., but does believe that he requires help and needs an education.

Summary of Proceedings

[4] Given the extensive involvement of the Minister with this family, it will be helpful to review the proceedings as they have evolved over time.

- [5] The Minister filed a Protection Application and Notice of Hearing on September 24, 2014. The Minister sought a finding that T.R.G. was in need of protective services pursuant to s. 22 (2) (b), (f) and (g) of the *Act*.
- [6] On September 29, 2014, the initial five day hearing took place. Both respondents were present but unrepresented. They sought an adjournment to obtain legal representation and took no position at that time. At the conclusion of the hearing, the Court made the finding that there were reasonable and probable grounds to believe that T.R.G. was a child in need of protective services and the Minister's request for an initial supervisory order was granted, placing T.R.G. in the care of the respondents subject to the supervision of the Minister.
- [7] On October 22, 2014, the interim hearing was completed. Both respondents were in attendance and had counsel representing them. T.R.G. had not been served with the Protection Application and Notice of Hearing by then and the Court was informed he was currently at the IWK Hospital in Halifax following a suicide attempt the day prior. Counsel for R.R.G. indicated that she consented to a psychiatric assessment and that she suffered from bipolar disorder. Both respondents consented on a reservation of rights basis to the finding sought. The Court made a finding that T.R.G. continued to be a child in need of protective services and granted a continuation of the Minister's supervisory order. The matter was adjourned for a pretrial conference on December 10, 2014, and a Protection Hearing on December 17, 2014.
- [8] On November 20, 2014, T.R.G. was taken into the temporary care of the Minister. The respondents were served with a Notice of Taking Into Care.
- [9] An Application and Notice of Hearing was filed by the Minister on November 26, 2014, seeking an order that T.R.G. remain in the temporary care and custody of the Minister.
- [10] On November 27, 2014, the matter was brought before the Court. The Court made the finding that T.R.G. was a child in need of protective services, that he could not be protected other than in the temporary care of the Minister and granted a variation order placing T.R.G. in the temporary care and custody of the Minister. The Court determined it was also an appropriate circumstance for the appointment of a *Guardian Ad Litem* for T.R.G.

- [11] On December 17, 2014, the matter returned before the Court for a Protection Hearing. Both respondents consented through counsel to the protection finding. The Court made the protection finding pursuant to s. 22 (2) (b), (f) and (g) of the *Act*. The Minister's counsel confirmed that a *Guardian Ad Litem* was being retained and that R.R.G. was having weekly access with T.R.G. R.R.G. was ordered to participate in a psychiatric assessment and both respondents were ordered to participate in services through a Family Support Worker. T.R.G. was referred for individual counselling and a Needs Assessment. The matter was set over for a Disposition Pretrial on February 25, 2015, and a Disposition Hearing on March 4, 2015.
- [12] On March 4, 2015, the matter returned before the Court for a Disposition Hearing. The Minister's counsel confirmed that a *Guardian Ad Litem* had been retained and was to be represented by counsel, though neither were available that day. It was confirmed the Needs Assessment was being organized for T.R.G. and that R.R.G. had consented to a psychiatric assessment. Both respondents consented through counsel to the disposition order sought. The Court determined that it was appropriate to grant the disposition order sought by the Minister continuing the placement of T.R.G. in the temporary care and custody of the Minister. The Court formalize the appointment of the *Guardian Ad Litem* and added him as a party. The matter was set over for a review hearing on May 14, 2015.
- [13] On May 14, 2015, the matter returned to court for a Review Hearing. Counsel for the Minister noted there been a change in residence for T.R.G., there was a psychological report available for him and services were on hold because of the crisis in T.R.G.'s life. He had been referred for specialized therapy and supervised access for both respondents continued. The Minister sought a continuation of the order. Both respondents consented through counsel, as did the *Guardian Ad Litem*, to the continuation of the order. The Court continued the order with T.R.G. remaining in the temporary care of the Minister. The matter was set for further review on July 20, 2015.
- [14] On July 20, 2015, the matter returned for review before the Court. Counsel for the Minister confirmed that he had received a genetic testing report for T.R.G., that his placement remained intact, that he continue counselling, and that supervised access continue for the respondents. The Child Needs Assessment was completed recommending dialectical behavioral therapy with a

psychologist for T.R.G.. The plan was to enroll T.R.G. in school with a gradual transition and the Minister sought a continuation of the temporary care order.

[15] Counsel for R.R.G. requested a Placement Hearing date on the grounds that the continuation of the temporary care order was not in T.R.G.'s best interest and sought a placement at the Reigh Allen Centre in Dartmouth, or in the alternative, placement with the mother. Counsel for M.R. indicated her wish to participate in the Placement Hearing and sought T.R.G.'s placement in the Reigh Allen Centre, or in the alternative, that T.R.G. be placed with her. Counsel for the Guardian did not support placement of T.R.G. at the Reigh Allen Centre, supported his current placement and the Minister's efforts to seek a specialized program at the IWK. At that time T.R.G. was facing charges for sexual assault arising from his placement in a foster home. The Guardian supported the Minister's request for continuation of the temporary care order.

[16] The Court continued the temporary care order, adjourned the matter for a pretrial conference on August 6, 2016, to discuss various evidentiary matters, scheduled a further pretrial conference for September 21, 2015, and scheduled Placement Hearing dates of September 24, October 15, October 29 and November 12, 2015 as well as filing deadlines for the parties.

[17] On September 18, 2015, the Minister filed a Notice and Application seeking permanent care and custody of T.R.G.

[18] On September 21, 2015, a pretrial conference took place and counsel for the Minister confirmed his earlier correspondence of September 18, 2015, in which he had requested the current scheduled Placement Hearing be adjourned. He indicated he had recently taken on the file from prior counsel, needed time to properly prepare and confirmed that the Minister had made application for permanent care of T.R.G. There was no objection raised to the adjournment and it was agreed four days would be sufficient for the Permanent Care Hearing. The matter was adjourned for new hearing dates of October 29 and November 12 of 2015, and January 13 and 14 of 2016, with an additional day of January 15, 2016, reserved in the event it was needed. Filing deadlines for affidavits and materials were set in a further telephone pretrial was scheduled for October 5, 2015.

[19] The Hearing took place on October 29 and November 12 of 2015, and January 13 and 14 of 2016. Decision in the matter was reserved.

The Law

[20] The *Act* sets out the relevant considerations and requirements for the Court to consider in a permanent care application, as set out below:

Purpose and paramount consideration

2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

...

Interpretation

3 (2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;

(l) 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 or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstances.

...

Child is in need of protective services

22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

(2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

...

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

...

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

...

Disposition hearing

41 (1) Where the court finds the child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42.

(2) The evidence taken on the protection hearing shall be considered by the court in making a disposition order.

(3) The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(b) a statement of the criteria by which the agency will determine when its care and custody or supervision is no longer required;

(c) an estimate of the time required to achieve the purpose of the agency's intervention;

(d) where the agency proposes to remove the child from the care of a parent or guardian,

(i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

(ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(e) where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

...

(5) Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i) a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons

why the child cannot be adequately protected while in the care or custody of the parent or guardian. 1990, c. 5, s. 41.

Disposition order

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

- (a) dismiss the matter;
- (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;
- (e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;
- (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

- (a) have been attempted and have failed;
- (b) have been refused by the parent or guardian; or
- (c) would be inadequate to protect the child.

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family

pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.

...

Duration of orders

45 (1) Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months; or

(b) where the child was six years of age or more but under twelve years of age at the time of the application commencing the proceedings, eighteen months, from the date of the initial disposition order.

(2) The period of duration of an order for temporary care and custody, made pursuant to clause (d) or (e) of subsection (1) of Section 42, shall not exceed

(a) where the child or youngest child that is the subject of the disposition hearing is under three years of age at the time of the application commencing the proceedings, three months;

(b) where the child or youngest child that is the subject of the disposition hearing is three years of age or more but under the age of twelve years, six months; or

(c) where the child or youngest child that is the subject of the disposition hearing is twelve years of age or more, twelve months.

(3) Where a child that is the subject of an order for temporary care and custody becomes twelve years of age, the time limits set out in subsection (1) no longer apply and clause (c) of subsection (2) applies to any further orders for temporary care and custody.

...

Permanent care and custody order

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

- (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
- (b) the child is at least twelve years of age and wishes to maintain contact with that person;
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstance justifies making an order for access.

Evidence

96 (1) At a proceeding pursuant to this Act other than Sections 68 to 87, the court may, subject to subsection (2) of Section 40, admit as evidence

(a) evidence from proceedings, pursuant to this Act or any other similar legislation, respecting the child that is the subject of the hearing, or respecting another child that was in the care or custody of a parent or guardian of the child that is the subject of the hearing; or

...

upon such terms as the court directs.

...

(3) Upon consent of the parties or upon application by a party, the court may, having regard to the best interests of the child and the reliability of the statements of the child, make such order concerning the receipt of the child's evidence as the court considers appropriate and just, including

...

(b) the admission into evidence of out-of-court statements made by the child.

Standard of Proof

[21] It is important to recognize that this is a civil matter and, therefore, the standard of proof required is as set out by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, at paragraphs 40 and 49, as follows:

I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.

...

...I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

Burden of Proof

[22] It is also important to establish who bears the burden of proof in such matters. The burden rests squarely with the Minister in this matter to prove its case and in particular to establish it has met the requirements for a permanent care finding and order pursuant to the provisions of the *Act*.

Admission of Child's Out-of-Court Statements

[23] The unique nature of hearsay evidence of children sought to be introduced pursuant to s. 96(3)(b) of the *Act* in child protection proceedings was considered in the decision of the Nova Scotia Court of Appeal of *The Children's Aid Society of Cape Breton v. A.*, 2004 NSCA 52 when the court noted at paragraph 15:

Bearing in mind the context and purpose of the trial judge's exercise of discretion to admit child hearsay pursuant to s. 96(3)(b) of the *Act*, I am not persuaded it is appropriate to impose any rigid formula for the receipt of such evidence. These are not criminal proceedings where the protections and concerns described in the governing jurisprudence such as *R. v. Khan*, [1990] 79 S.C.R. (3d) 1 (SCC), *R. v. Smith*, [1992] 1992 CanLII 79 (SCC), 2 S.C.R. 915 (SCC), and *R. v. Starr*, [2000] S.C.R. 144 (SCC) necessarily arise. Here in the context of child

protection proceedings, the discretion granted a trial judge to admit such evidence, whether or not the child in fact ever actually testifies in court, is found in s. 96(3)(b) which provides: ...

[24] The test for the admissibility of child hearsay in child protection proceedings pursuant to s. 96(3)(b) is a two-pronged one which requires that the Court consider the child's best interest and the reliability of the child statements.

[25] The first part of that test, the consideration of child's best interests, is normally addressed by acknowledging that it not in the child's best interest to be called to testify at a hearing and thus consideration of the admissibility of out-of-court statements as an alternative to the child giving evidence at a hearing would be in that child's best interest where available.

[26] The second part of that test - the reliability of the child's statement - has been the subject of judicial interpretation. Courts have said that there is a threshold of reliability that must be met. If, and only if, that threshold has been met and the statement admitted into evidence, the Court then must determine the ultimate reliability and therefore, the weight to be attached, if any, to the out-of-court statement taking into account all of the evidence before it.

[27] Respecting the threshold requirement of reliability, this was discussed in the case of *Children's Aid Society of Halifax v. P. M. H.* 2006 NSSC 75 when the court made the following comments at paragraph 15:

[15] Reliability in this context requires that there be "a circumstantial guarantee of trustworthiness" surrounding the statement before it may be admitted. The concept was explained by Lamer, C.J.C. in *R. v. Smith* (1992), 1992 CanLII 79 (SCC), 2 S.C.R. 915:

... the circumstances under which the declarant makes a statement may be such as to guarantee its reliability, irrespective of the availability of cross-examination. "Guarantee", as the word is used in the phrase "circumstantial guarantee of trustworthiness", does not require the reliability be established with absolute certainty. Rather it suggests that where the circumstances are not such as to give rise to the apprehensions traditionally associated with hearsay evidence, such evidence should be admissible even if cross-examination is impossible. (at p. 930)

[16] Reliability thus flows from the circumstances under which the statement in question was made (as stated by Lamer, C.J.C. in *Smith*):

... If a statement sought to be adduced by way of hearsay evidence is made under circumstances which substantially negate the possibility that the declarant was untruthful or mistaken, the hearsay evidence may be said to be “reliable”, i.e., a circumstantial guarantee of trustworthiness is established. (at p. 933)

[28] I must therefore determine if there are circumstantial guarantees of trustworthiness or reliability before admitting out-of-court statements made by T.R.G.

[29] If I determine that any out-of-court statements made by T.R.G. are admissible into evidence, I must then address their ultimate reliability and therefore what weight, if any, I should give to them.

[30] To understand this second stage of the reliability test, the decision of Justice Forgeron in *Mi'kmaw Family and Children Services of Nova Scotia v. H. F.*, 2013 NSSC 310, is helpful. In that decision Justice Forgeron considered the Agency's request for a finding that three out-of-court statements made by the child be held to be reliable for the truth of their content. The application for admission of the statements was made pursuant to s. 96(3) (b). Justice Forgeron indicated as follows commencing at paragraph 49:

[49] Section 96(3)(b) of the Act was the subject of appellate review in *G.A. v. Children's Aid Society of Cape Breton-Victoria*, 2004 NSCA 52 (N.S.C.A.). In this decision, Hamilton J.A. noted the important distinction between criminal and child protection proceedings. She further held that the application of rigid formulas was not appropriate in the child protection context at para. 15, wherein the following was stated:

15 Bearing in mind the context and purpose of the trial judge's exercise of discretion to admit child hearsay pursuant to s. 96(3)(b) of the Act, I am not persuaded it is appropriate to impose any rigid formula for the receipt of such evidence. These are not criminal proceedings where the protections and concerns described in the governing jurisprudence such as *R. v. Khan* (1990), 79 C.R. (3d) 1 (S.C.C.), *R. v. Smith*, [1992] 2 S.C.R. 915 (S.C.C.), and *R. v. Starr*, [2000] 2 S.C.R. 144 (S.C.C.) necessarily arise. Here in the context of child protection proceedings, the discretion granted a trial judge to admit such evidence, whether or not the child in fact ever actually testifies in court, is found in s. 96(3)(b)...

[50] It is not necessary for me to consider whether necessity remains a factor to be proven in light of the specific wording of s. 96(3)(b) because the parties did not advance that argument. Necessity was admitted. Reliability was the sole battle ground. Further, and although I am directed not to apply rigid rules, I must

nonetheless consider the issue of reliability in the context of the case law which has developed under the principled approach to hearsay.

[51] The starting point of the analysis is the premise that hearsay statements are presumptively inadmissible: *R v. Couture*, [2007] 2 S.C.R. 517 supra, para. 85. The court has the discretion to nonetheless admit the hearsay statements if the agency proves admissibility through indicia of reliability: *R v. Couture*, para. 85.

[52] This assessment of reliability involves a two stage process. The first stage, threshold reliability, was discussed and resolved previously. During the second stage, the trier of fact, in this case the court, must assess ultimate reliability based upon the totality of the evidence presented. In *R. v. Khelawon*, [2006] 2 S.C.R. 787 supra, the Supreme Court of Canada held that a functional approach should be adopted when determining factors relevant to the assessment of reliability. In particular, the court should focus on "the particular dangers raised by the hearsay evidence sought to be introduced, and on those attributes or circumstances relied upon by the proponent to overcome those dangers:" para. 93. The presence of corroborating or conflicting evidence is appropriate to consider at both the threshold and ultimate reliability stage: paras. 4, 100.

[53] Paciocco and Stuesser in the *Law of Evidence*, sixth edition, 2011, list factors that can be considered when determining the inherent trustworthiness of a statement, at p. 125, which factors include statements that are made:

- spontaneously,
- naturally,
- without suggestion,
- reasonably contemporaneously with the events,
- by a person who has no motive to fabricate,
- by a person with a sound mental state,
- against the person's interest in whole or in part,
- by a young person who would not likely have knowledge of the acts alleged, and
- whether there is corroborating evidence.

[54] The authors also list safeguards surrounding the making of the statement that could expose inaccuracy or fabrications at p. 125 of their text, which provides the following list of questions:

- Was the person under a duty to record the statements?
- Was the statement made to public officials?
- Was the statement recorded?
- Did the person know the statement would be publicized?

[31] In determining the ultimate reliability of any admissible out-of-court statements of T.R.G. I will adopt a functional approach as mandated by the Supreme Court of Canada. I acknowledge that I am not obligated to utilize a rigid formula when exercising my discretion to admit evidence under s. 96(3), given the Court of Appeal decision in *G.A. v. Children's Aid Society of Cape Breton -- Victoria*, 2004 NSCA 52.

Continuing Need for Protective Services

[32] The Minister must prove that the child in the matter, T.R.G., continues to be a child in need of protective services (*Catholic Children's Aid Society of Metropolitan Toronto v. C.M.*, [1994] S.C.J. No.37; 2 S.C.R. 165). That said, it is also the case that, as set out the Supreme Court of Canada in the same decision, at paragraph 42:

The determination of whether the child continues to be in need of protection cannot solely focus on the parent's parenting ability, as did Bean Prov. Ct. J., but must have a child-centred focus and must examine whether the child, in light of the interceding events, continues to require state protection.

Substantial Risk

[33] The Minister must also prove that the child, T.R.G., remains at substantial risk as it maintains that its position to seek permanent care is grounded, in part, in ss. 22(2) (b), (g) and (ja) of the *Act*, each of which requires proof of substantial risk to the children.

[34] Substantial risk is defined in the Act under s. 22(1) to mean “a real chance of danger that is apparent on the evidence.” Help in understanding what is meant by this is found in the decision of the Nova Scotia Court of Appeal in *M.J.B. v. Family and Children's Services of Kings County*, 2008 NSCA 64 when it held at paragraph 77:

The Act defines "substantial risk" to mean a real chance of danger that is apparent on the evidence (s. 22(1)). In the context here, it is the real chance of sexual abuse that must be proved to the civil standard. That future sexual abuse will actually occur need not be established on a balance of probabilities (*B.S. v. British Columbia (Director of Child, Family and Community Services)* (1998), 160

D.L.R. (4th) 264, [1998] B.C.J. No. 1085 (Q.L.) (C.A.) at paras. 26 to 30).
(emphasis added)

[35] Though that case was in the context of an allegation of risk of sexual abuse which is not applicable in this case, it does make clear that in this matter, the Minister must prove that there is a substantial risk of physical harm (s. 22(2)(b) or (ja)) or emotional harm (s.22(2)(g)). The Minister does not have to prove that such harm will occur in the future, only that there is a substantial risk of such harm occurring.

Services to Promote the Integrity of the Family

[36] Under s. 42(2) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that less intrusive measures, including those promoting the integrity of the family under s.13 of the *Act*, have been attempted and failed or refused by the parent or would be inadequate to protect the children. But this must be seen in context as noted in *Nova Scotia (Minister of Community Services) v. L.L.P.*, 2003 NSCA 1, at paragraph 25:

The goal of "services" is not to address the parents' deficiencies in isolation, but to serve the children's needs by equipping the parents to fulfill their role in order that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. If a stable and safe level of parental functioning has not been achieved by the time of final disposition, before returning the children to the parents, the court should generally be satisfied that the parents will voluntarily continue with such services or other arrangements as are necessary for the continued protection of the children, beyond the end of the proceeding. Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely.

[37] Likewise in *Family and Children's Services of King's County v. D.A.B.*, 2000 NSCA 38, the Court of Appeal found, at paragraph 51:

The starting point for the Agency's provision of appropriate services is the identification of areas of concern. The assessments by Melissa Keddie and Dr. Hastey were critical to this process. The fact that D.A.B. refused to fully cooperate with Dr. Hastey spoke volumes both as to his commitment to the process and his lack of insight into the difficulties confronting him. It also bore upon the likelihood that D.A.B. would avail himself of services if offered. The Agency's obligation to offer services is limited to "reasonable measures". In view of D.A.B.'s refusal to fully cooperate with Dr. Hastey, his failure to accept the

areas of concern identified by Melissa Keddie and his revealed inability to recognize himself as contributing to the problem, it is difficult to imagine what further services could reasonably have been offered by the Agency. (emphasis added)

Prospects for Change

[38] Under s. 42(4) of the *Act*, I cannot grant an order for permanent care unless I am satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time, not exceeding the time limits under the *Act*.

[39] In this case T.R.G. was 14 years old at the commencement of these proceedings and is now 16 years old. As a result, s. 45(1) of the *Act* does not apply. Instead, s. 45(2)(c) does apply and any order for temporary care and custody can only remain effective for 12 months duration. There is no outside date for final disposition so long as the order is renewed each 12 months until T.R.G. turns 19 years old.

Family or Community Placements

[40] Under s. 42(3) of the *Act*, I must also be satisfied as to whether or not it is possible to place T.R.G. with a relative, neighbour or other member of T.R.G.'s community or extended family. But as noted in *Children's Aid Society of Halifax v. T.B.*, 2001 NSCA 99, at paragraph 30 and 31:

Justice Cromwell's words should not be interpreted as imposing either upon the agency or the court a statutory burden to investigate and exhaust every conceivable alternative, however speculative or fanciful. He spoke of reasonable family or community options. Neither the agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put forward seriously by their proponents. By "reasonable" I mean those proposals that are sound, sensible, workable, well-conceived and have a basis in fact.

The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered. It is hardly the responsibility of the agency or the court to propose the alternative, provide the resources for its implementation, or shepherd the idea through to completion.

[41] I note that in this case there is no alternative Plan of Care presented by anyone else in the extended family or community.

Evidence of Prior Involvement

- [42] There was significant evidence of prior agency involvement set out in the affidavit of Kara Wood of September 24, 2014. While I cannot find that this is evidence of prior proceedings as contemplated by s. 96 (1)(a) of the *Act* as no proceeding had been commenced by the Minister in these matters, I do find the evidence relevant and admissible. There was no objection to its admission by the respondents. I will review the most relevant of that evidence as it provides significant historical context for the current proceedings and is therefore material to my assessment of T.R.G.'s best interests.
- [43] After T.R.G.'s birth, there was a referral from the public health nurse that the birth had taken place and that some supportive services from a Family Support Worker may be of assistance to lower the potential risk to T.R.G.. An Agency worker met with R.R.G. and offered the support but this was declined as R.R.G. felt she had support from her church, was being followed by her family doctor and denied any drug or alcohol abuse since becoming pregnant.
- [44] Her family doctor also made a referral suggesting some supportive services as R.R.G. had been "in and out of jail" in the past, and suffered bouts of depression and inappropriate behaviours and had been using illegal drugs. That said, the physician was reporting that R.R.G. was dealing with the baby surprisingly well and she was being seen daily by Public Health. No actions were taken by the Agency at that time.
- [45] There was a referral from a pediatrician in March 2003, indicating that R.R.G. may be suffering from Munchausen Syndrome by Proxy. The child was seen for poorly controlled asthma. R.R.G. reported performing CPR on the child several times when he stopped breathing while asleep and the mother reported using a lot of prescription medication for the child. The pediatrician questioned R.R.G.'s mental health and motivation for attending so frequently for medical treatment.
- [46] The family physician disagreed with the pediatrician's view and felt that the medical concerns were legitimate. She described R.R.G. as overprotective of the child and would not assess her as having Munchausen Syndrome by Proxy.
- [47] When workers met with R.R.G., she confirmed she was aware of the pediatrician's pending referral and acknowledged taking T.R.G. to the outpatient department at the hospital on a regular basis, but said it was not

without cause. She said T.R.G. had many health problems related to asthma and respiratory illnesses and that he regurgitated food almost every day. She confirmed he was on several prescribed medications, that after eating and when in bed he would gag on his food and sometimes going to "seizures". She described him as stopping breathing, choking and turning blue. She had met with the dietitian, but did not agree with the recommendation. Instead, she used a hoop-like device to sweep through his airway after he finished eating.

[48] She described that T.R.G. did not seizure while at the hospital and although she called the ambulance several times during the seizures, she said "as soon as the paramedics hand touches the door, he stopped choking and can breathe". She confirmed T.R.G. had been hospitalized at least 10 times since birth.

[49] The pediatrician met with the workers. The pediatrician confirmed that T.R.G.'s asthma was on the low end of the spectrum, that she offered to have T.R.G. assessed at the IWK and that R.R.G. refused to consent unless he was transported by ambulance to Halifax as she claimed that he stops breathing and takes a seizure during long car rides. Despite being prescribed puffers for asthma, T.R.G. hardly had any medication at all. There should have been much more medication used if his asthma had been as described.

[50] During a visit to R.R.G.'s home, the worker spoke to her and she described getting conflicting information from the family doctor and the pediatrician regarding T.R.G.'s asthma.

[51] Despite indicating to the workers earlier that her plan was to attend the Nova Scotia Community College in Truro in the fall, she denied same on this occasion and claimed she would have to attend at least two years at the Nova Scotia Community College in Stellarton before being eligible for Truro.

[52] At this meeting the workers discussed voluntary services with R.R.G. and she agreed to them. A file was opened and a worker assigned.

[53] Between August 27, 2003, and June 9, 2004, R.R.G. participated in community-based services as recommended, the home was appropriate and she only contacted an ambulance once, at which time the paramedic did intervene to help T.R.G. breathe. The agency closed its file at that time as the protection concerns had been addressed.

[54] On August 22, 2004, a referral was made by the New Glasgow Policing Service because R.R.G. had been arrested on that day for intoxication in a public place. When R.R.G. was interviewed she explained that she had not had a drink or problems with the law since becoming pregnant with T.R.G. She took T.R.G. to a friend's to be babysat as she wasn't feeling well, and went to the liquor store where she purchased alcohol and went for a walk to the bridge. The police stopped her and thought she was drunk and took her back to the police station. When she was released after midnight she did not go home as she felt her mother would be mad. She described herself as having made a mistake.

[55] Voluntary services were discussed with her but she declined them and said that she attended counselling in the past. She agreed to contact the Agency if she had problems in the future.

[56] On February, 2005, another referral from the new Glasgow Policing Services was received that R.R.G. had been arrested for leaving notes at the Provincial Court threatening to kill the local Provincial Court Judge and three police officers. Concern for her mental health was expressed. She was remanded to the East Coast Forensic Psychiatric Hospital for an assessment. A copy of the discharge summary report from that admission was introduced as evidence in this matter. That report indicated that she had been diagnosed with a personality disorder (not otherwise specified) with borderline antisocial traits. She was diagnosed with polysubstance dependence, dysthymia, adjustment disorder with mixed anxiety and depressed mood with the differential diagnosis of substance induced mood disorder, major depressive disorder in partial remission.

[57] In reviewing her past psychiatric history, that discharge summary referred to an extensive psychiatric history for R.R.G. dating to age five when she was apprehended as an "uncontrollable child" and placed in the Nova Scotia Hospital. She had several admissions to that facility by age 16 and had serious problems with alcohol abuse, violent behaviour, self-abusive behaviour and conduct disorder. She engaged in criminal activity as a young offender.

[58] Her known contact with adult psychiatric services was in November 2004 for a psychiatric assessment by Dr. Sugars after a referral by her family doctor due to complaints of depression. Treatment with antidepressant medication was recommended but was declined by R.R.G.

- [59] When reviewing her behaviour in the hospital, she was said to exhibit no problems, but exhibited a labile mood and expressed a great deal of anger towards alleged past abusers, her parents and authority figures.
- [60] On investigation, the maternal grandmother, M.R., disclosed to the worker that she been concerned for R.R.G.'s well-being for some time, had recently applied for and received joint custody of T.R.G. and that R.R.G. had agreed with this application.
- [61] M.R. had observed her daughter decline through the summer when her efforts in school began to decrease and she spent more time drinking alcohol. She suspected illegal drug use as well. She was spending late nights downtown in New Glasgow and the police would often find her by herself and drive her home, though the police involvement made R.R.G. paranoid that the police were watching her.
- [62] M.R. confirmed she was the primary caregiver for T.R.G. since his birth and she planned to remain involved as his primary caregiver until R.R.G. received the necessary treatment.
- [63] When the worker interviewed R.R.G., she confirmed she made threats and had pled guilty to the charges but that she "harbours a lot of revenge" toward certain people, and that the police and the judge were on her list, though they were not on top of the list. She said her previous stepfathers were on the top of the list but she refused to elaborate.
- [64] She described herself as gradually going through a nervous breakdown in the past two years and the criminal activity was the result. She said she lost about 70 pounds and had been prescribed medication for depression and anxiety. In the fall she began using marijuana while in school to pass the time.
- [65] She explained that the most difficult thing about her release conditions was that she could not have access to any weapons, reporting that she always carried a weapon, either a knife or a lead pipe. She said "the cops know I have access to a handgun". She described hating her mother but recognizing that she is good to T.R.G. and agreeable to the joint custody arrangement. She also described a lot of difficulty expressing affection towards T.R.G. and in receiving it from him.

- [66] In a follow-up home visit on July 26, 2005, M.G. reported that T.R.G. was doing well, she had day to day care and control of him and that T.R.G. had been referred to Mental Health regarding anger management issues. T.R.G. spoke to his mother each week while she was at the Dartmouth Forensic Unit. On her release, her contact with T.R.G. was supervised and he remained with M.R.
- [67] In September 2005, the Family Support Worker began working with the family to address significant behavioural issues for T.R.G. including smearing his feces, temper tantrums, defiance and aggressive behaviours both at home and at school. One incident resulted in the police being called by R.R.G. to assist her with having T.R.G. removed from school following a suspension.
- [68] Between September 2005 and June 2006 the mother and grandmother participated in family support sessions and group parenting sessions including anger management. Counselling for T.R.G. was undertaken and a psychiatric referral and counselling for R.R.G. was provided.
- [69] On June 14, 2006, M.R. reported that R.R.G. was taken by police and hospitalized as a result of threatening to end her life. She was also facing trespassing charges.
- [70] The Agency file was closed in May 2007 after the mother and grandmother agreed that T.R.G. would remain in the primary care of M.R. who would have discretion to decide when R.R.G. received the child based on her mental health. They agreed to contact the Agency if future problems arose.
- [71] In July 2011 there was a further referral as a result of a report by R.R.G. that a neighbour had attempted to have T.R.G. play strip poker and to have him put his head down on the adult's penis. This allegation was confirmed by T.R.G. when interviewed by the workers.
- [72] After investigation, the allegation was substantiated and it was agreed that R.R.G. supervise T.R.G. and he not be allowed to be around the alleged perpetrator. The plan was to have T.R.G. cared for full-time by M.R. as she had recently retired. T.R.G. was attending counselling through Mental Health including family counselling, but T.R.G. continued to exhibit behavioural issues at home and at school.
- [73] On April 2, 2013, a further referral was made by substitute teacher at T.R.G.'s school as a result of T.R.G. disclosing to her a very strange story

involving sexual intercourse with an adult woman which resulted in a baby. She further explained that at school T.R.G. had demonstrated explosive behaviours and that he could be violent. He was attending counselling through Mental Health.

[74] As a result of an investigation by the police and the agency, T.R.G. confessed that he had made up the sexual allegations and the file was subsequently closed.

The Evidence at the Hearing

[75] At the hearing several witnesses testified and provided affidavits and *viva voce* evidence. I have set out a summary of their evidence below and have reordered the witnesses where it is of assistance in understanding the evidence.

Kara Wood

[76] Kara Wood provided affidavit evidence in this matter. She is employed by the Agency as a social worker and was the case worker for R.R.G., M.R. and T.R.G.. She was not required by the respondents to provide evidence at the hearing. Her affidavits were admitted into evidence by consent.

[77] In her affidavit of September 24, 2014, Ms. Wood set out the basis on which the Agency became involved in the current proceedings. It began with a referral from the Mental Health Team at the Aberdeen Hospital on March 20, 2014. That team sent a letter describing an incident between R.R.G. and T.R.G. which occurred on January 17, 2014. The concern arose during a meeting at Mental Health Outpatients when T.R.G. and R.R.G. “exhibited behaviours which are significantly concerning”. They describe a mild verbal confrontation between T.R.G. and his mother that escalated with T.R.G. hitting his mother several times in the head with a stuffed monkey. When it was taken away by her, T.R.G. became more aggressive, hitting her with his hands. When his mother held his hands, T.R.G. began screaming and kicking at objects in the office and at his mother.

[78] Unfortunately, R.R.G. continued to engage verbally in a confrontation with T.R.G. Staff assistance was required in an attempt to verbally de-escalate T.R.G., but he continued to kick at his mother. As described R.R.G. restrained T.R.G. by lowering him to the floor, holding his wrists and sitting on his legs. She stated several times that she restrains T.R.G. “all the time when he is

angry". Verbal attempts to de-escalate T.R.G. by staff were unsuccessful and staff decided to utilize nonviolent crisis intervention techniques to de-escalate. Despite the staff handling the matter, R.R.G. got behind him and put her arms around his neck. She was told to let go as his airway could be compromised. Her interaction appeared to escalate the situation again as T.R.G. became agitated and kicked and tried to bite staff repeatedly. After several minutes of unsuccessfully trying to calm T.R.G. a decision was taken to call 911 for police assistance. When the police arrived T.R.G. calmed immediately and they escorted him to the emergency room."

[79] The letter went to say:

We are concerned about the series and chronic nature of the parent/child relational dynamic. There are significant problems with emotional expression and regulation in both parenting figures who usually address pertinent parenting issues differently. Our own efforts to address this have not been sufficiently successful, leading us to believe the T.R.G.'s physical and psychological safety is compromised.

T.R.G. and his family have access to number of services at Mental Health Despite the number and extent of interventions, there is been little clinical progress.

It is our impression that T.R.G. is very isolated and does not have any meaningful peer relationships and spends the majority of his time with his grandmother and mother. It has been observed that T.R.G. is treated and behaves like a much younger child, (sitting on lapse, carrying a stuffed animal) which is discordant with his intellectual assessment. It would appear that he has been infantilized in his family. For example, despite being 14 years old, T.R.G. walks him to and from school every day; he does not go anywhere unless accompanied by R.R.G. or K.; T.R.G. speaks to him using "baby talk" and again he often has a stuffed animal in his possession. It is unclear if either caregiver has appropriate knowledge regarding adolescent developmental milestones or possesses the insight to acknowledge that they may need further information.

[80] When the workers visited him at R.R.G.'s home and met with her, M.R. and T.R.G. on March 25, 2014, they learned that T.R.G. had been suspended from school for the rest of the year due to his violent behaviours.

[81] When asked about her behaviour at Mental Health in January, R.R.G. demonstrated how she restrained T.R.G. by placing him on the floor on his back and straddling his legs while holding his arms. She told the worker she was

pleased that the workers at Mental Health and witnessed his behaviour as she been telling them how he reacted home and she didn't think they believed her. She said T.R.G. was followed up by a psychiatrist from Halifax who came to the home to consult and T.R.G. was prescribed medication.

[82] As a result of the history set out above and the most recent incident at Mental Health, the Agency was concerned about emotional harm to T.R.G. and sought a finding pursuant to s. 22 (2) (b), (f) and (g) of the Act. As noted by Ms. Wood in her affidavit:

Limited progress and changes been shown despite supportive services and offered over the years. T.R.G.'s serious disruptive and aggressive behaviours both in the home and in the public were reviewed along with his isolation from peers as he cannot function in a school setting and is therefore not receiving an education. Due to R.R.G.'s inability to provide T.R.G. with age-appropriate opportunities to promote independence and autonomy, T.R.G. is not reaching developmental and emotional milestones and is increasingly aggressive behaviours and R.R.G.'s inability to effectively manage these behaviours is a further concern to the agency.

[83] Ms. Wood says that on May 26, 2014, she and a colleague met with R.R.G., M.R. and T.R.G. and was told that T.R.G. was now attending school at the schoolboard office for two hours every Monday and Thursday. His behaviours had lessened since beginning medication but neither his mother nor his grandmother could tell the workers what medication he was taking.

[84] R.R.G. indicated her goal for the Agency's involvement was to get Mental Health to become re-involved with the family. Yet she resisted T.R.G.'s enrolment in the ACT program despite the advice of Mental Health to do so and she would only consider it as a last resort.

[85] R.R.G. told the workers that T.R.G. is not comfortable and panics in large groups, that they attend church three times per week and are involved with the family through Big Brothers Big Sisters, and that T.R.G. will attend a family camp with his mother in August.

[86] R.R.G. commented that everyone thought she babied T.R.G. too much and that T.R.G. carries a teddy bear or a giant stuffed penguin with him. She also commented that T.R.G.'s friends are younger than he is and describes him as only 10 or 11 years old developmentally.

- [87] In July, 2014 a Family Support Worker was assigned to the family with the goal to assist the family in encouraging T.R.G. to gain some independence in the community. R.R.G. agreed that she would no longer use physical restraints or discipline with T.R.G.
- [88] In August, 2014 R.R.G. was charged with causing damage to property after she was accused of breaking several windows. She denied doing so and instead told the worker that every five years she is set up by the police.
- [89] Family Support Services had made little progress after beginning with the family on August 19, 2014. This was attributed to R.R.G.'s resistance to this intervention which impacted T.R.G.'s willingness to be involved. It was Ms. Wood's view that R.R.G. did not recognize that some of T.R.G.'s behaviours are normal adolescent behaviours and she blamed the Agency. In a meeting on September 10, 2014, R.R.G. again blamed the agency for T.R.G.'s behaviours, complained about the various medical professionals by whom she had been assessed in the past, and refused to sign a consent to permit the worker to speak to Mental Health.
- [90] R.R.G. told the worker that she hangs out with young people of T.R.G.'s age and disclosed that she told these young people that she supported them in "going to it" with T.R.G. if he acted out around them. When asked about her giving permission to others to fight with T.R.G., R.R.G. replied that this would be a consequence for T.R.G. acting the way that he does and he needed to learn.
- [91] About a week later Ms. Woods met with R.R.G. regarding the decision to seek a supervision order. When they discussed a psychiatric assessment of R.R.G. and sought her input about an assessor that she could work with, R.R.G. stated "they were no good pieces of shit", she was not going to talk to someone she doesn't trust and she does not trust anyone. She stated that this was a waste of time and she had a life to live. She asked if the worker wanted her to die or leave and accused the Agency of making T.R.G. worse. She told the worker she was going to bring up T.R.G. the way she wants. She then went on to describe an incident where a friend, who was a police officer, had been coming to her home to visit T.R.G., then stopped attending so she went to his home at 2 a.m. and told him "mess with my kid and I'll kill you."
- [92] In her affidavit sworn November 26, 2014, Ms. Wood says that R.R.G. agreed to a psychiatric assessment by a particular psychiatrist and was advised it would require a referral through her family doctor. Unfortunately, as noted

later in the evidence, R.R.G. ultimately refused to participate in a psychiatric assessment despite being ordered to do so by this Court.

- [93] On September 30, 2014, T.R.G. informed Shane Ranahan, the Family Support Worker, that he had been suspended from school again and was attending an alternative school program as a result of a "minor flip out" in school.
- [94] Mr. Ranahan reported that R.R.G. continued to struggle with allowing T.R.G. to walk places without remaining in constant contact with his mother by walkie-talkie or walking with her to various locations. When discussed with her on October 7, 2015, R.R.G. became loud and animated with the worker. During her time in working with the Agency R.R.G. continued to be oppositional, describing to Ms. Wood on October 10, 2015, that she could not talk to her as she was on the opposite side.
- [95] T.R.G. continued to struggle in school. On October 22, 2014, T.R.G. experienced an incident at school that led to the police being called. He attempted to bite the officer and school staff. He was then transported to the Aberdeen Hospital for assessment and then transferred to the IWK for a further assessment. He was accompanied by his "Big Brother".
- [96] At that time, the primary concern for T.R.G. was his "suicide gesture" whereby he placed a plastic bag over his head with the intent of suffocating himself. T.R.G. eventually did admit to doing so with the intent of suffocation. He refused to share the feelings that led him to attempt suicide. He was admitted to the IWK for observation and diagnosis.
- [97] After this incident, R.R.G. apologized to Ms. Wood for refusing to speak to her, indicated she would like to complete the psychiatric assessment ordered for her and had no preference as to the assessor. She said she was open to attending groups that would be helpful and inquired about anger management groups for T.R.G.. Unfortunately, the evidence showed subsequently the R.R.G. was unwilling to engage in the assessment for herself.
- [98] T.R.G. remained at the IWK from October 22 to October 27, 2014, at which time he was released. Throughout that time and after his release, R.R.G. refused to sign a consent to allow the agency worker to obtain information from the IWK about T.R.G. He was referred at the request of R.R.G. to the ACT program.

[99] On October 29, 2014, Ms. Wood attended a meeting at the school board to discuss a potential suspension for the remainder of the school year for T.R.G. She spoke to T.R.G. who got off his chair and went and sat on his mother's lap. R.R.G. told Ms. Wood that she did not want T.R.G. to see a particular counsellor any further due to safety concerns.

[100] When T.R.G. and his mother were called in for the meeting at the school board, Ms. Wood was informed shortly after that R.R.G. did not want her to attend the meeting and did not want anyone from Mental Health speaking with her.

[101] Ms. Wood did speak to Patrick Callahan at Mental Health on October 30, 2014, regarding his concerns for T.R.G. The child told him that at home there is kicking, hitting with fists and pulling of hair between R.R.G., M.R. and himself. When options were discussed with T.R.G., he told Mr. Callahan he did not want to go home and did want to go to the hospital. R.R.G. was waiting for T.R.G. in the waiting room, yet T.R.G. told Mr. Callahan that he did not want his mother to accompany him to the hospital. His mother was informed and Mr. Callahan walked with T.R.G. to the hospital. After he arrived at the hospital with T.R.G., R.R.G. arrived and accused Mr. Callahan of endangering T.R.G. When it was time to transfer T.R.G. to the IWK he agreed to go, but did not want his mother or grandmother to accompany him. As noted earlier, his "Big Brother" accompanied him instead. R.R.G. sent along a note requesting the T.R.G. be seen by another therapist instead of Mr. Callahan.

[102] Mr. Callahan told Ms. Wood that Mental Health Services for the family were suspended at that time as R.R.G. posed a danger to the staff. He told her that should T.R.G. be taken into care, they would reassess their decision to suspend services.

[103] In early November M.R. told Ms. Wood that when R.R.G. is unable to parent T.R.G. she tells M.R. to go to her home and she takes over parenting him. She told Ms. Wood that T.R.G. was terrified of her and was afraid that he was going to be taken away from his mother.

[104] T.R.G. began school again on a limited basis in the fall of 2014.

[105] In early November 2014, Shane Ranahan and Kara Wood arrived for a scheduled visit at the home to meet with R.R.G., M. . and T.R.G.. R.R.G. informed them that Mr. Ranahan had to meet with T.R.G. in one room and Ms.

Wood could meet with her and M.R. in another. When Ms. Wood explained she would need to meet with T.R.G. as well, R.R.G. indicated that T.R.G. was terrified of her, he would not meet with her and he knew that she was going to take him from her. When asked how he would come to believe this, R.R.G. told her that she tells T.R.G. everything.

[106] When Ms. Wood said it was important she meet with T.R.G., R.R.G. went upstairs to get T.R.G. and returned to say he was terrified and he didn't want to talk to her. When she explained that she needed to serve T.R.G. with a Notice to Child that she had been attempting to serve him with since the commencement of the proceeding in September 2014, R.R.G. pointed her finger at Ms. Wood and said that she was being sneaky and she did not like this. She said she had further prepared T.R.G. for this and told him to get up and leave if Ms. Wood gave him anything. She told Ms. Wood that she cannot do this to T.R.G. and that he needs to be prepared or he may act out. She again refused to sign a consent to allow the agency to speak with Mental Health about her and T.R.G., indicating yet again that she needed to speak with her lawyer. She claimed she was seeing a Mental Health counsellor but refused to tell Ms. Wood who her counsellor was.

[107] On November 17, 2014, there was another incident involving T.R.G. When Ms. Wood and another worker arrived at the Aberdeen Hospital after the referral R.R.G. became upset when she saw them and the police had intervened to calm her down.

[108] When the worker spoke to Sgt. Scott of the New Glasgow Police Service he advised that he had responded in the home earlier that afternoon as a result of a report by R.R.G. that T.R.G. had attempted to choke his grandmother, his mother and himself with his hands. When they arrived, T.R.G. asked when he could go to the IWK and he wanted to leave immediately. Sgt. Scott was able to calm T.R.G. but when he returned to speak with R.R.G. and M.R., T.R.G. began to escalate again and he "blew up" and lunged at his mother and grandmother. T.R.G. then attempted to choke his mother on two occasions in the presence of Sgt. Scott. At that point, T.R.G. began to threaten to choke himself and harm himself and the decision was made to take him to the hospital.

[109] At the hospital R.R.G. was anxious about the agency workers being present and said that the Agency been trying to "take T.R.G." since he was a baby and that she "only had one year left" and they could not take him any longer.

- [110] When the workers met with T.R.G. he told them he tried to kill himself, his mother and grandmother and stated "I wanted to kill us all" but could not remember why. He told Ms. Wood that he liked Shane Ranahan but hated her because he was terrified of her and he could kill her.
- [111] When asked how his family members show that they are upset he told the workers that they grab, pull and hit. When asked who would do these things he said that he would do so mostly and that his mother would as well. He was asked to elaborate and he told the workers that his mother grabbed him on his wrists and lower legs, would do so when she was angry, upset and not in a good mood. He told them that his mother pulled his shirt and demonstrated by pulling the collar of his shirt. He told them his mother would "crack him on his butt" and also slap his mouth and his hands. This last happened a few days prior.
- [112] T.R.G. said he was excited to go to the ACT program and to get away from New Glasgow as he wanted a break. He told the workers that if he was returned home that evening he would probably try to strangle himself again. He wanted to go anywhere else but home.
- [113] By the time he arrived at the IWK that evening, T.R.G. was described as calm and cooperative. He told staff that he did feel suicidal and that he had attempted to hang himself with the phone cord in addition to trying to choke his mother and his grandmother with the cord.
- [114] That same evening both R.R.G. and M.R. contacted the IWK and told them of their frustration with the Agency's involvement and blamed the agency for T.R.G.'s current mental health concerns. R.R.G. is reported to have said that she wanted T.R.G. to attend therapy but not with Patrick Callahan because the agency speaks with him and she wanted this information to be between T.R.G. and his therapist only.
- [115] When Anna Galvin spoke with T.R.G. on November 17, 2015 about returning home that day he told her he did know what would happen, that he felt like he needed a break from home and was not sure if he would hurt himself if he went on that day and that he probably would hurt himself. When discussing T.R.G.'s disclosure of hitting, pulling, grabbing and arguing in the home he said that "if that stuff could stop, then I would say get me home".

[116] As a result of all of the circumstances, the Agency took T.R.G. into care on November 20, 2014. When Harvey Bate, acting as Agent of the Minister, met with R. R.G. to inform her of the decision to take T.R.G. into care, she was argumentative and emotionally escalated, saying there was no need for Agency involvement. She accused the agency of trying to take T.R.G. since he was born. She continued to escalate emotionally at which point Mr. Bate and the police officer accompanying him left the home.

[117] When Ms. Galvin met with T.R.G. to explain he was being taken into care, he was told that telephone calls with his mother would not be permitted for a while until both he and his mother were safe. He did not become too upset or angry when speaking with her. T.R.G.'s concern at that time was that he would not be able to speak to his mother and he was worried that his mother would call and scream at the nurses and be mad at him because he did not speak to her.

[118] On November 21, 2014, R.R.G. attended at the agency office to speak with Harvey Bate. He was not in and she was told this. She then replied that she wanted him in the office and she would not leave until she saw him. Eventually she met with another worker and told the worker that Mr. Bate had told her that she could have contact with T.R.G. When she contacted the hospital she was told she was not allowed to. Mr. Bate confirmed to that worker that he in fact informed R.R.G. that she would not be having contact with T.R.G. right away until he settled.

[119] The worker told R.R.G. this by telephone and R.R.G. told the worker that this better happen and it better change or she would be back at the office at 3:30 p.m. and if it was not changed there will be consequences. R.R.G. was told there was no point in coming to the office that day as Mr. Bate was away until Monday and she again said that the worker better change this and she would that be back at 3:30 p.m.

[120] Given her statement that there would be consequences, the worker contacted the police who advised they would speak with R.R.G. to advise that she not return to the office that day. Despite this, R.R.G. arrived to the Agency office at 3:30 p.m. with the police across the street. When she was advised that the Agency had not changed its position the police entered the building and she left and was heard screaming as she walked down the street.

[121] After T.R.G. came into the temporary care of the Minister, he was placed in a group home for approximately 10 days and then placed with a foster family

and initially did well with only few outbursts. Unfortunately, he continued to struggle in school. After an initial cooling off period, access began between T.R.G. and his mother and grandmother under supervision.

[122] Both R.R.G. and M.R. continued to participate in family skill sessions with the Family Support Worker and R.R.G. attended the group sessions through Addiction Services, a parenting group with the Women's Centre and individual counselling. She continued to refuse to participate in a psychiatric assessment.

[123] In early December, 2014 Shane Ranahan met with R.R.G. and M.R. for a family support session. R.R.G. refused to discuss anything with him, stating that she was working with her lawyer to build a legal case against the agency for taking T.R.G.. When Mr. Ranahan tried to discuss the reasons for T.R.G. being in care, R.R.G. emotionally escalated, became more animated and loud and blamed the agency for lying and being sneaky. She cut off her mother when she tried to speak and ended the conversation.

Shannon MacLeod

[124] Shannon MacLeod provided her evidence at the hearing and in two affidavits. She is the parent follow-up social worker who began working with this family in April 2015 after taking over from another worker, Kara Wood. She was responsible for ensuring services were provided, doing case planning for the family and assessing risk.

[125] Her evidence in direct examination was quite simple. She explained that the agency took the position that an order of permanent care was in T.R.G.'s best interests and that access with his mother or grandmother was not in his best interests.

[126] In her affidavit of April 29, 2015, Ms. MacLeod indicated that in December of 2014, T.R.G. began a transition to reintegrate into school. The principal reported that T.R.G. exhibited some concerning behaviours including curling into the fetal position when he was encouraged to buy lunch in the cafeteria and sit at the table to eat.

[127] He also exhibited concerning behaviours in the foster home including when he hit a three-year-old child in the stomach in mid-December of 2014. He then began cursing and swearing at the foster parent and banging his bedroom door

as loudly as he could for about half an hour before he calmed. He then lay on his bed in the fetal position and expressed remorse for his outburst.

[128] In March 2015 he again acted out of the foster home when playing with the foster parents' twin grandchildren. He threw a set of garden clippers at the head of the foster parents' grandchild, age 11, causing a cut and large bruise to the child's face. In another incident, he became angry and told one of the grandchildren that he was going to kill him. He was so enraged a grandchild went to get an adult to help.

[129] T.R.G. was also smearing his feces on the wall which he agreed he did in anger. This resulted in a recommendation that T.R.G. be fully supervised when interacting with any children, especially younger children.

[130] T.R.G.'s acting out continued. In April 2015 he lost control after being asked to complete chores. He kicked open the door, banged other doors and swore. When asked to go to his room to calm down he did so but continued to slam doors. He lashed out and swung at the foster father's head and it took approximately half an hour for T.R.G. to calm. The police were called and T.R.G. was referred to a restorative justice program.

[131] In mid-April of 2015 T.R.G. exposed his genitals to a four year old in the foster home. The police began an investigation. It was determined that the current foster placement could not adequately provide the supervision necessary to ensure the safety of the other children in the home. T.R.G. was moved.

[132] He was placed at the Reigh Allen Centre in a specialized unit with one-on-one staffing. He began receiving individualized in-group programming and was doing well and engaging in those programs. He began learning some independent living skills including cooking, light chores and peer interaction. The agency was seeking a further foster placement and his school reintegration was put on hold.

[133] Until his move to the Reigh Allen Centre, T.R.G. had supervised access with his mother and grandmother at the agency office. Access began again after his move. T.R.G. continued frequent telephone access with his mother and grandmother throughout.

[134] T.R.G. was placed at the Bridges group home in Pictou County in May 2015. By then he had been charged with sexual assault and indecent exposure as a result of the earlier incidents when in foster care.

[135] T.R.G. continued to exhibit difficult behaviour including leaving the Bridges facility without permission and going to his mother's home, threatening suicide, exhibiting sexualized behaviours, committing self-harm and threatening to harm others. Unfortunately, some of these actions resulted in additional criminal charges including uttering threats, assault and breach of an undertaking. He was remanded for a period of time during the month of June, 2015 to the Nova Scotia Youth Correctional Centre in Waterville.

[136] In early July T.R.G. was taken by the RCMP to the Aberdeen Hospital after he threatened suicide.

[137] Throughout this time supervised access with his mother and grandmother continued, as did frequent telephone contact with his mother and grandmother.

[138] Around this time T.R.G. began work with Carolyn Scott after a Needs Assessment was completed by Dr. Allister Webster. Their evidence is given elsewhere in this decision.

[139] In May 2015 a detailed chromosome study was completed on T.R.G. which determined that he carried a small chromosome deletion that is likely a significant contributor to his history of developmental delay and learning difficulties.

[140] A plan was created to gradually transition T.R.G. to high school in September 2015.

[141] In early June, R.R.G. was informed that the agency had applied on T.R.G.'s behalf for legal representation through Nova Scotia Legal Aid for the criminal charges facing him. R.R.G. said she was unaware of these charges and that she would be contacting Nova Scotia Legal Aid on T.R.G.'s behalf. She also told the worker she was not to speak with T.R.G., or his lawyer about the charges before she did and that she doesn't trust the agency. She again blamed the agency for all of T.R.G.'s issues, said the agency had lied to her since T.R.G. was taken into care, that T.R.G. hated all social workers, and that the agency was trying to put a wedge between her and her son.

[142] R.R.G. went on to indicate she could not attend some access as she had to attend court-ordered services in relation to a conditional sentence order she had received in early January 2015 arising out of convictions on ten mischief charges. She advised that she would be completing her house arrest in early July 2015. When asked about her court ordered services, she told the worker it was "not any of your business so drop it".

[143] In her affidavit of September 20, 2015, Ms. MacLeod related an incident in which R.R.G. met with workers at the agency office seeking a travel voucher. When she was told it was declined she asked to speak with their "boss". She was told she would need to wait for an appointment and when she was leaving she said she would continue to return to the office daily until she received a voucher. Later that day the office doors were locked at 4:30 as usual. R.R.G. attempted to come into the office after that time and when she couldn't enter, she remained in the parking lot for approximately half an hour. When the workers left for the day, one of them observed R.R.G. shaking her fist and giving them the finger as they drove away.

[144] In late August 2015 Harvey Bate met with R.R.G. to discuss which lawyer would represent T.R.G. in his upcoming criminal matters. R.R.G. arrived for the meeting with a police officer, indicating he was a support person for her, that the agency usually call the police on her anyway so she brought an officer with her.

[145] When informed that the agency had made the decision to retain Roseanne Skoke to represent T.R.G. and that they could not retain the lawyer representing T.R.G. as that would create a conflict, R.R.G. responded that if there was a conflict T.R.G. should be represented by a lawyer in Halifax. She went on to suggest that the agency had lawyers in their "back pocket" and that she also believed that the judge was in the agency's "back pocket"

[146] In cross-examination, Ms. MacLeod confirmed that the agency's position is that T.R.G.'s best interests will be met by permanent care order. She testified that the Minister's concerns centre around the mother's mental health, T.R.G.'s behaviour, his special needs and the concern that his mother did not have the ability to meet those needs. She went on to say that there were concerns regarding the mother's parenting and in particular her use of restraint and the various reports respecting her mental health.

- [147] When asked, Ms. MacLeod indicated she was not aware of R.R.G. being under psychiatric care or taking medication as she had refused any psychiatric assessment.
- [148] When asked about the serious criminal offenses T.R.G. been charged with since coming into care, Ms. MacLeod acknowledged them and indicated that T.R.G. was now accountable for his actions and was being supervised and therefore he had been charged.
- [149] Ms. MacLeod confirmed that she had interacted with T.R.G. approximately six times and had made notes detailing observations of him. He had never complained of abuse to her.
- [150] When asked why the agency was not supporting access if permanent care was granted, she explained that the access would not be a T.R.G.'s best interest because of his inappropriate interactions with his mother and the inappropriate boundaries with his mother. She agreed that she doesn't know if T.R.G. will cooperate with a plan that includes no access.
- [151] When asked in cross examination regarding concerns for M.R., Ms. MacLeod explained that to she and R.R.G. co-parented T.R.G. and she has the same concerns regarding boundaries for her. She agreed that there is no information regarding inappropriate behaviour by M.R..
- [152] When asked why there was no proposal for access for the grandmother if permanent care was granted, Ms. MacLeod explained that he would not be able to set up appropriate boundaries between T.R.G. and his grandmother and given the history of co-parenting she does not know how such boundaries could be set. She noted that T.R.G. had lived with his grandmother for many years. When it was suggested supervised access with the grandmother was an alternative, Ms. MacLeod replied that that would have to be assessed by the agency as to risk.
- [153] Under cross-examination by counsel for the Guardian, Ms. MacLeod described T.R.G. as having high needs, that he needs special services, and that he must cooperate with those services. She acknowledged guardian's position that T.R.G. will not cooperate with those services unless there is access.
- [154] Ms. MacLeod also acknowledged that T.R.G. could have contact without the consent of the agency as he had done when at the Bridges group home and

otherwise. She agreed that access under the supervision of the Minister was better than T.R.G. having access on his own.

Ann Marie Galvin

[155] Ann Marie Galvin provided evidence in the matter. She is the intake social worker with Department of Community Services and also acted as T.R.G.'s child in care social worker when another worker, Bonnie Dawson, was on maternity leave.

[156] During her time with T.R.G. she was responsible for his well-being while in care, including his medical needs, providing support for his emotional needs, and support within his foster family.

[157] In her affidavit of September 28, 2015, Ms. Galvin indicated that she began working with T.R.G. in her role as a child in care caseworker when he came into the care of the Minister on November 20, 2014, and continued in that role until the return of Ms. Dawson from maternity leave on May 27, 2015. After that time she had limited involvement with T.R.G..

[158] She confirmed, as set out in the affidavit of Karen Wood of November 26, 2014, that she became involved with T.R.G. again on November 17, 2014, after a referral was made on that date and she and another worker attended at the Aberdeen Hospital. When they arrived, R.R.G. was upset and had to be calmed. They spoke to Sgt. Kevin Scott of the New Glasgow Police who told them that he had responded to the family home earlier that afternoon after a report by R.R.G. that T.R.G. had attempted to choke his grandmother, his mother and himself.

[159] When the police arrived, T.R.G. asked when he could return to the IWK and that he wanted to go immediately. Sgt. Scott spoke to T.R.G. apart from the other adults and was able to calm him, but when he returned to speak with R.R.G. and M.R., T.R.G. began to escalate again and lunged at his mother and grandmother. He attempted to choke his mother on two occasions when the police were present. T.R.G. began to threaten to choke and harm himself and he was transported to a local hospital.

[160] R.R.G. expressed concern that the Agency had been trying to take T.R.G. since he was a baby and was anxious about the workers' involvement.

[161] When Ms. Galvin and the other worker met with T.R.G. he told them that he had tried to kill himself, his mother and grandmother and stated "I wanted to kill us all" but could not remember why. He indicated that he liked one worker, but hated another, Ms. Wood, because she terrified him and he could kill her.

[162] He described that he lives with his grandmother, M.R., and that his mother lives next door. His grandmother makes the rules and his mother makes the chores.

[163] When asked how the family show they were upset he stated that they grab, pull and hit. When asked who would do this, he replied that he would mostly and that his mother would as well. He went on to elaborate that his mother would grab him on his wrists and lower legs and would do so when she was angry, upset and not in a good mood. He indicated that his mother would pull on his shirt and he demonstrated by pulling on the collar of his shirt. He said that he and his mother would both hit and that his mother would crack him on his butt and slap his mouth and hands. He said that the last time this happened was a few days prior.

[164] T.R.G. said that he was excited to go to the IWK to get away from New Glasgow for a break and that if he was returned home that evening he would probably try to strangle himself again. He wanted to go anywhere else but home that evening.

[165] Ms. Galvin spoke with T.R.G. the next day by telephone and he repeated that he felt like he needed a break from home. He also stated he was not sure if he would hurt himself if he went home that day, but he felt he probably would hurt himself. When asked about his previous disclosures regarding hitting, pulling, grabbing and arguing in the home he said "if that stuff could stop, then I would say get me home".

[166] On April 21, 2015, Ms. Galvin has further involvement with T.R.G. when an emergency placement had to be found for him after his foster home placement broke down. The breakdown was as a result of a report that he exposed his genitals to younger children in the home.

[167] Ms. Galvin drove T.R.G. to the Reigh Allen Centre, a group home in Dartmouth, where he was to be placed. During the drive they discuss the allegations and T.R.G. acknowledged exposing himself as described.

[168] During the same drive, Ms. Galvin and T.R.G. discussed his long-term plan for placement. T.R.G. discussed with her that another child has been in foster care and had received increased numbers of, and longer lengths of visits, with the child's family before returning home. When asked if he wanted to increase his visits or have longer visits, T.R.G. told her that he did not.

[169] Ms. Galvin had further involvement with T.R.G. on July 3, 2015 when she attended at the Aberdeen Hospital in New Glasgow to meet with T.R.G. after he had made suicidal comments the day before. T.R.G. appeared happy to see her at the time.

[170] After some probing, she was able to elicit from T.R.G. that he had become upset and said he wanted to harm himself because he was having issues with staff at the group home telling him to do things and asking him to do things, and this made him angry. In conversation with Ms. Galvin and the mental health crisis worker, T.R.G. indicated that talking with his therapist was good for him, he found it helpful and was hoping it would continue. T.R.G. also admitted to being frustrated because he didn't have his glasses that day and then admitted he broke them on purpose.

[171] On August 25, 2015, Ms. Galvin spoke with T.R.G. by phone. T.R.G. said things were not going good for him that he wanted to talk about adoption. He asked her to tell another worker that he really, really wanted to be adopted. When asked what this meant to him, he expressed that it meant that he did not have to live at the Bridges group home anymore. T.R.G. then said that it would be a "really long time" before he could live with his mother again, but that he did not know if he could live at Bridges for another year. He said if he could not be adopted he would like to go back to the Reigh Allen Centre. He also expressed that he was worried about criminal court and his pending charges.

[172] T.R.G. did say that talking to his therapist, Carolyn Scott, and his *Guardian Ad Litem*, Mr. Reid, was helpful and that he was eager to start school in the fall.

[173] In cross-examination, Ms. Galvin confirmed that she had had many conversations with T.R.G., visiting him the standard once per month, receiving calls from him, and participating in some of his transportation. When asked whether T.R.G. had disclosed any abuse, Ms. Galvin confirmed there was confirmation of abuse during the initial contact at the Aberdeen Hospital, it was discussed in the IWK notes and included allegations of pushing, hair pulling and other abuse.

[174] When asked in cross examination about the reasons for the application, Ms. Galvin identified that there is continued risk to T.R.G. in his mother's or grandmother's care. She went on to say that the issues resulting in T.R.G. being placed in temporary care were not likely to resolve and thus, was an application for permanent care.

[175] Ms. Galvin confirmed that T.R.G. was experiencing behavioural problems in school and had been suspended. She confirmed that T.R.G. had been placed in foster care and attended high school in Antigonish, but that placement had broken down. He was transferred to the IWK in Halifax and then to the Bridges group home in New Glasgow. She confirmed again the T.R.G. told her that he likes school and wants to attend.

[176] It was suggested to Ms. Galvin that T.R.G.'s description of adoption was really his way of expressing that he wanted out of his placement at the Bridges group home, that he was unsettled and had uncertainty in his life. Ms. Galvin did support the Agency's position that they wish to pursue permanent placement and adoption for T.R.G. though she did not know the chances of adoption for him.

[177] Under cross-examination by counsel for the *Guardian Ad Litem*, Ms. Galvin confirmed the T.R.G. is a high needs child with challenges around his behaviours, his education, and his emotional regulation. She further confirmed the T.R.G.'s cooperation was important and if he did not cooperate, little could be done for him. She confirmed the Guardian's position that it was likely that would be no cooperation from T.R.G. if he did not receive any access with his mother or grandmother and further agreed that T.R.G. could contact either or both of them on his own regardless of the agency position.

Bonnie Dawson

[178] Bonnie Dawson provided evidence in this matter. She is the temporary care worker for T.R.G., beginning her work with him after returning from maternity leave on May 27, 2015. She provided evidence by way of affidavit and *viva voce* at the hearing as well as her case recordings entered by consent.

[179] In her affidavit sworn September 29, 2015, Ms. Dawson described her work with T.R.G.. She says she received an email from the Bridges home on June 21, 2015, describing problems with T.R.G.'s recent behaviour. This included on June 13, 2015, T.R.G. swearing, slamming things and cleaning out his room

to leave in what was viewed as an attention-seeking behaviour. T.R.G. attempted to take forks and knives and threatened suicide. He also made aggressive motions towards a peer and a staff member.

[180] In the same email, it was detailed that on June 14, 2015, T.R.G. put a knife to his throat and threatened to kill himself. He again packed his belongings and told others he was leaving. This was again seen as attention seeking behaviour and when ignored, the behaviour ceased.

[181] On June 16, 2015, T.R.G. was temporarily denied access to his allowance money and T.R.G. attempted to gain access to a program vehicle and punched the vehicle. On June 17, 2015, T.R.G. refused to participate in life skills programming, hid under the table and left the group.

[182] Ms. Dawson went on to say that on June 22, 2015, T.R.G. was arrested for assaulting another resident at Bridges and for breaching his condition to keep the peace. He was to remain in cells that night and appear in Court in Pictou the following day. Ms. Dawson attended at Court with T.R.G., R.R.G. and M.R. the next day and T.R.G. was released on a recognizance with a return date of July 15, 2015.

[183] Ms. Dawson describes that when at Court that morning and during a break, she was standing outside the courtroom and R.R.G. approached her, appearing agitated with her hand in a fist and raising her voice, blaming Ms. Dawson and the agency for T.R.G.'s legal problems. R.R.G. claimed that none of this would have happened if T.R.G. was with her and that the agency was destroying T.R.G., ruining his life and it was all the agency's fault. R.R.G. came into what Ms. Dawson describes as her personal space, was close to her face with a raised voice and told her it was all her fault. M.R. was present during that exchange and apologized for her daughter's behaviour.

[184] Ms. Dawson says that on the evening of July 2, 2015, T.R.G. made suicidal comments at Bridges and they took him to the Aberdeen Hospital for assessment. When contacted by another worker to inform her on July 3, 2015, of the previous night's incident, R.R.G. again blamed the agency for causing T.R.G.'s problems.

[185] Ms. Dawson also explains that T.R.G. took part in a Care Planning Meeting at Bridges. Among other things discussed, T.R.G. asked if Ms. Dawson had spoken to Ms. Galvin about his questions regarding adoption. T.R.G.

confirmed he did have questions and a meeting was arranged the following day to discuss these.

[186] The next day Ms. Dawson picked up T.R.G. and took him to lunch, he was in a good mood. She answered questions T.R.G. asked her about adoption and the court process and explained to him that the agency had put forward a plan for permanent care and custody and what that meant. T.R.G. told Ms. Dawson that he would like to be in permanent care and custody and move to a foster home.

[187] Ms. Dawson says T.R.G. also talked to her about getting a job at a fast food restaurant and working on his life skills programming at Bridges. She described him as age-appropriate and he did not exhibit any child-like behaviours as he had in the past. She was impressed with his insight regarding his own situation and the progress he had made in a few weeks.

[188] Ms. Dawson's affidavit and the case recording for July 8, 2015, refer to Ms. Dawson and another worker taking T.R.G. to Provincial Court in Antigonish for his first appearance on two criminal charges. When he arrived R.R.G. and her mother M.R. were present. T.R.G. ran to his mother and hugged her, sat in her lap, hugging and kissing her on the neck and R.R.G. hugging and kissing him back. When Ms. Dawson informed R.R.G. it was inappropriate for T.R.G. to be sitting on her lap, R.R.G. replied "you did this to him, he needs us". T.R.G. and his mother began whispering in each other's ears. After some time R.R.G. got up and gave T.R.G. her seat.

[189] R.R.G. then spoke with the Crown Attorney prior to the opening of Court. Ms. Dawson followed and heard R.R.G. request that she be provided with the disclosure material for T.R.G.. Ms. Dawson intervened and requested that he hold the disclosure until a lawyer could be secured for T.R.G.. R.R.G. became agitated and argued. The disclosure was withheld by the Crown Attorney who decided to keep the disclosure and provide to T.R.G.'s lawyer once appointed.

[190] R.R.G. told Ms. McLeod that she was going above her pay grade and that SHE would get a lawyer for T.R.G.. When Ms. Dawson explained that T.R.G. was in the Minister's care and it was part of the Minister's role to ensure he had legal counsel, R.R.G. said she would talk to Harvey Bate about this.

[191] When Court opened the judge requested that T.R.G. and his legal guardian come forward to the microphone. R.R.G. also proceeded to the microphone and

continued to interrupt Ms. Dawson and T.R.G. when being asked questions by the judge. The matter was ultimately put over until late August for T.R.G. to secure counsel.

[192] The case recording of August 5, 2015, notes that Ms. Dawson took T.R.G. to Provincial Court in Pictou for further criminal charges. Ms. Dawson confirmed to the Crown Attorney that lawyer Roseanne Skoke would be representing T.R.G. and informed her that Ms. Skoke had requested an adjournment due to being involved in another court matter on the same day.

[193] When Ms. Dawson met with T.R.G., his mother and grandmother, T.R.G. had his arms wrapped around his mother's waist, was holding onto the side of her body and kissing her neck and face. To Ms. Dawson, T.R.G. appeared very childlike and was acting in a juvenile manner and his voice changed to a child-like "baby voice". Attempts at discrete redirection failed.

[194] This interaction continued for some time with R.R.G. treating T.R.G. as a much younger child, encouraging him to continue the baby talk and they continued to hug and kiss each other. T.R.G. was told by Ms. Dawson and his mother to act appropriately in the court room and he seemed to settle.

[195] Prior to entering Court T.R.G. met with Doug Lloy, his lawyer, and after they entered the courtroom R.R.G. was asked by Doug Lloy if he was still acting for T.R.G. to which R.R.G. replied "yes". Mr. Lloy indicated that the Crown Attorney had told him that Roseanne Skoke was representing T.R.G. for matters in Antigonish. R.R.G. said that Ms. Skoke was not and that another lawyer, Pavel Boubenov, was representing T.R.G. on those matters. Ms. Dawson then informed Mr. Lloy that Ms. Skoke been retained to represent T.R.G. for the Antigonish matters. R. R.G. said that Ms. Dawson was wrong, that she had gone above herself and got approval to choose a different lawyer.

[196] During another break in Court, Ms. Skoke attempted to meet with T.R.G. as she was at the court for another matter. When she attempted introduce herself, R.R.G. told her she was not T.R.G.'s lawyer and that she was going to have Mr. Boubenov represent T.R.G.. Ms. Dawson then informed R.R.G. that Mr. Boubenov would be in conflict to represent T.R.G.. Ms. Skoke asked Ms. Dawson to meet privately, but she was unable to as she could not leave T.R.G., his mother and grandmother unsupervised. They did speak in the hallway with R.R.G. present and the courtroom door open to allow Ms. Dawson to see T.R.G. and his grandmother.

[197] R.R.G. accused Ms. Dawson of upsetting T.R.G., that she was acting above her pay grade and that R.R.G. was given authorization by Harvey Bate to get a lawyer for T.R.G.. Ms. Dawson confirmed that Mr. Bate had not done this and R.R.G. again claimed he had. After some back and forth, with R.R.G. continually maintaining she would choose the lawyer for T.R.G., Ms. Skoke explained that the agency is the legal guardian for T.R.G. and it was her understanding she would be representing him. R.R.G. claimed that Ms. Dawson had upset T.R.G. with all of this and she did not speak to her further.

[198] In the case recording for September 16, 2015, Ms. Dawson reports that she again took T.R.G. to Provincial Court in Antigonish respecting the indecent exposure and sexual assault charges. T.R.G. was initially anxious about attending court and went to his room and closed the door but Ms. Dawson was able to persuade him to join her.

[199] When they arrived Court R.R.G. and her mother were present. T.R.G. again went to his mother and sat on her lap. T.R.G. refused a chair when offered. T.R.G. and his mother were affectionate, hugging and kissing each other and whispering. When warned about whispering, they did stop.

[200] The Crown Attorney spoke with Ms. Dawson and informed her that R.R.G. had attended at his office that morning and told him that T.R.G. was not comfortable with his lawyer. The Crown Attorney asked T.R.G. this, and T.R.G. looked at his mother and told the Crown Attorney that he was not comfortable with his lawyer. Ms. Dawson told the Crown that T.R.G. had not informed her of this. R.R.G. intervened and stated T.R.G. was not comfortable talking to Ms. Dawson. The Crown Attorney suggested we meet with T.R.G.'s lawyer prior to Court to discuss this further.

[201] When asked why T.R.G. hadn't told her about this prior to attendance at Court, T.R.G. told Ms. Dawson he planned to tell her. R.R.G. again said T.R.G. was not comfortable speaking with her and was intimidated by her. T.R.G. was leaning his head on his mother's shoulder and she was rubbing his back, telling him it was all okay.

[202] When Ms. Skoke arrived, they all left the courtroom and met privately with her. Ms. Dawson explained what had happened. Ms. Skoke explained to T.R.G. her role, that she had tried to include his mother's lawyer by contacting him, and that she would still like to represent T.R.G., but that if he didn't want

her to represent him, she would not do so now or in the future. T.R.G. decided to dismiss Ms. Skoke.

[203] When Court resumed, Ms. Skoke informed the Judge that she believed that she could not act due to the interference of R.R.G. and this was confirmed by the Crown Attorney as well. In the course of addressing the Court, the Crown Attorney stated that T.R.G. was in the temporary care and custody of the Minister and as such, the Minister is the legal guardian of T.R.G.. He noted that the issues with the delays in the matter had been in part due to the interference of R.R.G. and suggested that the social worker assist T.R.G. in securing a lawyer.

Cathy Cashen

[204] Cathy Cashen, the adoption social worker with the Agency, provided her evidence by way of affidavit sworn September 28, 2015, and *viva voce* evidence at the hearing. She described her work as an adoption social worker over the last three years in locating appropriate adoptive homes for children placed in the permanent care and custody of the Minister.

[205] She amended her affidavit at the hearing to confirm that as of October 6, 2015, there were 143 prospective adoptive families available in Nova Scotia. While she could not indicate that T.R.G. could be matched with the prospective adoptive family until he was legally available for adoption, based on his characteristics, as of the October 6, 2015, there were no potential adoptive families for T.R.G. in the Agency's database.

[206] Her affidavit goes on to describe the transition services available for children adopted through the Agency. She also noted in her *viva voce* evidence that there were no adoptions which included third party access.

[207] In cross-examination she did agree that given T.R.G.'s age and characteristics, the odds of adoption were fairly low for him though she did offer that "anything is possible".

Dr. Allister Webster

[208] Dr. Allister Webster testified. He had conducted a Child Needs Assessment of T.R.G.. He was qualified as an expert in clinical psychology with a particular expertise in trauma needs assessments of adolescences and was

qualified to give opinion evidence in those areas. His Assessment Report was tendered in the hearing by consent.

[209] In his direct examination, Dr. Webster confirmed that he had met with T.R.G. on two occasions for two to three hours each time. He had also reviewed the materials provided to him by the Minister and conducted psychometric testing on T.R.G. as detailed in his report.

[210] Dr. Webster testified that when he interviewed T.R.G. about his home life, T.R.G. described it is perfect, that everybody got along, and that was no need for any discipline. When challenged on this based on the materials provided to Dr. Webster indicating a long period of conflict and behavioral issues within the home, T.R.G. indicated he did not want to discuss things. He seemed to feel safer saying nothing. He did, however, confirm that he was largely under the care of his maternal grandmother, M.R..

[211] When asked about the *Guardian Ad Litem* report and in particular the Guardian's comment that T.R.G. doesn't appreciate the short or long-term consequences of his behaviors, Dr. Webster disagreed. He felt that T.R.G. did understand the consequences as demonstrated by his sudden improvement in behavior when he interacted with police authorities and in other circumstances.

[212] As an example of this, Dr. Webster points to the collapse of the foster placement. He describes the T.R.G. brought his coping strategies to bear after getting the lay of the land in the home and the result was the collapse, which occurred.

[213] When asked about the possibility of that T.R.G. may suffer from autism, Dr. Webster said the focus needs to be on his needs, but that there were not a lot of early indicators of autism.

[214] Dr. Webster testified that T.R.G.'s wish was to be 18 and make his own decisions. T.R.G. also informed him that he did not want to return to the care of his mother or his maternal grandmother.

[215] Dr. Webster was very clear that he was not prepared to make a diagnosis of T.R.G.'s mental health circumstance, maintaining the T.R.G. needs a period of stability before any diagnostic work was undertaken. He felt the T.R.G. would need at least a year of stability for him to settle to ensure that his needs were met and for any diagnosis would be helpful. He also would want T.R.G. to be

stable for a period of time before discussing any of the traumas he has experienced in his life.

[216] Dr. Webster also testified that it was his opinion that T.R.G. should not be returned to the care of his mother or maternal grandmother, because that is where he experienced trauma in his life, and it would not be in his best interests to place him back in that environment particularly if there is no change to that environment. Dr. Webster could not conclude that the mother or maternal grandmother could meet T.R.G.'s needs and questioned what they had worked on to change their own circumstances such that they could meet his needs.

[217] Dr. Webster confirmed that his knowledge of any trauma in T.R.G.'s life was based on the materials provided to him by the Minister and the fact that T.R.G. did not deny the allegations of physical abuse when described to him by Dr. Webster. That said, Dr. Webster never asked T.R.G. directly about any abuse he may have suffered and confirmed that it was, not to talk but abuse and these circumstances.

[218] In his report Dr. Webster provides the following view:

Diagnostically, there were a variety of opinions offered by the mental health professionals who had engaged with T.R.G. over the years. What appeared clearly and consistently throughout the collateral data was the T.R.G. has generally and pervasively struggle to manage in an adaptive manner. He has posed a threat to himself and to others on numerous occasions. It seemed that his engagement in aggressive and violent behaviors occurred particularly when he felt thwarted/frustrated, when he was emotionally disregulated and distressed, and when he felt threatened by the actions of others. It is opined that T.R.G.'s experience of trauma and his inability to adaptively manage the psychological fallout from his reactions to trauma have significantly impaired his approach to life and his engagement in interpersonal interactions and relationships.

It would seem prudent to set efforts for diagnostic clarification off to the side for the immediate future. Given the levels of distress and dysfunction that have underpinned this youth's life, efforts might be better directed at this time towards the development of an adaptive, supportive, and enriched environment for T.R.G.. At present, I believe the efforts for diagnostic clarity will remain thwarted given the unstable circumstances that encircled this young man for several years now. Once a positive and stable environment has been in place for a minimum one year, and T.R.G. has been given opportunity to profit from that environment, efforts for diagnostic clarity might be refocused. It is also possible that after having been immersed in an enriched and stable environment, T.R.G.'s

maladaptive approach to life might be altered to the point that further interventions will become less necessary.

[219] Dr. Webster went on in his report to describe his opinion respecting T.R.G.'s current needs as set out below:

In terms of T.R.G.'s current specific needs, the following considerations appeared to be most salient:

T.R.G. appeared to present with a minimal level of insight. He also appeared to have adopted a hopeless perspective. T.R.G. presented with little expectation for future happiness. He seems resigned to a life of loneliness and vulnerability.

T.R.G.'s early experiences were chaotic. He participated in the world where boundaries seem to constantly shift. It is possible that his view of his future is one in which instability is the only constant that he could anticipate.

T.R.G.'s experience of emotional, physical and sexual abuse might have entrenched his sense of vulnerability. Within his worldview, it is possible that he considers his emotional and physical safety to rest at the mercy of others who are more powerful in his environment. This might partially serve to explain his engagement with younger and smaller children. He might simply consider such environments as less threatening.

T.R.G. is capable of accessing appropriate behavior when he chooses. Collateral information regarding his recent admission at the IWK in the early portion of the stay within his foster placement provides evidence of this.

T.R.G. demonstrated a tendency toward behavioral recklessness, impulsivity, and emotional reactivity. He appears to struggle to manage his emotions adaptively. He appears willing to engage in the use of violence both instrumentally and reactively.

[220] With respect to recommendations, Dr. Webster comments:

T.R.G. is a young person in the midst of his adolescence and he is struggling significantly. T.R.G.'s history reflected a chaotic and unhealthy trajectory. His needs include the development of a healthy sense of identity, personal autonomy, adaptive coping strategies, supportive attachments, and a healthy connection to the community through friendships and engagement in recreational activities. At the time of this assessment, it appears that T.R.G. will require considerable ongoing support if he is to secure a foothold on any road towards a positive future.

[221] Dr. Webster then goes on to offer recommendations which include engagement with the therapist trained in dialectical behavioral therapy (DBT) as well as identifying his need for a structured home environment with healthy interactions, routines and predictability regarding safety. Dr. Webster further recommended that T.R.G. needs a formal education if he is to achieve any level of self-sufficiency and autonomy. He recommended this most strongly and indicated a specialized education program would have to take into account T.R.G. circumstances and capacities. He further recommended engagement in an adolescent focused group therapy, participation in recreational pursuits, engagement with a program such as Big Brothers and if that was to be family reunification, family therapy as a cornerstone of any reintegration plan was recommended along with in-home support.

[222] In direct examination, Dr. Webster explained that people's responses to trauma will differ. Some will develop chronic or acute trauma symptoms. Any person's reaction to repeated trauma is cumulative and affects the person's ability to resist the impact of the trauma.

[223] Dr. Webster did not support the view that T.R.G. was behaving as a 10 year old child. Instead he provided his view that base in the collateral date T.R.G. can respond in different ways depending on the environment. For example, in one visit to the IWK he behaved well and in another he struggled. He testified that T.R.G. can adapt based on how he adapts to an environment by "scoping out" that environment to determine how to behave to have his needs met. He might behave in child-like manner if he feels threatened and in other environments he may behave well if he perceives no threat.

[224] When asked to review the discharge summary from 2005 for R.R.G., Dr. Webster described the diagnosis of personality disorder (not otherwise specified) to mean that she was found to have many traits of a personality disorder but the requirements of a specific diagnosis had not been met. He went on to explain that the diagnosis of borderline and antisocial personality disorder traits indicated that she exhibited some of the traits but not enough to allow a diagnosis.

[225] When cross-examined on this, Dr. Webster agreed that someone with such traits can parent so long as the traits do not impair parenting to the point of being harmful. The best way to be sure would be to conduct an assessment.

[226] In direct examination, he went on to testify that in one theory, BPD and ASPD develop through a psychosocial disorder and there is some hard wiring or biological basis which can be mitigated by a strong, supportive, nurturing environment which can move that person towards a very successful social life. On the other hand, if encouraged by the environment to act out it can bring out that misbehavior. In essence, he made clear that a caregiver who was not appropriately supportive could cause that antisocial or borderline behavior to rise to the forefront.

[227] When asked to review the notes which described the use by the mother of physical restraint of T.R.G. in the presence of the Agency workers, Dr. Webster reflected on his many years of work within the penitentiary system and expressed his view that the use of restraints is an incredibly traumatizing experience.

[228] When asked to review the notes of the Agency workers describing the behavior of T.R.G. as infantilized by his family, he expressed his view that a child entering a room will scope out the environment to determine what will keep him safe. He will adapt his behavior based on what will meet that need. An adolescent who behaves in this way is saying to himself “what will meet my needs here, my level of safety?” and will adopt that behavior.

[229] Dr. Webster emphasized that T.R.G. is looking to be safe in his environment and this is why he is so adamant that he wants to be 18 so he can make his own decisions. He concluded that based on his review of the materials and T.R.G.’s presentation, that the home environment was a turbulent and unsafe environment for T.R.G..

[230] Dr. Webster testified that T.R.G.’s home environment has impacted his development in that T.R.G.’s ability to find safety, friendship, fun or anything a normal adolescent would want, was very challenging for him. In any situation where he felt vulnerable or threatened he would react in unhealthy ways. For T.R.G. to be successful, he needs to learn entirely new skill sets.

[231] Though he had not assessed the mother or grandmother, he did opine that if T.R.G. were returned to the home again, T.R.G. would struggle as he moves forward. He has the ability to learn better behaviors and tools, but to place him in an environment which is turbulent and which would or might expose him to physical or sexual abuse would be to thwart that development. The time for him to learn the behaviors and skills is from now until he turns 18.

[232] When cross-examined, Dr. Webster confirmed that there had been a change in T.R.G.'s demeanour in the form of an increase in confidence which indicated some progress.

[233] When asked about a timeline for T.R.G., Dr. Webster explained that he has complex needs and would need years of long-term therapy. He explained that trauma underpins the circumstances. T.R.G.'s entire world was in chaos and unsettled and he developed dysfunctional behaviors and coping with life.

[234] T.R.G. described to Dr. Webster that he was mainly taken care of by his grandmother and his mother was in his life and did play a role in his life. T.R.G. denied any abuse at the hands of his mother or grandmother. He did not want to return home and that was why he was so adamant that he wants to turn 18. While he did indicate that he did not feel safe at home, he did not elaborate as to why.

[235] Despite T.R.G.'s view of a perfect life at home, Dr. Webster identified many traumas involving physical (including the use of restraint) and sexual abuses which he identified in the information provided by the Minister.

[236] When asked about possible psychological diagnoses of T.R.G., he said they could be trauma related. He agreed that being taken into care would be a trauma but T.R.G. later indicated that he did not want to go home. He noted that trauma is cumulative and by taking one and suggesting it is the one that caused all problems would not be helpful.

[237] Dr. Webster confirmed he did discuss the foster placement with T.R.G. and no concerns were expressed by T.R.G.. He described things as going pretty well. He describe that they treated him well and he, therefore, treated them well.

[238] In cross examination Dr. Webster was asked about T.R.G.'s hopelessness. He noted T.R.G.'s attempt on his own life as a sign of that hopelessness. When asked about T.R.G.'s time at IWK, Bridges group home, jail, foster home, and at the Reigh Allen Centre and the impact those experiences would have on T.R.G., Dr. Webster opined that it would depend on how T.R.G. experiences those circumstances. If he is moving thought these experiences and not getting his needs met, it would not be helping him.

[239] When asked about DBT, he confirmed that Dr. Scott can provide this, but so can two recently trained employees of the local mental health authority.

[240] Dr. Webster repeated his view that if T.R.G. did not have his needs met his life trajectory is not positive. He is capable of learning if he applies himself and if he does so, he will be okay. When he's not stressed, he can scope out the environment and move forward, but he has to step up to do the work required. This is the critical time up to when he is 18. It is critical that he be placed in a safe, secure environment.

[241] In discussing his conclusion that T.R.G.'s home environment was chaotic, he confirmed this was based on the information provided by the Agency, but it was not just the reports of the Agency workers. It included reports from therapists, the IWK, police, as well as T.R.G.'s own report of his sense of being unsafe at home. It is T.R.G.'s belief of being unsafe that matters, as his perception is the key. Thus, if he was returned to an environment where he feel unsafe, it would not improve T.R.G.'s circumstance and without improvement his trajectory is not good. DBT is critical and safe placement is critical.

Carolyn Scott

[242] Carolyn Scott provided evidence in this matter. She is a clinical psychologist who is currently T.R.G.'s therapist. She was qualified as an expert in clinical psychology with a particular expertise in assessment therapy for adolescents and is qualified to provide DBT.

[243] Her two reports respecting T.R.G. were introduced in evidence. The first was dated June 29, 2015. In that report, she describes the background material she had reviewed and the reasons for T.R.G. seeing her for therapy. She confirmed as of that date, she had seen him on five occasions. She employs DBT in working with T.R.G.. In her *viva voce* evidence she described DBT as an integration of cognitive behavioral therapy and mindfulness practice and is designed to be very skills-based including modules of distress tolerance, mindfulness, emotion regulation and interpersonal effectiveness.

[244] In part she describes her interaction with him as follows:

He is since been quite open and expressive regarding recent and current experiences and challenges; however, he has been reluctant to date to discuss the issues with his family that resulted with him being taken into care of the Agency.

...

T.R.G. has identified maladaptive coping strategies he has typically used in the past when dis-regulated such as threatening to harm himself or others, sleeping too much, not eating enough or eating too much, excessive playing of video games, throwing things and being violent.

[245] In her summary and recommendations in that report Ms. Scott comments :

T.R.G. has been actively engaged in therapy sessions. He seems to have good insight into his difficulties; however, he will likely require long-term therapy to address the significant emotional dysregulation that underlies his behavior.

T.R.G.'s situation is complex in that there are long-term environmental and developmental factors that have significantly impacted his emotional and behavioral experiences and this is complicated further by an identified medical condition.

Nonetheless, T.R.G. is intelligent (likely his intelligent level is higher than assessed as noted by Dr. Webster) and hopefully, he will understand that his medical condition has likely significantly contributed to his difficulties.

[246] In her second report dated August 27, 2015 Ms. Scott confirms that the DBT work continues with T.R.G.. Since the last report she had eight scheduled therapy sessions with him.

[247] In this report she notes in part:

It seems evident that T.R.G. has difficulty to initiate discussions regarding his family; however, he is responsive as long as questions are not overly personal or inquisitive.... He has agreed that he has likely learned to respond impulsively and in anger from his home environment, however he also understands that he is additional challenges such as medical conditions that impact his ability to cope well at times.

[248] In her summary and recommendations, Ms. Scott comments :

As noted previously, therapy will likely need to be long-term for T.R.G. to assist him with managing emotional states effectively on a regular basis and to acquire and practice improved interpersonal skills.

[249] In direct examination, Ms. Scott identified her goals for T.R.G. in therapy as helping him develop adequate coping skills in terms of dealing with emotional

regulation and interpersonal skills and to assist him being more effective in his day to day functioning.

[250] She reviewed her progress to date as reflected in the reports and since the date of the last report. Generally T.R.G. was doing well but was not a very forthcoming respecting his home life. There had been some interruptions in the therapy process arising from some behavioral incidents outside of therapy in June and at the end of September.

[251] Ms. Scott provided her view that once levels of stress or distress in T.R.G.'s life increased, he probably reverted to coping strategies which were unhelpful and unhealthy. The triggers included any time he experienced a lot of pressure, such as having to do more than one thing at a time as well as the on-going legal proceedings. Another trigger is his experience of any conflict among people around him, whether he is directly involved or not, as well as internal triggers which were not yet identified or dealt with by Ms. Scott with him.

[252] Ms. Scott confirmed that T.R.G. did not want to talk about his home life and did not talk a lot about his experience of access with this family. When asked why this would be so, Ms. Scott referred to her review of the documentation provided by the Minister and identified a history of trauma in the home and its impact on his current functioning and reactions. She was clear that in her view T.R.G. had experienced a lot of trauma in his life.

[253] When Ms. Scott asked T.R.G. about his wishes, he initially indicated that he wanted to stay at the Bridges group home, but on another occasion he became dysregulated, expressing his view that he didn't want to live there or anywhere, and didn't care if he lived or died. He did not suggest wanting to live with his mother or his grandmother and it was Ms. Scott's impression that he didn't want to live with either. They did not discuss adoption to any extent.

[254] Ms. Scott identified that T.R.G.'s needs are for consistency, predictability and stability in his life. He needs a stable living arrangement and consistency of the people in his life. Over the previous few weeks of therapy she had seen the difference in T.R.G. in that he looked better and he had a more positive attitude regarding his experiences in the group home.

[255] Ms. Scott sees T.R.G. as a victim of trauma and as having suffered abuse at the hands of a sitter, the use of physical restraints and other situations at home,

and that his acting out in the presence of police officers is him re-enacting his trauma experience.

[256] When asked about diagnoses, Ms. Scott indicated that she observed symptoms and traits of complex post-traumatic stress disorder (PTSD) in T.R.G. but was not yet ready to provide a diagnosis. Complex PTSD is characterized by chronic trauma or abuse, hyper-vigilance, avoidance of reminders of the trauma, hyper-arousal and re-experiencing the trauma through intrusive thoughts or nightmares. She has observed these symptoms with T.R.G..

[257] Ms. Scott indicated that T.R.G. exhibited personality traits of Asperger's syndrome in that he had difficulty reading social cues and potentially was exhibiting some traits of borderline personality disorder and anti-social personality disorder.

[258] Ms. Scott described that T.R.G. would find any change very difficult. He needs predictability and stability and any changes in his life, including his living arrangements, would be disruptive. She also described his need to form healthy attachments with people who were able to cope with his issues and challenges. She also believed that he needed consistency with respect to his therapist and that he was responding well to the DBT approach.

[259] She provided her view that T.R.G. needs to learn to self-regulate, has shown an ability to do so, and that he can learn to do so better. But if too much is thrown at him at once he can become dysregulated.

[260] When asked about T.R.G.'s home life and its impact on T.R.G., she provided her view that based on the information indicating his mother's issues, he would learn some behaviors and the restraints used would be traumatizing. The use of fists and hair pulling would be difficult for him and the sexual abuse in 2011 would be traumatic.

[261] Respecting the infant behavior with his mother, she did not observe this but indicated that at his age, an adolescent, he should be treated in an age-appropriate way and the description of knee sitting and kissing is more typical for a younger child. Such behavior would likely keep T.R.G. emotionally and psychologically quite young and challenge his development.

[262] She testified that for a trauma survivor such a T.R.G., returning him to his home environment would be very difficult for him as the trauma occurred there.

[263] She did confirm in cross examination that she never asked about, nor did T.R.G. complain of, abuse at the hands of the mother or grandmother. Her insight into his home environment was based on the Minister's materials combined with her own observations and symptoms of T.R.G., which remind her of a trauma survivor. She did agree that the apprehension itself could be a trauma for T.R.G..

[264] When asked if T.R.G.'s difficulties with the justice system began after apprehension, Ms. Scott noted her view that the behavior which caused his legal difficulties seemed to be similar to those described in school and at home prior to apprehension.

[265] She explained that she had not gone deeper into the trauma experienced as her practice is to teach coping skills before exploring the trauma, or it could lead to the patient re-experiencing the trauma.

[266] She expressed her view that if the home environment is where he experienced trauma, such as restraints and abuse, then to return him to that environment might have him re-experience that trauma and that person will quickly dysregulate, especially if there has been no change to that environment.

[267] She could not conclude that the mother and grandmother cannot meet his needs as she does not have the information required to do so. But, she was clear that T.R.G. is a very vulnerable and fragile individual and it is common for adolescents to avoid talking about trauma in their lives. Ms. Scott opined that T.R.G. would need 12 to 18 months of therapy at least. He is a complex young man with significant needs. She was also very clear that if T.R.G. is placed back in a home environment where he doesn't feel safe, it would have a significant negative impact on his therapy and recovery. If that environment included people who could not model appropriate behaviors, it is likely T.R.G. would regress to his maladaptive behaviors. Without a home environment that is safe and supportive of T.R.G., his chances for improvement are poor.

[268] Respecting adoption, Ms. Scott felt that if that were to occur, it should be gradual and T.R.G. might feel great about that possibility. Respecting access with his mother and grandmother, T.R.G. avoided this issue, but he is of an age that if he wants access, he will find a way. If T.R.G. wants access it should be

in a neutral environment and it should be left to T.R.G., if he is clear about it, with someone he can trust and can handle the access.

Jeffery Reid

[269] Jeffrey Reid, the *Guardian Ad Litem* for T.R.G., provided testimony in this matter. Mr. Reid was appointed as Guardian in March 2015. He filed five reports as part of his evidence. Those reports are dated May 14, July 14, August 31, October 9 of 2015, and January 8, 2016. He also provided his *viva voce* evidence at the hearing.

[270] It was clear from the reports that it was slow going in developing a rapport between Mr. Reid and T.R.G. in the early months of their relationship. But it is also clear that a rapport did develop and T.R.G. began to speak more openly with Mr. Reid towards the end of May 2015. For example, when T.R.G. was arrested on June 22, 2015, Mr. Reid received a call from the RCMP detachment informing him that T.R.G. was in custody and that T.R.G. had requested that they called Mr. Reid to inform him of this. Mr. Reid attended at the RCMP detachment to see T.R.G. and they did speak at some length.

[271] From the various reports, I note the following concerns and summaries provided by Mr. Reid:

July 14, 2015- I am deeply concerned about T.R.G.'s education. He has lost a great deal of time this year, and I believe that the longer he is out of school, the harder it will be for him to reintegrate into a community school. I am also concerned about his ability to function within a school setting without appropriate supports. It is my worry that without supports and appropriate supervision, T.R.G.'s recent behaviors may surface at school, creating conflict with peers and staff, creating a risk of suspension and expulsion.

I am also very concerned about T.R.G.'s continued involvement with the police and the youth criminal court. I believe that T.R.G. does not understand the potential negative outcomes of his actions, or appreciate the severity of his actions on his future in either the short or long-term.

August 31, 2015-I remain deeply concerned about T.R.G.'s education. After missing a significant period of time, returning to school will likely present serious challenges to T.R.G.. T.R.G. has not said much to me about school, but I notice a change in tone and mood from him when I raise this topic, leading me to believe he is anxious about his return to school. I continue to worry that without in-school supports an appropriate supervision, T.R.G.'s acting out behaviors may surface at

school, leading to conflict with peers and staff, creating a risk of suspension and expulsion.

My concerns about T.R.G.'s continued involvement with the police and the youth criminal court remain... When I probe, T.R.G. answers with one-word responses, avoiding any in-depth discussion about his experiences. In our conversations, T.R.G. has struggled with seeing his responsibility and how his actions towards other people are creating these problems for him. I believe that T.R.G. does not understand the potential negative outcomes of his actions, or appreciate the severity of his actions on his future in either the short or long-term.

[272] Mr. Reid goes on to recommend supports for T.R.G.'s education including in school support and assistance, that he received regular mental health counselling and support including a trauma informed approach on a daily basis and that he be considered for placement in a residential treatment program which would likely reduce the need for police involvement and resulting criminal charges.

[273] In his October 9, 2015, report, Mr. Reid repeated his concerns regarding T.R.G.'s education. He noted that he was attending school for two classes per week, but felt that he was still losing valuable time which would affect his functioning at a later point in his life. He was also concerned that without in-school supports and appropriate supervision, his behaviors may surface at school leading to conflict with peers and staff and creating risk of suspension, expulsion and additional criminal charges.

[274] He repeated his concern about continued involvement with the police and the youth criminal justice system, as he notes:

In our conversations, T.R.G. struggles with seeing his responsibility and how his actions towards other people are creating these problems for him. From our conversations, I believe that T.R.G. has an understanding of right and wrong, but in the moment does not understand how his actions or increasing the likelihood of more severe consequences to himself and others.

[275] Respecting the proposal a permanent care, Mr. Reid says the following:

Following my discussions with T.R.G., and after reviewing all information available to me, I am supportive of the permanent care application. However, I am concerned with the application for adoption with no access. Based on what T.R.G. has told me, I believe that he doesn't like feeling that he has to make some decisions that would lead to his mother being angry or upset. I also believe that

T.R.G.'s views change depending upon who he is having discussions with what his current circumstances are. It is my opinion that removing access will set T.R.G. and the adoptive placement up to fail. In our conversations, T.R.G. is telling me that he would go home if given the chance. From that, it is my belief that T.R.G. would not cooperate with a plan that would not permit him to have access with his mother or grandmother. I must also voice my concern about the potential impact on the family that would adopt T.R.G.. The supervision requirements necessitated by the risk T.R.G. presents younger children and the aggressive behaviors he has the ability to demonstrate leave me with serious concerns about the ability of the family to manage T.R.G..

[276] In his January 8, 2016, report, Mr. Reid again repeats his concerns regarding T.R.G.'s education. He confirms his view that permanent care is appropriate but does not agree with the Minister's position that there should be no access.

[277] In his *viva voce* evidence, Mr. Reid confirmed that he had spoken to the supervisor at Waterville where T.R.G. was a resident at the IWK secure care unit. He was informed by the supervisor that T.R.G. was doing better and more social.

[278] Mr. Reid repeated his support for permanent care, but his position remained that access should be permitted with both T.R.G.'s mother and grandmother. He informed the court that T.R.G.'s view is that he wishes to both go home and to stay in care.

[279] It was Mr. Reid's opinion that it is not in T.R.G.'s best interests that he be returned to his mother's or grandmother's care and that intensive mental health assistance and treatment will be required for T.R.G. over a long period of time.

[280] Respecting access, he supports it with both the mother and the grandmother, but believes it should be supervised. If this was denied, T.R.G. would likely seek out access on his own and elope from wherever he was residing which would likely lead to him to being in more trouble. Put succinctly, Mr. Reid felt that even though this might be less than ideal, it should still go ahead and is consistent with T.R.G.'s best interests.

[281] In cross-examination, Mr. Reid confirmed that T.R.G. said little to him of his life with his mother and grandmother. He did not discuss the possibility of access with T.R.G. and T.R.G. did not ask for increased visits with his mother and grandmother. T.R.G. did discuss with Mr. Reid enjoying visits with his mother and grandmother and did not discuss any negative visits.

[282] In further cross-examination he provided his view that it would be appropriate to have separate access between T.R.G. and his mother and T.R.G. and his grandmother.

[283] Mr. Reid agreed that he was aware that access could occur without an order of the court so long as the Agency agreed and, of course, T.R.G. could do so on his own with or without the Agency's agreement.

[284] Based on what he had read, Mr. Reid believed that T.R.G.'s home life was one of trauma and that there are unhealthy aspects to his access with his mother and grandmother, but still feels it is appropriate and good for T.R.G. to have access with them. He agrees that T.R.G. would be guarded about what he shared with him about access time.

[285] He also confirmed that T.R.G. never volunteered any information about abuse he may have suffered in the home. T.R.G. did say on two occasions he wanted to go home to his grandmother's care.

M.P.

[286] M.P. provided evidence by way of an affidavit sworn January 14, 2016 and *viva voce* evidence at the hearing. She has known R.R.G. for 21 years and she says that R.R.G. always attended the church where M.P. attends weekly. From these attendances she had an opportunity to observe R.R.G. and the way she interacts with T.R.G..

[287] Her evidence was that she has known T.R.G. for approximately 15 years. R.R.G. attended church with T.R.G. since around the time of his birth. T.R.G. and R.R.G. also regularly attended a children's function on Wednesdays once T.R.G. was old enough to do so.

[288] It was M.P.'s evidence that T.R.G. was always well-behaved in R.R.G.'s presence, listened to her and took direction from her and she never observed R.R.G. yell at, or otherwise be rude with T.R.G.. She never observed R.R.G. hitting or punching T.R.G.. When T.R.G. lost his temper and became difficult when being teased by other children, R.R.G. always took the proper steps to resolve the issue.

[289] Based on her observations, she believes that R.R.G. is a loving and caring mother and always took proper care of T.R.G.. She observed that T.R.G. was doing well in her care.

[290] In cross-examination she confirmed that the last time she had seen T.R.G. was in the spring of 2015 at Sunday school classes, prior to him coming into the care of the Minister. When asked why T.R.G. was taken into care, she indicated that R.R.G. had told her that he might be in harm's way in her home, but that she didn't think it was due to abuse in the home.

[291] She confirmed her observation that T.R.G. was different from other children, that he found it difficult to make friends and was less mature, though he was not in trouble with the law. He seemed intelligent, but had difficulty interacting with other children and if teased, his buttons were pushed and he would exhibit a verbal outburst.

[292] She confirmed that she is a psychiatric nurse and has work in that field for 20 years and did recommend the T.R.G. see a psychiatrist or psychologist. She was aware that he had seen a therapist.

T.D.

[293] T.D. provided evidence in the matter by way of her affidavit sworn January 14, 2016 and *viva voce* evidence at the hearing. Her evidence was that she is a stay-at-home mother raising three children and has known R.R.G. since 1998 as a result of their involvement in a youth group at a church in the local area. She recalled R.R.G. was a regular attender at that church and shortly after T.R.G. was born she began taking him with her to church. Since she travelled to and from church with R.R.G., she had an opportunity to observe her with T.R.G. at those times. She also travelled with R.R.G. and T.R.G. when he began attending a children's function on a weekly basis at church.

[294] She described R.R.G. as a very devoted mother who paid attention to T.R.G.'s needs and that T.R.G. always had a strong bond with her.

[295] She described T.R.G. as developmentally slower than other children but that R.R.G. dealt with him appropriately. She described that R.R.G. treated T.R.G. well but firmly, had rules for him and disciplined him appropriately. She never observed R.R.G. yelling at or hitting T.R.G.. T.R.G. listened well to her, took directions from her and was mostly well behaved in her presence.

[296] She testified that she personally knows the maternal grandmother, M.R., and has observed her interacting with T.R.G. and that they have a strong bond.

[297] When asked in cross examination what she knew about why T.R.G. was in care, she had no knowledge of the reasons. She indicated that the last time she had seen T.R.G. prior to him coming into care was about one year ago.

M.R.

[298] M.R. testified by way of an affidavit sworn October 27, 2015 and providing *viva voce* evidence at the hearing.

[299] In her affidavit she confirms T.R.G. was initially raised by R.R.G. and herself, but that there was eventually a court order of joint custody placing him in her care, until T.R.G.'s apprehension by the Minister.

[300] She is critical of the agency in several respects. First she is critical of the delay between the Needs Assessment of Dr. Webster in which he recommended therapy and the commencement of that therapy for T.R.G. approximately five to six months later.

[301] M.R. is also critical of the agency for not engaging T.R.G. with his Big Brother while in care. She reviews the history of T.R.G.'s involvement with his Big Brother over many years, that T.R.G. was comfortable with this relationship, and that he participated with his Big Brother's family in activities.

[302] M.R. is critical of the agency for not encouraging T.R.G. to participate with other children his age in recreational activities. She also notes that T.R.G. might have benefited from a recommended adolescent focus group therapy process, but it was never done.

[303] She expresses concern regarding T.R.G.'s education and the fact that it has been interrupted. She feels it is necessary for them to have a future.

[304] M.R. does not agree with permanent placement and in that sense disagrees with the Guardian. She does support what she sees as the Guardian's recommendation that T.R.G. requires long term placement in a residential treatment program.

[305] She feels there is little likelihood of T.R.G. being adopted and that she has doubts T.R.G. really understands the meaning of adoption and only talked of it as an escape from Bridges.

[306] M.R. stated that since he was in temporary care, T.R.G. has spent time in many places including a foster home, two or three times at the IWK, the Reigh Allen Centre, at least two times in jail and at the Bridges home. She feels that there are so many people in his life that T.R.G. really doesn't know who to trust.

[307] She is critical of the agency for the fact that T.R.G. has been charged with several serious criminal offenses since coming into temporary care. She feels T.R.G. is not a good fit with the Bridges program and would be better off elsewhere, specifically the Reigh Allen Centre.

[308] Despite maintaining that he should not be placed in the permanent care of the Minister, she does say in the final paragraph of her affidavit that it is her position that T.R.G. should be placed in the care of the Department of Community Services, that T.R.G. should go to an institution with few inmates in an educational program, that his education should start full-time immediately, and that someone should monitor his behaviour and progress. She does not want T.R.G. to go to what she refers to as the "Truro facility" as she doesn't think that would be in T.R.G.'s best interests.

[309] In cross-examination by the Minister's counsel, M.R. was somewhat vague in her position. She was opposed "in a sense" to the Minister's position on permanent care and wants T.R.G. to get help and an education. She again said that the Minister was not helping very much and finally did say that she wants T.R.G. returned home.

[310] When asked about any concerns for R.R.G. and her mental health, she said she was "not really" concerned, but didn't know about drugs and alcohol in her life.

[311] She did confirm that in 2005 she was a party to a joint custody order for T.R.G. and that T.R.G. has been in her primary care since 2005.

[312] She expressed again the T.R.G. should be in a long-term care facility to get help, but that she has no money to pay for such a service. She clarified her position that she thinks he needs long-term care and then should be returned

home. She doesn't want him "adopted out" at his age, nor does she want him at the Wood Street Centre in Truro.

[313] She believes T.R.G. belongs at the IWK and the Reigh Allen where he can receive assistance. She acknowledged that the Reigh Allen Centre is a secure facility and only for emergency and short term placements.

[314] She says that she believes that she can manage T.R.G. as she did so for many years and he was only charged with criminal offences when he was taken into the temporary care of the Minister. When asked if he should be placed with his mother, she replied that she didn't know.

[315] On cross-examination by R.R.G.' counsel, M.R. testified that she lives in an apartment on one side of a duplex. Since 2005 T.R.G. has slept and ate at her house, has sometimes eaten with R.R.G., and R.R.G. was present sometimes. Sometimes T.R.G. went to R.R.G.'s apartment in the other half of the duplex.

[316] She confirmed that T.R.G. did attend school and passed, but commented that the children are often pushed through. She confirmed that he was suspended in October 2014 and only allowed to attend two days per week and he was frustrated by this. This was prior to his coming into the temporary care of the Minister.

[317] Though he was never charged with an offense prior to coming into the care of the Minister, M.R. did confirm that he was taken in by police on one or two occasions. She did not provide further information on this.

[318] Under cross-examination by counsel for the Guardian, she confirmed that that T.R.G. did fight with other children and kicked over computers. He had many behavioural problems prior to coming into the temporary care of the Minister including aggressive behaviours. She claims she could manage him but that he now needs intervention and she cannot provide this.

R.R.G.

[319] R.R.G. provided evidence in this matter. She filed two sworn affidavits and provided *viva voce* evidence at the hearing.

[320] In her first affidavit sworn August 22, 2015, she confirmed that she lives in a two bedroom townhouse and that her mother, M.R., occupied a two bedroom

townhouse next door. She says the T.R.G.'s bedroom is in her mother's townhouse and that her mother has had day-to-day care of T.R.G. for the past few years.

[321] R.R.G. says that T.R.G. has developmental delays in that he is 15 years old but acts more like a 10-year-old. She maintains he was diagnosed with Asperger's syndrome and was seen by specialist at the IWK, but provides no medical report or other evidence in support of this.

[322] She does acknowledge T.R.G. was having problems at school and that he failed the previous year. She also acknowledged he had problems with the law in the past, but that she and her mother were able to keep the situation under control despite T.R.G. being sometimes difficult.

[323] R.R.G. maintains in that affidavit that she understood that the agency was involved and apprehended T.R.G. on November 15, 2014 because they "became aware of T.R.G.'s mental health problems and believed that he can get help much faster if he is in care. She did acknowledge and agree that T.R.G. needs the help of a mental health professional."

[324] It was her evidence that T.R.G. has gone "downhill" since coming into temporary care given that he has had several serious criminal charges laid against him and she observes that he is disoriented and confused. She believes that she and her mother can control T.R.G. and that he does much better at home. She notes that T.R.G. has not only accumulated criminal charges, but lost a great deal of school time since coming into temporary care.

[325] R.R.G.'s plan in that affidavit is that T.R.G. should be returned to her care, and that he would reside with her and M.R. at their addresses in New Glasgow. Her plan is to enroll T.R.G. at the same school as before, but as an alternative he could go to Bridgeway Academy. She has a plan to get T.R.G. into mental health care in New Glasgow.

[326] She says that she has bipolar disorder and that she is on medication as prescribed. She also says that she attends for mental health counselling once per month, attends for addiction counselling three times per week, and that she currently does not smoke or drink. She did not provide any independent evidence of her diagnosis, prescriptions, maintenance of that medication, or evidence regarding her mental health counselling or diagnoses, despite being

requested by the Minister to sign a consent to obtain this information and her consistent refusal to do so.

[327] In her affidavit sworn October 29, 2015 she says that because T.R.G. is not mature enough he often says things which are untrue. She believes he does so because he believes he will benefit from this such as when he is in trouble, or when he believes that other people are expecting him to say certain things.

[328] She repeats that she has been diagnosed with bipolar disorder, takes medication and further says that she is seeing a psychiatrist and is attending a mental health support group on a regular basis as well as attending for addiction counselling. She again provided no independent evidence of any of this.

[329] She says that for many years T.R.G. was in her care and custody and together with her mother they provided him with a nurturing and stable environment.

[330] She flatly denies any allegations of abuse respecting T.R.G. She says she never yelled at him, never hit him and never pushed him. She says she does not believe in yelling or physical punishment.

[331] R.R.G. says that she does not believe that T.R.G. truly wants to live away from her or be adopted. She says when he makes these statements it is the result of his immaturity and mental health problems. She says it is very easy to manipulate T.R.G.. She repeats that though he is 15 years old, he looks and acts as if he were 10.

[332] In her second affidavit she seeks the immediate return of T.R.G. into her care with no reference to her mother as part of that plan.

[333] In her direct *viva voce* evidence at the hearing, she says that she finished a parenting program at the Women's Centre, a Boundary Program and a Connect 4 program through the Church of the Nazarene. She says she learned in the Boundaries Program how to say no and how to set boundaries with family, friends and everything in life. The parenting program was over the course of eight weeks. She provided no independent confirmation of attendance and completion of these programs.

[334] R.R.G. testified that T.R.G. was developmentally delayed and had been tested through the school system.

[335] When asked about what help she had sought prior to T.R.G. coming into temporary care, she says that he been seen by a psychiatrist Dr. Basik and was diagnosed with Asperger's syndrome. T.R.G. was seeing Dr. Basik three times per month. He was prescribed medication and was taking it. She provided no independent evidence of this diagnosis or prescription.

[336] She again described the living arrangements since 2005 with T.R.G. living with her mother in one side of a duplex and she residing in the other side. She says that she was with T.R.G. every day and she took him to school each day.

[337] As part of her plan she says she wants T.R.G. to attend the ACT program for three or six months. She says that she hears wonderful things about the program and that he doesn't need to be in care to attend.

[338] She testified that T.R.G. had been bullied at his old school and she now plans to place T.R.G. in Bridgewater Academy. Unfortunately, she can't pay for the cost, but was told by others that "they would find a way". She feels going two days a week as he is now is not good for T.R.G. in part due a lack of socialization.

[339] R.R.G. testified that she was attending for mental health counselling once each month and was on medication, but again provided no independent evidence of this. She did acknowledge to using marijuana once in a while as a result of fibromyalgia, but that she never consumed near the house and T.R.G. never saw her do so. Again, there is no independent evidence of the diagnosis of fibromyalgia for R.R.G..

[340] In cross-examination by the Minister's counsel, she confirmed her plan was that T.R.G. would attend for the ACT program when he is released from Waterville and then return home. She acknowledged that the agency had tried to have T.R.G. admitted to the ACT program but he was denied. She says that the agency did not really explain why. She said that the agency did not try again.

[341] When questioned about the Asperger's diagnosis, she acknowledged that Ms. Scott and Dr. Webster found no indication of this, but says it could "pop up" in Ms. Scott's work with him. In the record there was a reference to Dr. Pippa Moss saying that T.R.G. was not suffering from Asperger's which was acknowledged, but says it was based on a very brief consultation.

[342] When asked about the description by the Mental Health Team at the Aberdeen Hospital of her restraint of T.R.G. on January 17, 2014, R.R.G. said that the description of what she had done was not accurate. She says T.R.G. did not require restraint several time per week. She specifically denied that she got behind T.R.G. and put her arm around his neck. She demonstrated that she put her arms around his shoulders and arms, not around his neck.

[343] When asked about T.R.G.'s behaviours including sitting on her lap, hopping on her back for piggyback rides and other so-called infantilizing behaviour, she described T.R.G. as being like a 10-year-old and the only time he sat on her lap was when the agency worker was coming, Court was pending, or at the school board when T.R.G. was petrified on each occasion. Regarding piggyback rides, she said that she had done this with T.R.G. at church all the time, they were best friends and was nothing wrong with this. When it was noted that Dr. Webster and the agency were concerned about her treatment of T.R.G. as a younger child, she did not agree with any of those concerns. She says that he does not need permanent care, but rather he needs help through the IWK instead.

[344] R.R.G. was then directed to a Presentence Report for T.R.G. in his criminal matter dated July 9, 2015, which was entered as an exhibit by consent. R.R.G. was referred to the recording of an interview by the probation officer with her in which she is said to have indicated "you couldn't discipline this kid... He made fun out of all the things you'd do." When asked about this, R.R.G. said that if you sent T.R.G. to his room he pretended to teach a class, if you sent them to the corner he pretended to talk with friends, and if you sent him to clean the ditch he would love it.

[345] When she was referred to her statement to the probation officer that she was unaware as to why T.R.G. came into the care of the Minister in November 2014, she replied that she was told by Harvey Bate of the agency that she did nothing wrong, that T.R.G. needed help and he would get help while in care. She says she was told no other reasons why he was in care.

[346] When asked about the report that she had told the probation officer that T.R.G. had been exposed to fighting at daycare at age three and that it was at this time he "turned violent" mostly towards her. R.R.G. said that two other children were doing harm to themselves at that time. She went to the daycare to help out the daycare and saw the behaviour. She took T.R.G. out of the daycare and believes the T.R.G. blames her for putting him in there in the first place.

She goes on to blame the daycare for allowing T.R.G. to see the violence he did.

[347] When R.R.G. was referred to the affidavit of Kara Wood in which she records what T.R.G. had described to her as the abuse he suffered, R.R.G. denies that she ever hit T.R.G. and says that he made this up. She said this description was blown out of proportion and that she might take his hands to put them down might have become "grab". The pulling on a shirt might be if she grabbed his shirt if he was going onto the street. She said if she looked at him with a "parent look" he would slap his own hands.

[348] She denied pulling handfuls of hair from T.R.G.'s head as reported. She said that if he pulled her hair and she would pull his hair to demonstrate the pain and to correct his behaviour. She says the workers exaggerated in their recordings.

[349] R.R.G. confirmed that she did not sign a consent form to allow agency to speak to her counsellor or psychiatrist because she wanted to see what the consent form was about. In the end she did not sign the consent form.

[350] When asked about her refusal to discuss the Court-ordered services arising from her criminal charges, R.R.G. says that she thinks her court orders are in place for her to follow and the agency had no right to know what they contained.

[351] When asked about the allegations that she interfered with the agency's efforts to retain a lawyer to represent T.R.G. on his criminal charges, she said that T.R.G. didn't want the lawyer the agency had chosen and that she had spoken to a Halifax lawyer. She objected to Roseanne Skoke acting for T.R.G. and suggested that Ms. Skoke would do less than a good job for T.R.G. given that the agency was choosing her because, she said, the agency gets what it wants and T.R.G. would lose.

[352] When asked what she thought the agency wanted, R.R.G. testified that they did nothing to provide help, but they wanted T.R.G. in permanent care for 15 years, but couldn't get him and that the agency caused the breakdown for T.R.G. as part of a plan to get him into permanent care.

[353] R.R.G. maintained that 95 percent of the agency's recordings of T.R.G.'s communication exaggerated, or lied about what he said. She said that she picked and chose court documents to review with T.R.G. and that he denied

saying things that were alleged. For example, she says the agency lied to T.R.G. by saying that he was only going on a vacation for three months “and then it would be done with”.

[354] R.R.G. was firm in her belief that the agency was to blame for T.R.G.'s problems and that they ruined his life. She says all of his problem behaviours are due to the agency's intervention. She says he was living a happy life when on medication prior to agency involvement.

[355] On cross-examination by counsel for M.R., R.R.G. testified that T.R.G. had passed grade eight and deserved to go to grade nine. He was in school from September, 2014 until he was taken by the police to the IWK. The time taken from school to deal with police and IWK had interfered with his education.

[356] When R.R.G. was directed to Dr. Webster's report, in particular the section which contains his opinion that T.R.G. appeared to present with a minimal level of insight and to have adopted a hopeless perspective and little expectation for happiness, R.R.G. referred back to the sexual abuse he suffered at the hands of a babysitter and that he been bullied. She agreed that he was depressed and that she tried to get him help with the psychiatrist, but help was put off again and again. She says that since he is been in the temporary care of the Minister, he is 10 times worse than he was.

[357] R.R.G. testified that she told T.R.G. the agency was lying to him and reminded him of this when he was in temporary care. She believed that the agency was setting him up for failure by promising to put him in an activity such as karate and failing to do so, telling him of plans to bring him home for Christmas and failing to do so, and other circumstances which she says were lies by the agency workers and she told T.R.G. they were lying.

[358] R.R.G. blames all of the criminal charges on the agency and says none of this would have happened if T.R.G. had remained at the Reigh Allen Centre instead of being placed at Bridges.

[359] Under cross-examination by counsel for the *Guardian Ad Litem* R.R.G. testified that T.R.G. had been violent since three years old and blames that on his daycare experience described earlier. She says she tried to get T.R.G. tested since he was five, that he had seen Pat Callahan at that age and that she experienced 13 years of violent episodes during which she tried to get help and was put off. She had significant difficulty in getting help for T.R.G..

[360] She testified that prior to coming into temporary care, there'd been at least 20 incidents of aggressive behaviour by T.R.G. at school and in 15 or 16 of those she was able to calm him. She agreed this was a chronic problem for T.R.G. at school.

[361] R.R.G. says that she discouraged T.R.G. from using Roseanne Skoke as his lawyer and admits that she told T.R.G. to listen around to the other young people at the Bridges program regarding Ms. Skoke. She maintains that if the agency picked the lawyer, the agency would win and, therefore, if Ms. Skoke was the agency's choice, she would "screw T.R.G. over".

[362] She agreed that T.R.G. should be held accountable for any criminal action he took and says her attitude was that if you do something wrong, plead guilty to it.

[363] Regarding court documents, R.R.G. admits that she reviewed them with T.R.G. prior to his being taken in the temporary care and when he was with her at church. She had done this as recently as a couple months prior. She maintained that this was appropriate and that he had a right to know despite acknowledging that she had been told not to disclose, or discuss those documents with anyone. She says that Kara Wood told her it was okay for her to review the documents and decide what to show T.R.G.. She admitted that she would show the documents today to T.R.G. if he asked for them and would pick out documents that she knew were a lie and show them to him.

[364] R.R.G. maintained that the only reason T.R.G. was taken into temporary care now is because the agency was running out of time to take him.

[365] When asked about the *Guardian Ad Litem*, she acknowledged she was aware of him, but that she never called to discuss any of his reports with him. She never contacted him for any further information about his reports, saying she did know how to contact him, despite having his contact information on his reports and having her own lawyer, and that she did know she was allowed to contact them.

Analysis

Out-of-Court Statements Analysis

[366] Having set out of the test to be applied when determining whether a child's out-of-court statement should be admitted pursuant to section 96(3)(c) of the *Act*, I will now provide my analysis of the statements proposed to be introduced by the Minister and my determination of the admissibility of each. I note that the Minister did not provide a list of the statements they wish to have considered, so I have set out below those which I find most relevant. In doing so, I am mindful of the position of R.R.G. that she opposes their admission and that I should be very careful in assessing these statements as T.R.G. has mental health issues which affect his reliability in making these statements.

Statement to Patrick Callahan

[367] In her affidavit, Kara Wood she says that she spoke to Patrick Callahan, a therapist at Mental Health on October 30, 2014, regarding his concerns for T.R.G.. Mr. Callahan relayed that T.R.G. had told him that there is kicking, hitting with fists and pulling of hair between R.R.G., M.R. and himself. He told Mr. Callahan that he did not want to go home and did want to go to the hospital.

Statement to Kara Wood and Bonnie Dawson November 17, 2014

[368] In their affidavits, Kara Wood and Bonnie Dawson say that when they met with T.R.G. at the Aberdeen Hospital following an incident that occurred at his home, T.R.G. told them that he tried to kill himself, his mother and grandmother and stated "I wanted to kill us all" but could not remember why. He also told them that he liked Family Support Worker Shane Ranahan, but hated Ms. Wood because he was terrified of her and he could kill her.

[369] When asked how his family members show that they are upset, Ms. Wood and Ms. Dawson say that T.R.G. said that they grab, pull and hit. When asked who would do this, he said he would do it mostly and that his mother would as well. When asked to elaborate he told the workers that his mother grabbed him on the wrists and lower legs, do so when she was angry or upset and not in a good mood. He also told them that his mother pulled his shirt and demonstrated by pulling the collar of his shirt. He told them that his mother would "crack

him on the butt" and also slap his mouth and his hands. He said that this had last happened a few days prior.

[370] T.R.G. went on to tell the worker's that if he was returned home that evening he will probably try to strangle himself again. He wanted to go anywhere else but home.

[371] When later that evening he was admitted to the IWK, staff reported to Ms. Wood that T.R.G. and told them that he did feel suicidal and that he had attempted to hang himself with the phone cord in addition to trying to choke his mother and his grandmother with the cord.

Statement Ann Marie Galvin November 17, 2015

[372] Kara Wood reports in her affidavit that in a conversation with social worker Ann Marie Galvin on November 17, 2015, when they were discussing T.R.G.'s return home, T.R.G. told her that he did not know what would happen if he was returned home that day, but felt like he needed a break from home and was not sure if he would hurt himself if he went on that day, and that he probably would hurt himself. When they discussed T.R.G.'s earlier disclosure of hitting, pulling, grabbing and arguing in the home, he said that: "If that stuff could stop, then I would say get me home".

Statement to Ann Marie Galvin November 20, 2014

[373] Ms. Wood says in her affidavit that the case recordings indicate Ann Marie Galvan met with T.R.G. on November 20, 2014, to explain why he was being taken into care and why telephone calls with his mother would not be permitted for a time. T.R.G. expressed his concern at that time that he would not be able to speak with his mother, and he worried and feared that his mother would call and scream at the nurses and be mad at him because he did not speak to her.

Statement to Ann Marie Galvin of April 21, 2015

[374] Ann Marie Galvin says that when she was driving a T.R.G. to the Reigh Allen Centre for placement they discussed increasing the number of and length of visits and when he was asked if he wished to increase his number and duration of visits, T.R.G. told her that he did not.

Statement of Ann Marie Galvin of August 25, 2015

[375] Ann Marie Galvin says that she spoke with T.R.G. on August 25, 2015, by phone. T.R.G. described to her that things were not going well for him and that he wanted to talk about adoption. He said he asked her to tell another worker that he really, really wanted to be adopted. When asked what this meant to him, he expressed that meant that he did not have to live at the Bridges group home any more. T.R.G. said that that it would be a "really long time" before he could live with his mother again, but he did not know if he could live the Bridges for another year. He said if he could not be adopted, he would like to go back to the Reigh Allen Centre. He also expressed that he was worried about criminal court and his pending charges.

[376] T.R.G. also said that talking to Carolyn Scott and his *Guardian Ad Litem* was helpful and that he was eager to start school in the fall.

Statement to Bonnie Dawson in July 2015

[377] Bonnie Dawson says that she picked up T.R.G. for lunch in early July 2015, that he was in a good mood. She answered questions T.R.G. asked her about adoption and the court process and explained the agency's plan to put forward a plan for permanent care and what that meant. T.R.G. told Ms. Dawson that he would like to be in permanent care and custody and move to a foster home. T.R.G. talked to her about getting a job at a fast food restaurant and working on his life skills programming at Bridges. She says he was age-appropriate and did not exhibit any childlike behaviours.

Statement to Teacher of April 2, 2013

[378] A referral was received by the agency on April 2, 2013, from a substitute teacher at T.R.G.'s school as a result of T.R.G. disclosing to her a story involving T.R.G. having sexual intercourse with a woman which resulted in a baby. T.R.G. later confessed that he had made up the sexual allegations.

[379] I will begin by indicating that I find it is in T.R.G.'s best interests that I consider admitting these statements so as to have avoided his providing testimony and allowing his voice to be heard if these statements are admitted. Thus, I find the first part of the test to be applied under section 96(3)(b) has been met.

[380] In determining whether the Minister has met the threshold test of reliability for the admission of these statements into evidence, without determining their ultimate reliability or weight, I take into account that these statements were made to the workers in the course of conversations which form part of the normal process of agency worker duties. These were each recorded by the worker. There is no indication that T.R.G. was exhibiting high emotion. He seems to have been calm in each conversation, though some followed periods of high emotion. The statements seemed spontaneous, though often the result of a question put to him. There is nothing to suggest he was led in those questions. I am mindful that T.R.G. has developmental delays and mental health issues, but I am satisfied that in each case, there is sufficient indicia of reliability to find they should be admitted in to evidence.

[381] With respect to the statements made to Patrick Callahan, I find likewise the statement is admissible. It was made in the context of a therapeutic relationship, appears spontaneous and without suggestion. Certainly there is no suggestion that Mr. Callahan has a motive to fabricate and he was not called for cross-examination to challenge his recording or recollection of the statements. Again I am mindful that T.R.G. has developmental delays and mental health issues, but I am satisfied that there is sufficient indicia of reliability to find that these statements should be admitted into evidence.

[382] Finally, with respect to the statement made to the teacher regarding sexual activity with an adult, I cannot admit this statement. It is clearly not reliable based on T.R.G.'s admission he had fabricated it and the obvious falsity of its contents. It will not be admitted.

[383] Now that I have determined which statements will be admitted I will review each as part of my analysis of the evidence in the matter. In doing so I am mindful of my obligation to determine their ultimate reliability and what weight, if any, I should place on them in the context of the case law reviewed herein.

Preamble

[384] In my analysis of the evidence in this matter, I have carefully considered the preamble to the *Act* which includes a reference to a child's right to the least invasion of privacy and interference with their freedom. This is compatible with their best interests and it is important to note that children have a sense of

time which is different from that of adults. I consider that children are entitled to protection from abuse and neglect and that their rights and fundamental freedoms are no less than those of adults. I also keep in mind that parents have a responsibility for the care and supervision of children and those children should only be removed from the parent's care when all other measures are inappropriate.

Best Interests

[385] I must clearly consider the best interests of T.R.G. and in this analysis I keep in mind the provisions of section 3(2). Not all of these factors are to be given equal weight in each case and are to be seen in the context of the circumstances of each family. For example, consideration of a child's cultural, racial and linguistic heritage is not applicable in the present case.

Need for Protection

[386] The Minister is seeking an order for permanent care pursuant to section 42 (1)(f) of the *Act*. The burden of proof rests squarely with the Minister to prove its case on a balance of probabilities and that burden never shifts throughout.

[387] The Minister must first prove that T.R.G. was a child who was still in need of protection at the date of the hearing. It is not sufficient for the Minister to rely on any earlier protection finding. I find that in this case the Minister has met the burden of proof and that the evidence is substantial that T.R.G. remains in need of protection.

[388] The identified risks for T.R.G. at the time the proceedings commenced in September 2014, and a supervision order was put in place, through to the protection concerns identified at the time T.R.G. was taken into the temporary care of the Minister in November 2014, through to the date of the hearing for permanent care, remain largely intact and unchanged.

[389] The Minister's evidence in this matter included the history of the mother from a young age and of this family since the time of T.R.G.'s birth in November 1999. This history included early referrals after T.R.G.'s birth over concerns around the behaviours of the mother. By that time the mother had had involvement with the criminal justice system, been incarcerated, suffered bouts of depression and had been using illegal substances.

[390] There were concerns that she may be suffering from a mental health condition and that she may have been taking T.R.G. for medical treatments that were not necessary while under-medicating him for asthma. The mother's description of many occasions when T.R.G. was choking and would then suddenly stop choking and breathe well when a paramedic arrived suggests that, while T.R.G. did have medical conditions, she was acting inappropriately in seeking excessive medical attention for him.

[391] The mother's involvement with the criminal justice system continued after T.R.G.'s birth. She was arrested for intoxication in a public place in August 2004. She admitted to being intoxicated.

[392] She was arrested in February of 2005 for leaving notes at the Provincial Court threatening to kill the judge and three police officers. She admitted to the worker that she had done this and had pled guilty to those charges. She said that these people and others were "on her list" and that she "harbours a lot of revenge".

[393] As a result of a referral to the East Coast Forensic Psychiatric Hospital, R.R.G.'s discharge summary revealed psychiatric problems dating back to age of five when she was placed at the Nova Scotia Hospital. She had several subsequent admissions by age 16, problems with alcohol abuse, violent behaviour, self-abusive behaviour and various criminal activities as a young offender. The mother claimed to have access to weapons and always carried a weapon, either a knife or a pipe.

[394] M.R. was concerned for her well-being at that time and T.R.G. was placed in a joint custody arrangement.

[395] T.R.G.'s behavioural issues as identified in that evidence included, in 2005, spreading his feces, temper tantrums, defiance and aggressive behaviours both at home and at school. The police were involved at least once. Services were offered and entered into including counselling for T.R.G. and a psychiatric referral and counselling for the mother. The next year the mother threatened suicide and was hospitalized. She was also facing further criminal charges.

[396] That same historical evidence confirmed that T.R.G. had been the victim of inappropriate sexual contact by another adult, which no doubt had an impact on him. Further services were offered to T.R.G.

[397] These proceedings commenced in part as a result of a letter from the Mental Health Team at the Aberdeen Hospital described earlier in the evidence. That letter described, and I accept it as fact, that the behaviour witnessed was "significantly concerning". The description of the escalation between T.R.G. and his mother, which consisted of verbal and physical violence, was concerning enough on its own.

[398] When it escalated to the point that the mother restrained T.R.G. and is said to have put her arm around his neck, putting him at risk of having his airway constricted, this became particularly concerning. Though the mother denies that she put T.R.G. in this chokehold and says she wrapped her arms around his arms and shoulders, I do not accept this. I find that the description of these mental health professionals, who were witness to this event, are trained in observation and experienced in taking notes and recording events and descriptions, and have no motive to lie, is more credible and reliable than the description of the mother.

[399] It is worthy of note that these mental health professionals were involved with this family and they conveyed their impression that T.R.G. was isolated, did not have meaningful peer relationships and spent the majority of his time with his grandmother and mother. He had experienced a number of services but there was little progress.

[400] They also identified his infantilized behaviour as being of concern. Of particular concern is the mother's participation in this behaviour and the fact that she did nothing to discourage it despite his age.

[401] T.R.G.'s suspension from school at that time was an identified risk. I find that it is of significant concern. Despite the mother's claim that all of T.R.G.'s problems began with the agency's intervention, and in particular his being taken into temporary care, this is one of many examples where serious behavioural problems which resulted in risk to T.R.G. pre-date the agency's taking T.R.G. into temporary care.

[402] Despite the supervision order being in place and services being provided, there was little progress identified. The mother's involvement with the criminal justice system continued when she was charged with causing damage to property in August 2014 and, despite her denial that this it occurred and her accusation that the police set her up every five years, she later pled guilty to at least some of these charges and was sentenced. This is one of many examples

throughout the evidence where the mother externalized blame for every possible action or instance of neglect by her, instead of demonstrating any insight into the causes which largely rested with her.

[403] Lack of insight on the part of the mother is a constant in the evidence. Examples include her refusal to consent to a psychiatric assessment despite being ordered to do so; her evidence that the only reason T.R.G. was taken into temporary care was to get him help; her inability to articulate the clear protection concerns set out by the agency respecting her own behaviours and history, despite overwhelming evidence that T.R.G. had experienced trauma in the home for which she was responsible. She demonstrated no inclination to seek out help for herself through agency services or to provide evidence to the court of any meaningful progress in regaining or maintaining her mental health. For example, she testified she was under the care of psychiatrist yet she provided no evidence by way of independent reports nor did she call any psychiatrist to give evidence.

[404] Evidence of the lack of insight of the mother and the subsequent risk to T.R.G. include her refusal of reasonable agency requests to obtain information from the IWK respecting T.R.G.; refusing to allow the workers to participate in the meeting at the schoolboard October 2014; attempting to direct that T.R.G.'s therapist not speak to the agency; attempting to control the worker's meeting with T.R.G. in November 2014; interfering with the agency's attempt to serve him with notice; and admitting that she cherry-picked documents to disclose and discuss with T.R.G., despite clear direction that this was prohibited, among many other examples.

[405] For T.R.G., there has been some improvement over time but there have been many peaks and valleys for him, both before and after coming into temporary care. While it is correct that T.R.G. has been convicted of several criminal offenses since coming into temporary care, I find that these behaviors are similar to those in which he engaged prior to the involvement of the agency even as described by his mother. For example, she described T.R.G. as being violent since age 3. She says that at least 20 times he was violent at school. There had been multiple police involvements with T.R.G. at school. He had been suspended many times and at the time of the commencement of these proceedings T.R.G. was at school only two days a week.

[406] The mother demonstrated a lack of insight when she blamed T.R.G.'s violent behaviour on being exposed to violence at a daycare when he was three years old. This is contrary to the evidence of both Dr. Webster and Carolyn Scott. They described T.R.G. as a trauma victim whose behaviour was consistent with long exposure to trauma, not a single incident. I find that he has been exposed, over a long period of time, to trauma within his home by mother as described later.

[407] The mother's lack of insight even extends to the infantilized behaviour identified with T.R.G. This has been going on for years and the mother participated in it regularly. She suggests that it is because T.R.G. behaves like a 10 or 11-year-old rather than a 15-year-old.

[408] First, I cannot find that a 10 or 11-year-old would speak in "baby talk", regularly sit on a mother's lap, hug and kiss her on the face and neck in public, carry a stuffed toy or require the use of a walkie-talkie to go from place to place. These, at best, are the behaviours of a much younger child and inconsistent with the mother's position.

[409] Second, the mother claims that this behaviour is only exhibited when T.R.G. is terrified about things such as going to court, the legal proceedings broadly, or the workers coming to visit the home. For example she says he is terrified of Ms. Wood and T.R.G. says this himself.

[410] Yet, the evidence is clear that the workers, including Ms. Wood, have spent significant amounts of time with T.R.G. over the course of these proceedings. This includes time alone in car rides, private interviews and even taking T.R.G. for lunch to discuss adoption issues. Throughout all of these interactions, there is no evidence at all that T.R.G. has exhibited anything other than momentary stress or fear of a circumstance. He may have articulated on occasion that he hates or is frightened of a worker but his behaviour speaks differently. The only evidence of his infantilized behaviour occurring is when he is in the presence of his mother and only towards his mother. For example, at their appearances in Provincial Court, as soon as he laid eyes on her he began the behaviour.

[411] The significance of this was identified by Dr. Webster when he described T.R.G. as being a trauma victim who, when he enters a room, scopes out the environment to determine what he has to do to feel safe. I find that, as a result of the long history of trauma in the care of his mother, T.R.G. behaves as an

infant with her in the hope and expectation that she will not further abuse him so long as he behaves in this way. That is consistent with the opinion of Dr. Webster and certainly consistent with the evidence. The mother's theory and clear lack of insight into what this behaviour represents are very concerning.

[412] With respect to the out-of-court statements made by T.R.G. and outlined earlier, I am mindful that each is made by a young person who has some developmental delays. I am also mindful of the fact that he has been contradictory in some of the statements, including one that was not admitted regarding his allegation that he had a sexual relationship with a woman, which he later admitted was not truthful.

[413] On the other hand, I find that the recording of these various statements as noted above was made by persons experienced in recording such information, that they had no motive to lie and I find that they were accurately recorded. Where the recordings are inconsistent with the position and evidence of the mother, I prefer the evidence of the agency on these issues.

[414] Respecting the weight to be given to the statements, particularly those that involve T.R.G.'s description of the abuse he suffered at home, I accept these and reject the evidence of the mother that they did not occur. I do so for several reasons.

[415] First, the mother has not been able to admit to one aspect of her own behaviour which has caused T.R.G. any risk, despite the overwhelming evidence, both expert and otherwise, that T.R.G. was suffering trauma in his life. Her self-serving descriptions and denials make much of her evidence difficult to believe and where it is inconsistent with the statements made by T.R.G., I do not accept her evidence.

[416] Second, I find that the descriptions T.R.G. provides in his out-of-court statements are consistent with the expert opinions regarding trauma over time, as stated by Dr. Webster and Ms. Scott.

[417] Third, these statements are consistent with emotional abuse, which is apparent on the evidence. Specifically, I find it reasonable to infer that not only did T.R.G. experience physical abuse in the home at the hands of his mother, but he also experienced emotional and psychological abuse. The mother's own behaviour throughout these proceedings is evidence that she has no sense of proportionality or insight and will do or say whatever it takes to

serve her own interests. There is almost nothing that she has done that demonstrates her putting T.R.G.'s interests ahead of her own. Rather, she creates a narrative that supports her own view of the world that is inconsistent with all of the other evidence available in this proceeding.

[418] As to trauma, T.R.G has made statements to the workers and others describing the home environment in which punching, pulling, slapping and grabbing occurred frequently. He says that he and his mother do these things. I find that the evidence is clear that the home environment for T.R.G. was not only physically violent but also, and perhaps more importantly, emotionally stressful for him on a constant, long-term basis. This is consistent with the opinions of Dr. Webster and Ms. Scott. It is also consistent with the history of the mother, who has a lifelong mental health profile, avoided an assessment of her current psychiatric condition, did not provide any current information from her psychiatrist regarding her mental health functioning, engaged in violent criminal activity even while these proceedings were underway, and blames everyone except herself. Fundamentally, she seeks to have T.R.G. “fixed” without any insight into her role in T.R.G.’s behavioral challenges and has thereby created risk for T.R.G.

[419] The mother’s aggressive, obstructionist and interfering behaviour in the work of the agency suggest to me that is very likely that she would behave similarly in her own home with T.R.G., causing infantilized and other inappropriate behaviour by him as a coping message mechanism. This is consistent with all of her own historic information and the evidence throughout these proceedings.

[420] The mother’s position that T.R.G.'s problem behaviours after being taken into temporary care are solely the fault of him being apprehended, his placements in various locations and involvement with the justice system, is simply not credible. His behaviors long predate his being in temporary care. One of many examples is the incident of November 17, 2014, when T.R.G. attempted to choke his grandmother, his mother and himself and repeated this attempt by lunging at his mother and grandmother when the police were present. It was then that he told the workers about his experiences in the home being grabbed, pulled and hit. When combined with the restraint method used by the mother as observed by the Mental Health Team, it is clear the T.R.G.'s ongoing behavioural problems are not the result of agency involvement. What

has changed is that T.R.G. is now held accountable for those behaviours while in the care of the Minister.

[421] As a further example of the mother's unique perspective, after the incident in November 2014, when T.R.G. attacked his mother, grandmother and himself and the police became involved, she immediately claimed that the agency was trying to take T.R.G. because they had only one year left before they could no longer do so. In other words, rather than trying to understand in any sense why T.R.G. would behave in such a violent way and attempt self-harm, she externalized blame and responsibility.

[422] T.R.G.'s own description of not wanting to go home, wanting to go anywhere but home and suggesting that if the hitting, pulling grabbing and arguing would stop he would say get "get me home" speaks for itself in terms of T.R.G.'s experience in that home.

[423] The evidence of the mother threatening consequences if telephone access was not reinstated immediately, staking out the offices of the agency, screaming when leaving the office and other inappropriate behaviour, is further evidence of the mother's approach of externalizing blame and an inability to control her emotions. I find that this is an example of the type of behaviour that that was likely being experienced by T.R.G. in his own home with her.

[424] A further example of the mother's predilection to damaging behaviour is interference with the retention of counsel to represent T.R.G. in his criminal matters. The fact that she did so outside the court and during court proceedings demonstrates that she has no understanding of what is best for T.R.G.. I find this would have been a traumatizing and stressful experience for T.R.G. and his infantilized behaviour at that time was a result of his stress at seeing his mother involved in that proceeding. Throughout these proceedings she simply refuses to understand why the Minister is involved, its role and how she can best move forward in support of T.R.G. instead of creating further chaos for him as she did that day in court.

[425] The evidence of Dr. Webster was particularly helpful to this Court. I accept his evidence as contained in his report and *viva voce* testimony as well as his recommendations.

[426] I accept Dr. Webster's opinion that T.R.G. does appreciate the short and long-term consequences of his behaviours. What we are seeing, according to

Dr. Webster, is T.R.G. adapting by scanning his environment and taking on the behaviour that he thinks will best protect him.

[427] It is also significant to note Dr. Webster's opinion that it would not be in T.R.G.'s best interest to be returned to the care of his mother or grandmother as that is where he experienced trauma in and his life and without significant change to that environment, we would be returning him to that traumatic circumstance again. I find the Dr. Webster was well grounded in his conclusion that T.R.G. had been exposed to trauma and that his behaviour was consistent with one who had suffered such. The fact that T.R.G. did not describe abuse to Dr. Webster is not surprising in the circumstance and I do not find that to be relevant to the determination of this finding.

[428] Dr. Webster's description of T.R.G. as a young person who is struggling significantly, with a history of chaos in his life and physical and emotional abuse and maladaptive coping strategies are well grounded in the evidence. His conclusion that T.R.G. will require considerable ongoing support and that the assistance he receives between now and the age of 18 is critical and is significant in my assessment of this matter. He makes several recommendations but notes that he will require years of long-term therapy to gain independence, an opinion shared by Ms. Scott. I accept this.

[429] I accept Ms. Scott's view that, because of T.R.G.'s trauma history, when the stress increases or distress appears in his life T.R.G. reverts to coping strategies which are unhelpful and unhealthy. I find that this is what occurs when he is in the temporary care of the Minister and finds himself under stress. He simply does not know how to cope appropriately and when triggered, goes to his earlier coping strategy which is not appropriate or effective. It is said that T.R.G. needs time, measured in years, to learn to cope in healthy ways. I accept that opinion provided by both experts. I find that T.R.G. needs, as described to Ms. Scott, consistency, predictability and stability in his life. As of the date of the hearing, none of that was present for him at home.

[430] At this point I will briefly touch on the evidence provided by M.P. and T.D., friends of the mother. Each provided evidence that supported the mother's view that she is an able and loving parent. On the other hand, their ability to observe a T.R.G. and his home environment was very limited. I find that though their evidence is well-meaning, it does not materially contribute to my assessment in this matter.

[431] I also note that the evidence of M.R. causes concern. She has been intimately involved in T.R.G.'s care and has been his primary care figure for many years in her home. I find that her evidence, while consistent in many ways with the position taken by the mother, is inconsistent with the overwhelming bulk of the evidence respecting T.R.G.'s experience with trauma and stress. Given all of the evidence before the Court, it is concerning that M.R. is blaming the Minister and agency for all of T.R.G.'s problems just as her daughter does.

[432] It is worthy of note that in her affidavit M.R. does not say much about whether or not T.R.G. suffered abuse of any form in the home. I find that her affidavit and *viva voce* evidence is stark in its dearth of reference to the many risks identified by the Minister. I interpret this to demonstrate a complete lack of insight on her part and certainly does not reflect a grandmother who is able to protect T.R.G. and provide for his best interests. I do respect the fact that she has parented T.R.G. for many years, but I also find that she permitted the trauma to occur to T.R.G. while in her care and that she has done nothing to change those circumstances and demonstrates no insight into her role in allowing it to occur.

[433] I, therefore find that T.R.G. remains a child in need of protection.

Grounds Under Section 22 (2)

[434] I must now determine if the Minister has met the burden of proving the grounds pled pursuant to s. 22 (2). The Minister says the grounds are s. 22 (2)(b), (f) and (g) of the *Act*. I will consider these grounds.

[435] In some of the evidence and in submission, I understand the Minister also wishes the Court to consider the grounds under section 22 (2)(j) and (ja), but these were not pled, nor were the pleadings amended at any point in the proceedings. I will therefore not consider these grounds.

[436] As noted above, in order for me to find that there is grounds under s. 22 (2)(b) and (g) each requires proof of substantial risk to T.R.G. . I must therefore find that there is a real chance of danger that is apparent on the evidence. Section 22 (2)(b) requires a finding of substantial risk of danger of physical harm that is apparent on the evidence. I do not need to find that the harm will actually occur, only that there is a real chance that will occur.

[437] I find that there is a substantial risk of physical harm. The evidence is clear that T.R.G. has suffered trauma. He describes the trauma including a physical harm experienced by him. Though denied by the mother, I accept that evidence.

[438] There is nothing that the mother has done to reduce the risk of that harm continuing. She has refused a psychiatric assessment. She essentially refused services for herself through the Minister. Though she claims to be under the care of a psychiatrist and on medication for bipolar disorder, she has provided no independent evidence of this, nor any expert opinion evidence from that psychiatrist or anyone else that any changes have occurred since the involvement of the Minister. Her continuing criminal behaviour, including violence, threatening behaviour to a worker at the courthouse, externalizing blame, inappropriate behaviour at the agency office and her complete absence of insight into the role she is played in T.R.G.'s traumatic upbringing, lead me to the conclusion that there is a substantial risk present.

[439] I also find that, pursuant to subsection (g) there is a substantial risk that T.R.G. will suffer emotional harm. I have already found that T.R.G. has suffered emotional harm over the course of many years as part of his trauma experience and for the reasons set out above respecting the risk of physical harm, I find that there is an ongoing substantial risk of that emotional harm in this case.

[440] I also find that there has been an emotional harm suffered by T.R.G. pursuant to subsection (f). While proof of substantial risk is not required for this subsection, I wish to be clear in my finding that T.R.G. has demonstrated this emotional harm by his severe anxiety, his self-destructive and aggressive behaviour on many occasions, both before and after the commencement of these proceedings, including up to the date of the hearing.

[441] I further find, as set out under that subsection, that neither the mother nor the grandmother, are able to provide services or treatment to remedy or alleviate the harm. Neither has a concrete plan to move forward. I find that to alleviate the harm would require that both the mother and grandmother to enter into a course of counselling or therapy themselves to obtain appropriate diagnosis, particularly of the mother's mental health condition, and to gain insight and skills necessary to help T.R.G..

[442] As well, I find that the plan of the mother and grandmother to address T.R.G.'s needs should he return to their care is inadequate and inconsistent with the advice and recommendations of Ms. Scott and Dr. Webster. There is a plan by the mother to, for example, get T.R.G. admitted to the ACT Program despite admitting he had been rejected when the Agency applied. There is no evidence that she has spoken to anyone about how to get T.R.G. admitted. She says that wants T.R.G. to enter the Bridgeway Academy but admits she cannot afford the cost and claims someone has told her they will find a way. This is not a plan for T.R.G., only wishful thinking.

Services To Promote The Integrity Of The Family

[443] I am mindful that I am unable to grant an order of permanent care unless I am satisfied that less intrusive measures, including those promoting the integrity the family under s. 13 of the *Ac*, have been attempted and failed, or refused by the parent, or would be inadequate to protect T.R.G. . Keeping that in mind, I am satisfied that the Minister has proven that all reasonable services have been provided or made available to the respondents and to T.R.G. throughout this matter. Clearly T.R.G. has been supported through services. The mother has consistently refused to engage in meaningful services including, most significantly, a psychiatric assessment necessary to address her needs and thereby the needs of T.R.G..

[444] I find that reasonable measures have been taken by the Minister and have been ineffective.

Reasonable Prospects For Change

[445] As to whether there are reasonable prospects for change within a reasonably foreseeable time, I find that there are no such reasonable prospects. Both Dr. Webster and Ms. Scott make it clear that T.R.G. will require long-term therapy to obtain any progress and that therapy will be in terms of years.

[446] The mother has demonstrated no movement towards insight or progress in her own circumstances and has no plan whatsoever to move forward into the future. The same is true of the grandmother. Therefore, find that there is simply no reasonable prospects for change within a reasonably foreseeable period of time in this matter.

Family or Community Placement

[447] Pursuant to s. 42 (3) of the *Act*, I must also determine whether it is possible to place T.R.G. with a relative, neighbour or other member of his community or extended family before ordering permanent care. I find that there is no possibility of such placement. The only plans that have been presented are those of the respondents. I have already determined that T.R.G. remains at substantial risk in the care of his mother or his grandmother and no other placements have been presented as alternatives.

Decision on Placement and Access

[448] I have carefully reviewed and considered all of the evidence and having applied the law to that evidence, my findings lead me to conclude that what is in the best interests of T.R.G. is that he be placed in the permanent care of the Minister with a plan for adoption. The fact that T.R.G. will have to consent to any adoption is not unusual in such circumstances and if a suitable home is found by the Minister they will simply have to manage that circumstance with T.R.G..

[449] Whether there should the access granted to the mother or the grandmother now that permanent care has been ordered, I take into account s. 47 of the *Act* as follows:

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

(a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;

(b) the child is at least twelve years of age and wishes to maintain contact with that person;

(c) the child has been or will be placed with a person who does not wish to adopt the child; or

(d) some other special circumstance justifies making an order for access.

[450] In dealing with this section it is helpful to note the comments of the Court of Appeal in *Children and Family Services of Colchester County v. K.T.*, 2010 NSCA 72

37 Before the issuance of a permanent care order, the legislative focus is on preserving the family unit. This would understandably mean that when the children are in temporary Agency care, parental access is to be encouraged so as to hopefully rehabilitate the family. However, with a permanent care order, the focus shifts. Any hope of preserving the family within the legislated time limits is presumably lost and the focus becomes a stable alternate plan. Thus, upon securing a permanent care order, the Agency under the *CFSA* effectively becomes the parent:

...

39 Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaces the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by virtue of ss. 47(2)(a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2)(c) is consistent with this. It provides that if no adoption is planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third., for children under 12, the "some other special circumstance" contemplated in s. 47(2)(d), must be one that will not impair permanent placement opportunities.

40 Therefore, to rely on s. 47(2)(d) as the judge did in this appeal, the (special) circumstances must be such that would not impair a future permanent placement. When then would s. 47(2)(d) apply? Consider for example a permanent placement with a family member which will involve contact with the natural parent. Presuming that the adopting parents would be content with that arrangement, the adoption would not be deterred. See **Children's Aid Society of Cape Breton-Victoria v. M.H.**, 2008 NSSC 242 at para. 35.

41 In short, access which would impair a future permanent placement is, by virtue of s. 47(2), deemed not to be in the child's best interest. This represents a clear legislative choice to which the judiciary must defer.

[451] The Minister takes the position that if permanent care is ordered, there should be no order for access. The mother and grandmother have not taken any position on this as they maintain permanent care is not in T.R.G.'s best interest.

[452] The *Guardian Ad Litem* takes the position that if T.R.G. is ordered into permanent care, access should be granted. He feels this is appropriate both because broadly speaking, it is in T.R.G.'s best interests, but also because based on his interviews of T.R.G. and his assessment of T.R.G.'s likely behaviour, he is of the view that T.R.G. will not cooperate with any permanent care plan or plan of adoption that does not permit him to have access with his mother or grandmother. He also expresses concern about the potential impact on any adoptive family if such access were not allowed. This could, in his view, lead to difficulties based on the risk that T.R.G. might present to younger children if not properly supervised.

[453] I take into account in assessing this issue the evidence of the adoption social worker, Kathy Cashen, that there are no potential adoptive families for T.R.G. in the Agency's database at this time. Despite the fact that "anything is possible" it seems highly unlikely based on the evidence before me that T.R.G. will be adopted.

[454] The *Guardian Ad Litem* testified that at times T.R.G. both wants to go home and to stay in care. T.R.G. did tell the Guardian that he enjoyed visits with his mother and grandmother and did not discuss negative visits. I find it reasonable to infer that T.R.G. wishes to continue access if he is placed in permanent care.

[455] Based upon this, and particularly the facts that there is little likelihood of adoption, that T.R.G. has expressed a wish to continue access, and the view of the Guardian that T.R.G. will seek access on his own in any event and this will be difficult to manage in any placement, I will order that T.R.G. have supervised access with his mother and grandmother. The frequency and duration will be left to the discretion of the Minister.

Timothy G. Daley, JFC