W A R N I N G

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

This is a case under Part III of the *Child and Family Services Act* and is subject to subsections 45(8) of the Act. This subsection and subsection 85(3) of the *Child and Family Services Act,* which deals with the consequences of failure to comply with subsection 45(8), read as follows:

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

2005 ONCJ 223 (CanLII)

Toronto Registry No. C2338/01
CITATION: *Children's Aid Society of Toronto v. L.(V.J.)*, 2005 ONCJ 223

ONTARIO COURT OF JUSTICE

BETWEEN:

CHILDREN'S AID SOCIETY OF TORONTO,
Applicant,

— AND —

V.J.L.,
Respondent.

Before Justice Mavin Wong
Heard on 3-4, 7, 10 and 12-13 May 2004; 17-18 and 28 June 2004;
14 September 2004; 1 and 4-7 October 2004; 22-24 and 26 November 2004;
14-15 and 21 February 2005; 14-15 and 17 March 2005; and 7 April 2005
Reasons for Judgment released on 14 June 2005

CHILD PROTECTION — Form of order — Crown wardship — Best interests of child — Cultural background — Children were apprehended when mother was arrested for her role in marijuana grow operation — During house search, police seized videotape showing mother and her then partner having sexual intercourse, while her eldest daughter (then 10 years old) was videotaping and participating in sexual activity — In ideal world, children should have been placed into Chinese-speaking foster home but, unfortunately, no such placement was then available — As result of delays before mother's criminal cases came to conclusion, children had lost their ability to communicate freely with mother in native Chinese — In light of disturbing nature of events that triggered intervention by children's aid society, more important considerations, such as children's their need for physical, mental and emotional safety, trumped their cultural needs — Mother's household would remain unfit for children's return so long as mother failed to appreciate impact that her misconduct had affected her children and, by contrast, non-Chinese foster home was far preferable to anything that mother had to offer.

CHILD PROTECTION — Form of order — Crown wardship — Least restrictive option to protect child — Children had already been found to be in need of protection after mother had been arrested for her role in marijuana grow operation — During house search, police seized videotape showing mother and her then partner having sexual intercourse, while her eldest daughter (then 10 years old) was videotaping and participating in sexual activity — Mother's own expert witnesses stressed that she was now changed person, that she had accepted responsibility for her past

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transgressions and was willing to correct them, but those expert opinions were based almost exclusively on mother's own self-reporting — During subsequent child protection trial, mother showed that, in fact, she took responsibility for virtually nothing; she denied involvement in growing marijuana and argued that she had been drugged during making of videotape, all of which left much of expert opinions without foundation and of limited weight — Her pattern of conduct was to puts her own hedonistic needs above those of her children and this was being repeated again — Despite commitment not to get involved in any more relationships with men, she had been secretly living with man about whom no one knew anything, who was evasive and elusive in responding to inquiries from children's aid society and who showed pathetic interest in his own biological children, let alone mother's children — Mother had effectively demonstrated that she did not sufficiently understood how her misconduct had affected her children — Court concluded that she was incapable of meeting her children's emotional needs — Children's return into mother's household was not viable option — Crown wardship ordered.

CIVIL PROCEDURE — Costs — Entitlement — Misconduct in or abuse of litigation process — Advocacy of position having little chance of success — After children's aid society had finished its case and while court was hearing evidence on behalf of mother, society made motion to add newborn child to case — Mother's lawyer opposed motion and court had to cut trial short for that day and adjourn matter to later date — By return date of motion, society had realized that motion had been ill-advised because newborn's father would have to be added as party and have to be supplies with copies of transcripts of society's evidence of many days, with possible right by him to cross-examine — Society withdrew its motion, but court agreed that mother's lawyer was entitled to costs for loss of trial time when motion was made for having to prepare to argue for motion that never took place — Costs of $5649.60 fixed against children's aid society.

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STATUTES AND REGULATIONS CITED

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

Jane L. Long .... **for the applicant society**
Gary Gottlieb .... **for the respondent mother, V.J.L.**
Winnie W. Wong .... **for the Office of the Children's Lawyer, legal representative for the children C.W.L. and V.K.T.T.**

[1] JUSTICE M. WONG:— This is a judgment after a trial on an amended protection application relating to the children C.W.L. (born on […] 1990) and V.K.T.T. (born on […] 1992). Their younger sister, D.L. (born on […] 2002) is the subject of a protection application.

[2] On 16 January 2004, the Children's Aid Society of Toronto (hereinafter referred to as the "society") brought a motion for summary judgment relating to all three children. Justice Paul H. Reinhardt made a finding that C.W.L. was a child in need of protection under

clause 37(2)(*c*) (sexual exploitation) and clause 37(2)(*d*) (risk of sexual exploitation) of the *Child and Family Services Act*, R.S.O. 1990, c. C-11 (as amended), and a finding in relation to V.K.T.T. and D.L. under clause 37(2)(*d*).

[3] The society is seeking an order for Crown wardship with access for the two older children, C.W.L. and V.K.T.T., as well as an order for Crown wardship without access for D.L. The lawyer for C.W.L. and V.K.T.T. supports the application for Crown wardship with access.

[4] The mother, Ms. V.J.L., seeks the return of all three of her children under an order of supervision. None of the children's fathers participated in the proceedings.

[5] The trial began on 3 May 2004 and was scheduled for six days. The society's evidence was completed by 17 June 2004 and more time was required. In total, an additional 20 days were scheduled and the trial has taken more than ten months to complete.

[6] In the meantime, Ms. V.J.L. has had another child, A.L., who is subject to a separate protection application. Initially, the society sought to join the protection application relating to A.L. with this trial, but later abandoned its motion. As a result of the initial attempt to join the two proceedings, the court made an order of costs against the society on 1 October 2004. Oral reasons were given with written reasons to follow.

[7] After having carefully considered the evidence and the positions of all parties, I am satisfied that the following orders are necessary: for C.W.L. and V.K.T.T., orders for Crown wardship with access; and for D.L., an order for Crown wardship for the purposes of adoption with no access.

[8] I propose to deal with the evidence under the following headings:

1: THE BACKGROUND OF THE CASE AND THE FINDING para. [9]

2: THE SOCIETY'S POSITION para. [18]

3: THE MOTHER'S POSITION para. [22]

4: THE SOCIETY'S EVIDENCE para. [25]

4.1: The Videotape para. [25]

4.2: Ms. V.J.L.'s Contact with the Society para. [36]

4.3: Dr. Fitzgerald's Report para. [50]

4.4: Dr. Nitza Perlman's Assessment para. [59]

5: THE EVIDENCE OF Ms. V.J.L. AND HER WITNESSES para. [62]

5.1: Ms. V.J.L.'s Evidence para. [63]

5.1(a): Employment and Gambling para. [73]

5.1(b): The Marijuana Grow Operation para. [81]

5.1(c): The Videotape para. [96]

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5.2: Dr. Thomas Li para. [113]
5.3: Irene Law — Hong Fook Society para. [121]
5.4: Pastor Alex Wong para. [123]
5.5: Ms. C.C. para. [125]
5.6: Probation Supervisors para. [128]

6: **Ms. V.J.L.'S PLAN FOR THE CHILDREN** para. [135]
6.1: Background of Mr. Y.X.G. para. [137]
6.2: Concerns about Mr. Y.X.G. para. [143]

7: **THE DISPOSITION** para. [174]

8: **THE ORDER** para. [190]

9: **COSTS** para. [194]

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1: BACKGROUND OF THE CASE AND THE FINDING

[9] C.W.L. and V.K.T.T. came into care on 4 September 2001. Their mother, Ms. V.J.L., had been arrested on charges related to a marijuana grow operation. After police searched her home, they seized a videotape showing Ms. V.J.L. and a male having sexual intercourse. Ms. V.J.L.'s ten-year old daughter, C.W.L., was videotaping and participating in the sexual activity.

[10] On 19 September 2001, C.W.L. and V.K.T.T. were placed together in a foster home in rural Eastern Ontario and remain there. At first, both children had difficulties adjusting to an environment devoid of any other Asian people or culture. They have since settled and are doing well. Upon apprehension, the children wanted to see and be with their mother, but they had no direct contact with her until after Ms. V.J.L. pleaded guilty to her criminal charges. For close to two years, the children communicated with their mother through letters and the worker.

[11] On 13 June 2003, Justice Petra E. Newton of this court sentenced Ms. V.J.L. on the charge of conspiracy to produce marijuana to a conditional sentence of two years less one day to be followed by two years of probation.

[12] Ms. V.J.L. pleaded guilty to one count of sexual exploitation and one count of failing to comply with a recognizance. On 4 September 2003, she was given a 21-month conditional sentence, plus three years of probation.

[13] On 21 July 2003, almost two years since their separation, Ms. V.J.L. and her two children met at the society's office. Ms. V.J.L. apologized to her children and the visit went well. After being in care for so long with no exposure to anyone Chinese speaking, C.W.L. and V.K.T.T. had difficulty communicating with their mother without an interpreter.

[14] Until recently, Ms. V.J.L. and her two oldest children have enjoyed supervised

access visits in the community close to where C.W.L. and V.K.T.T. live. However, since August 2004, when V.K.T.T. began counselling, he has refused to see his mother.

[15] In March 2002, Ms. V.J.L. advised the society that she was pregnant. On […] 2002, Ms. V.J.L. gave birth to a girl named D.L. The society apprehended D.L. a few days later and she remains in care. There has been no contact with D.L.'s father.

[16] In the middle of this trial, Ms. V.J.L. gave birth to another child, A.L. The society also apprehended A.L., who now lives with D.L. in the same foster home. A.L. is the subject of a separate hearing. The father, Mr. Y.X.G., is a family friend whom Ms. V.J.L. met in China and the couple have been together since the end of 2003. Together they have put forward a plan to have all four children returned to their care. They have a full-time baby-sitter ready to move into their home to help them to care for all of the children.

[17] On 16 January 2004, Justice Reinhardt of the Ontario Court of Justice, on a summary judgment motion, found that C.W.L. was a child in need of protection under clause 37(2)(*c*) and clause 37(2)(*d*) of the *Child and Family Services Act* and that V.K.T.T. and D.L. were in need of protection under clause 37(2)(*d*). Justice Reinhardt declined to make orders of disposition and the matter was remanded for trial.

2: THE SOCIETY'S POSITION

[18] The society's position is that Ms. V.J.L. has extremely poor judgment and a history of engaging in criminal activity, all of which puts her children at serious risk. She has always put her own interests ahead of her children. When C.W.L. and V.K.T.T. were very young, Ms. V.J.L. left them for extended period of time with friends and family. She travelled back and forth between Toronto, Vancouver and China. When living in Toronto, Ms. V.J.L. hired baby-sitters to look after the children. Between 1999 and 2000, Ms. V.J.L. was gambling heavily. Her daily routine consisted of getting up between 10 and 11 a.m.; going to work; and then gambling heavily in casinos in Niagara until the early morning hours. Ms. V.J.L. relied on a live-in baby-sitter to take care of C.W.L. and V.K.T.T., but she would sometimes wake up early enough to check on what the children were eating for breakfast and would call at night to check on their homework.

[19] The society further submits that Ms. V.J.L. has little insight into her behaviour and that she has the simple view that she has taken responsibility for her mistakes and that they are behind her. Although outwardly co-operative with the society, counsel submits that Ms. V.J.L. hid from the society the fact she was living with Mr. Y.X.G. (A.L.'s father) and Mr. Y.X.G.'s five-year old son, D.G. There are court orders prohibiting Ms. V.J.L. from having unsupervised contact with persons under the age of 14 years unless pursuant to a court order or with the society's permission.

[20] The society only learned Ms. V.J.L. had a new partner a week before this trial began. The society tried to meet with Mr. Y.X.G. but he claimed that he was busy. It tried to interview his son D.G., but the child was sent back to China on 18 May 2004, where he remains. Mr. Y.X.G. did not meet with the society until A.L. was born and apprehended in

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September 2004, when he had retained a lawyer and well after this trial began.

[21] The society submits that Ms. V.J.L.'s plan to have all the children, as well as D.G., returned to her puts the children at risk and is not in their best interest.

3: THE MOTHER'S POSITION

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[22] Ms. V.J.L. says she accepts responsibility for her past-shortcomings and has learned from her mistakes. She has co-operated with the society and has maintained appropriate contact with all of her children. Ms. V.J.L. is now in a loving and stable relationship with Mr. Y.X.G. and together they have the financial resources and willingness to have all five children live with them.

[23] Ms. V.J.L.'s counsel submits his client has complied with all of the criminal court orders. This has included counselling at the Hong Fook Society; meeting with Dr. Thomas Shing Fu Li, a psychologist; attending her church; reporting to her conditional sentence supervisor and complying with the conditions of the order.

[24] Most importantly, Ms. V.J.L. has met with Dr. Julian Gojer, an expert in forensic psychiatry, numerous times. Dr. Gojer prepared three reports for Ms. V.J.L.'s criminal proceedings and testified at this trial. Dr. Gojer's opinion is that Ms. V.J.L. suffers from anti-social personality traits. Dr. Gojer testified that these individuals commit acts that are against the law or have done things that are socially unacceptable, but they are not incorrigible criminals. He believes that Ms. V.J.L. was caught up with her gambling and the marijuana growing, and thus allowed herself and C.W.L. to be "victimized" by Mr. A.K., the man in the sexually explicit videotape. The circumstances that existed are no longer present and the risk factors are greatly reduced. Ms. V.J.L. is now with Mr. Y.X.G., a supportive and stable partner. They are financially secure and are motivated to have the children returned to her. Ms. V.J.L. has insight into her problems and is taking responsibility for her bad parenting choices. Dr. Gojer testified that Ms. V.J.L.'s focus is now properly on her children's well being. He concludes Ms. V.J.L. is a low risk to the children and the risk is manageable.

4: THE SOCIETY'S EVIDENCE

4.1: The Videotape

[25] On 4 September 2001, the society was called after police seized and viewed the videotape.

[26] The tape is over 30 minutes in length and shows Ms. V.J.L. and a man engaged in sexual intercourse. C.W.L. is on the video alternating between taping and actively assisting the couple. C.W.L. first strokes the male's penis. She stimulates her mother's breasts and helps the man insert and thrust his penis into her mother. C.W.L. rubs her mother's breasts with her hand and mouths her mother's nipples. C.W.L. is smiling and laughing. Speaking in Cantonese, Ms. V.J.L. tells C.W.L. to bite the man's penis. C.W.L. asks "Where?" Her

mother tells her to "Take revenge for mom" and tells her daughter to "Suck it comfortably" and to suck it with her tongue. The man tells C.W.L. that her mother "Wants it". C.W.L. replies that she knows and says, "I hold the penis and put it in Mommy's hole". Ms. V.J.L. tells her daughter, "To make it hard first and put it into the hole". Close ups show C.W.L. inserting the man's penis into her mother's vagina. She puts both of her feet on the man's buttocks and pushes him as he has sexual intercourse with Ms. V.J.L. C.W.L. says, "Let me push it for you".

[27] Ms. V.J.L. tells C.W.L. to let the man see her buttocks because she is so beautiful. The mother says, "Let Daddy see, just a quick look. He will not touch. Be good. [Mr. A.K.] says he will not touch, he will touch mom only." The video ends as C.W.L. says she is tired and has used a lot of energy.

[28] C.W.L. is clothed throughout and neither adult touches the child sexually.

[29] Ms. V.J.L. says that she was heavily under the influence of alcohol and marijuana when the video was made. She says her boyfriend, Mr. A.K., gave her the alcohol and drugs. Ms. V.J.L. claims to have no memory of the incident and insists she spoke to Mr. A.K. after C.W.L. told her about the tape the next morning. Mr. A.K. had assured her that he had destroyed the tape.

[30] On the tape, Ms. V.J.L. appears very relaxed and changes into many different sexual positions. It is impossible to tell whether Ms. V.J.L. is groggy from the alcohol and drugs that she says she took or is just experiencing sexual pleasure. She is semi-conscious and actively directs C.W.L. to do many things. At one point, Ms. V.J.L. asks C.W.L. whether she is videotaping. At another time, a telephone rings in the background and Ms. V.J.L. directs her daughter to "Tell the maid, I am not home".

[31] The society submits that C.W.L. appears too relaxed and comfortable on the video for it to have been the first time she was involved in sexual activity. Counsel for Ms. V.J.L. submits that there is no evidence suggesting that C.W.L. was involved in other incidents. C.W.L. has said that this was the first and only time that she was involved.

[32] I have seen the videotape and C.W.L. seems unusually relaxed and knowledgeable for a twelve year old. Her knowledge of how to sexually stimulate her mother is impressive. Dr. Gojer says that, from just viewing the tape, he cannot conclude that this was or was not C.W.L.'s first sexual encounter. Dr. Gojer agrees C.W.L. does not appear particularly embarrassed or upset by what her mother is doing or asking her to do. Dr. Gojer also says that he cannot conclude that the incident would have traumatized C.W.L. without completing a full trauma assessment.

[33] Dr. Gojer may be right from a scientific viewpoint that there is insufficient information upon which to draw these conclusions. To the lay person, however, C.W.L.'s level of comfort and spontaneous interaction is extremely disturbing. As to the issue of trauma, C.W.L. has refused to discuss it with her counsellor, which may in itself speak to the impact on her.

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[34] Suzanne Vernon-Smith, an intake worker, viewed the tape on 4 September 2001. She apprehended the children at their school the same day. When the police interviewed C.W.L., she initially denied knowing about the tape until they told her that they had seen it. She then became very upset and cried. C.W.L. informed the police that her mother had woken her around 1 or 2 a.m. and asked her to videotape something. She said that her brother, V.K.T.T., was not in the bedroom and the family's live-in babysitter and her husband were sleeping in their own rooms. C.W.L. said that it was the only time that her mother had asked her to be involved.

[35] V.K.T.T., who was 9 years old at the time, was also interviewed. V.K.T.T. maintains that he was not involved in any inappropriate sexual contact, nor did he know about the videotape.

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4.2: Ms. V.J.L.'s Contact with the Society

[36] On 17 September 2001, society intake workers, Anne Mullins and Julie Huynh (acting as an interpreter), went to interview Ms. V.J.L. in custody, where she was detained pending her bail hearing. Ms. V.J.L. was co-operative and answered all questions. Ms. V.J.L. admitted knowing about the tape, but thought that her boyfriend had destroyed it. She said that she loved her children and wanted to make sure that they were all right.

[37] On 2 October 2001, Ms. V.J.L. was released on bail. On 10 October 2001, she met with Ms. Frankie Holmes, a senior social worker with 18 years of experience and the family service worker for this case. Ms. V.J.L. wanted to see her children, but was told the society was not prepared to arrange visits until the children went for psychological assessments. During the period that Ms. V.J.L. was not allowed to see her children, she was financially very supportive and would buy the children things that they had requested.

[38] Ms. Holmes said that Ms. V.J.L. was pleasant, attended her meetings on time, followed through with directions and attempted to engage in discussions. Overall, Ms. Holmes's impression was that Ms. V.J.L.'s co-operation was superficial and that she over-compensated by purchasing the children expensive gifts. In cross-examination, Ms. Holmes admitted that the society decided to recommend Crown wardship fairly early in the proceedings.

[39] On 25 October 2001, Mr. Yale Brick, the child protection supervisor, met with Ms. V.J.L. at the society's office. Ms. V.J.L. came to the office hoping to meet with Ms. Holmes or the children's worker, David Baird. Neither worker was available. In his affidavit, Mr. Brick outlined his contact with Ms. V.J.L. on that day. He said that Ms. V.J.L. wanted to discuss her children and that she was crying. She said that she was under the influence of marijuana when the video was made and did not know the sexual acts were being taped. She denied that it was C.W.L. in the tape. In her evidence, Ms. V.J.L. denies making some of these statements, claiming her English was too poor to have a conversation with Mr. Brick without an interpreter.

[40] On 20 March 2002, Ms. V.J.L. told Ms. Holmes that she was expecting another

child. D.L. was born on […] 2002, at which time (as Ms. Holmes testified) Ms. V.J.L.'s level of co-operation increased. Ms. V.J.L. was permitted twice-a-week access visits supervised at the society office. C.W.L. and V.K.T.T. were permitted an access visit on 23 December 2002 with their sister, D.L.

[41] For the most part, the visits with Ms. V.J.L. and D.L. have gone well except on three occasions, where Frankie Holmes reports Ms. V.J.L.'s being too rough with D.L. Ms. Holmes testified that, on 25 September 2003, Ms. V.J.L. was changing D.L.'s diaper and hit the baby's right thigh because the child was wiggling. Ms. Holmes reported that, on 2 October 2003, Ms. V.J.L. was again quick to react by raising her hand over her head as if to hit D.L. after the baby had dropped her mother's cell phone. Ms. Holmes said that, instead, Ms. V.J.L. lowered her hand and tapped the baby's bum. On 5 February 2004, the worker saw Ms. V.J.L. raise her hand as if she was going to hit D.L.'s leg to stop her from kicking. Ms. V.J.L. denies ever being rough with D.L. In support of her position, Ms. V.J.L. called as a witness her friend, Ms. C.C., who was at the meeting of 25 September 2003 and who said that she saw nothing.

[42] When Ms. V.J.L. had her first access visit with C.W.L. and V.K.T.T. on 21 July 2003, she met the children individually and apologized to them for what she had put them through. She told C.W.L. that she had learned from her mistakes. Unfortunately, an interpreter was required because C.W.L. and V.K.T.T. had lost their fluency in Chinese. Since July 2003, the visits have gone well except for the fact there is seldom an interpreter and communication between Ms. V.J.L. and her children is awkward. The society's efforts to obtain an interpreter have been modest and Ms. V.J.L. says that she cannot afford to pay for one.

[43] Since 6 July 2004, V.K.T.T. has opted to not see his mother. According to David Baird, the children services worker, V.K.T.T. began seeing a social worker for counselling in June 2004. Counselling for V.K.T.T. was delayed because the society decided that C.W.L. should begin her counselling first. C.W.L. went to 7 sessions and then refused to continue. Mr. Baird tried to contact other therapists for V.K.T.T. but could not find one in the area where the children lived. Instead of having V.K.T.T. start his counselling sessions with the same therapist who was working with C.W.L., the society simply waited.

[44] Once V.K.T.T. began his sessions in the summer of 2004, he opted to stop seeing his mother. The first missed visit was on 6 July 2004 when V.K.T.T.'s friend was visiting him at the foster family's cottage. Since then, V.K.T.T. has chosen to miss his the monthly visits. Counsel for Ms. V.J.L. objected to Mr. Baird's telling the court what V.K.T.T.'s reasons were for missing the visits. Mr. Gottleib took the position that he would call V.K.T.T. as a witness, should the court permit the child's worker to give this evidence. However, after counsel's objection, society's counsel chose not to pursue this line of questioning. It would have been helpful to the court to hear V.K.T.T.'s explanation, albeit through his worker. I am, therefore, left to infer why V.K.T.T. refuses to see his mother.

[45] Ms. V.J.L. still drives to her monthly meetings with C.W.L. The visits have generally gone well.

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[46] Overall, the children have adapted very well to their foster home. They get along well with their foster parents and the other children in the home. The family is committed to providing long-term foster care them. C.W.L. is very close to another girl in the home. Both children are doing well in school, with C.W.L. excelling with grades in the 80% to 90%. The children spend their summers at their foster parents' cottage and have friends visit. C.W.L. is baby-sitting and beginning to earn some money. V.K.T.T. has made some good friends, is active in sports and, early on, expressed interest in staying to complete his grade VIII.

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[47] According to Winnie Wong, counsel for C.W.L. and V.K.T.T., the children would like to remain living in the foster home for the foreseeable future. They support the society's application to make them Crown wards with access.

[48] As for D.L., she is placed in the same foster family as her sister, A.L. From all accounts, D.L. is a beautiful 3½-year-old girl. She has emotionally bonded with her foster parents and gets along well other members of the family. D.L. recognizes Ms. V.J.L. and looks forward to the access visits. It is unlikely that, at D.L.'s young age, she recognizes Ms. V.J.L. as her "mother", but she gives and receives affection without difficulty. Ms. V.J.L. has attended her visits regularly, and is affectionate and loving.

[49] D.L. is an adoptable child, although her foster family is not in a position to adopt her.

4.3: Dr. Fitzgerald's Report

[50] On 1 March 2002, C.W.L. and V.K.T.T. were sent for psychological assessments with Dr. Daniel Fitzgerald. Dr. Fitzgerald's *curriculum vitae* is found at tab 11 in exhibit 1, the society's trial brief. Since 1991, Dr. Fitzgerald has been a consulting psychologist with the Children's Aid Society of Toronto as well as other children's aid societies in Ontario. Seventy to eighty percent of his work is for the Toronto society where he spends three days out of five days per week at the society's office. He does not do private assessments for parents involved with litigation with the society. In 2003, Dr Fitzgerald testified in court approximately a half dozen times and, in 2004, at least three times, always as a witness for the society. Dr. Fitzgerald's only published work was one article, the title of which he could not remember when he first gave his evidence on 4 May 2004. By 7 May 2004, Dr. Fitzgerald remembered the article's title, the contents of which had nothing to do with attachment, bonding theory or post-traumatic stress disorder.

[51] I agree with counsel for Ms. V.J.L. that Dr. Fitzgerald's reports from 1 March 2002 have numerous shortcomings.

[52] First, Dr. Fitzgerald met with both children only once. The doctor initially interviewed the family service worker, Frankie Holmes and reviewed the referral letters and the children's school records. He then interviewed both children. There were no follow-up interviews with C.W.L. and V.K.T.T., even though, in his final recommendations, Dr. Fitzgerald recommended that the children's clinical needs be reassessed in six months.

[53] Second, Dr. Fitzgerald testified that, although he usually speaks with the parent or foster parent or other people connected to the child, he did not do so in this case. He did not ask to meet Ms. V.J.L. and, when he sought to meet with the foster parents, they did not attend.

[54] Third, the only objective test that Dr. Fitzgerald administered to either child was the Wechsler Abbreviated Scale of Intelligence, which was given to V.K.T.T. As for C.W.L., the most readily identifiable victim, Dr. Fitzgerald administered no objective tests. Rather, he gave her the Roberts Apperception Test for Children, wherein he showed her a series of pictures and asked her what she observed. When questioned why he would give V.K.T.T. the Wechsler test and not C.W.L., Dr. Fitzgerald indicated it was a matter of "priorizing" the things he was expected to accomplish in the time that was available. He admitted that a cognitive assessment of C.W.L. would have been helpful to him and necessary in the future.

[55] Fourth, Dr. Fitzgerald's choice of words when relaying that the children's feelings were guarded towards their mother was inaccurate. In his report, Dr. Fitzgerald wrote that V.K.T.T. would like to have "some contact with his mother". In cross-examination, he conceded that V.K.T.T.'s desire to see and to be with his mother was unqualified. V.K.T.T. wanted to be with his mother, to see her without conditions, and he expressed as his number one wish to live with her. The witness agreed that it was not in V.K.T.T.'s emotional best interest to be cut off from his mother, but added that the continuation of the no-access order for V.K.T.T. would not place an overly harmful strain upon him because, in his view, V.K.T.T. had the cognitive resources to be able to understand the reasons for the denial of access. Even though the child was never an alleged victim, Dr. Fitzgerald told the court that a no-contact order was necessary because criminal defence lawyers often want parents to have contact with the children to render them less able to give evidence. He added that, in some cases, ensuring the proper conduct of a parallel criminal proceeding is a factor in determining "best interests".

[56] Finally, Dr. Fitzgerald inadequately qualified in his report some of his findings related to C.W.L. He wrote that C.W.L. displayed "some of the cognitive dissonance often seen in victims of prolonged maltreatment". Yet in cross-examination, he agreed that many children in care experience this. He maintained, however, that on the bais of his entire interview with C.W.L., as well as consideration of her exposure to sex and corporeal punishment as a young child, C.W.L. showed some signs of cognitive dissonance although he was not suggesting that she was a victim of prolonged maltreatment.

[57] Dr. Fitzgerald's reports were prepared over three years ago and are presently of limited assistance to the court. These reports provide a glimpse into the psychological make-up of C.W.L. and V.K.T.T. at a very early stage of this process. I accept the content of the report in so far as it indicates what the children had to say about their mother's behaviour at home and how it made them feel. They told Dr. Fitzgerald that Ms. V.J.L. would bring men home with her and have sex with them. Dr. Fitzgerald quoted V.K.T.T. as saying,

> I would tell my mom, "Why do you have sex in front of us? We are just kids. We are not supposed to see this." I would say to her, "you should have gone to a hotel and leave us with the babysitter."

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That evidence was not challenged during cross-examination.

[58] However, Dr. Fitzgerald's choice of words and phrases in his final report left the impression that the children were less attached to their mother than they actually were. At the time of their initial separation, both children loved their mother and wanted to be with her. It would have been helpful had Dr. Fitzgerald been more direct about the quality of the relationship. Dr. Fitzgerald's original assessment likely helped to persuade the society that contact between Ms. V.J.L. and her children was not in the children's best interest. Perhaps for C.W.L., who was an easy to identify victim, this might have been the best course. But cutting off direct contact between V.K.T.T. and his mother is more difficult to understand. It seems that, early on, C.W.L. and V.K.T.T. were treated as a "pair", rather than as individuals. As soon as it was determined that V.K.T.T. was not a victim or a witness in the criminal trials, some effort should have been made to facilitate contact with his mother. If that was impractical because C.W.L. and V.K.T.T. lived together, then at least some immediate counselling for V.K.T.T. was required.

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4.4: Dr. Nitza Perlman's Assessment

[59] At the request of Ms. V.J.L.'s counsel, Dr. Nitza Perlman conducted a parenting capacity assessment in the spring of 2003. Her report dated 17 June 2003 is found at tab 15 in exhibit 1. Much of Dr. Perlman's report relates to Ms. V.J.L.'s background. With regard to the offences that Ms. V.J.L. to the attention of the society, Ms. V.J.L. stated her participation in the video with C.W.L. was committed when she was "drugged against her will" and was an isolated event. She said that her involvement in the other criminal charges (the production of marijuana charge) was "minor".

[60] In her conclusions, Dr. Perlman wrote at page 6:

> Of concern in this case is her poor judgment in choice of partners exposing the children to dangerous situations. Of concern also is that she has little insight into her contribution to the events that brought calamity on her family. There is also concern about her poor ability to postpone gratification and her apparent dependency on relationships to the point of putting her family at risk.

[61] Dr. Perlman concluded,

> It is possible that [Ms. V.J.L.] could benefit from long-term supports in these matters.

5: THE EVIDENCE OF Ms. V.J.L. AND HER WITNESSES

[62] Counsel for Ms. V.J.L. called numerous witnesses at this trial. They included Dr. Julien Gojer, a forensic psychiatrist; Dr. Thomas Li, a psychologist; Irene Law, a caseworker with the Hong Fook Society; Pastor Alex Wong; her friend Ms. C.C.; her conditional sentence supervisors and her "common law" partner, Mr. Y.X.G.

5.1: Ms. V.J.L.'s Evidence

[63] Ms. V.J.L. testified for nine days. Ms. V.J.L. was long-winded, indirect and often

evasive. Questions had to be often repeated and Ms. V.J.L. directed to answer the question. She quarrelled needlessly with counsel for the society over pronunciation of names and other insignificant details. Despite claiming to have limited ability to speak, understand and read English, she often corrected the interpreter and at one point demanded a change in interpreters. In spite of her claim that she lacked proficiency in English, Ms. V.J.L. was careful to have written exhibits and certain passages pointed out to her. She often gave conflicting evidence that, in addition, sometimes changed from one day to the next. At times, Ms. V.J.L. left the impression she was making up her evidence as she went along.

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[64] Ms. V.J.L. is 41 years old and was born in China. In her affidavit, dated 27 April 2004, she said that both her parents and her two siblings live in China. She described growing up in a very close-knit family. She completed high school and then joined the military for five years where she studied marketing and business administration. After leaving the military, Ms. V.J.L. worked for four years in a government factory manufacturing television sets. She said that she came to Canada in 1989 as a refugee claimant. She left China because the factory made donations to the students during the Tianneman crisis and claims to have become a target.

[65] Ms. V.J.L. testified that she married C.W.L.'s father in 1985. Her husband worked in a television factory as a manager. She reported to Dr. Perlman that her husband went into hiding when she fled China in 1989. At the time, she was pregnant with C.W.L. Ms. V.J.L. reported that her husband knew of C.W.L.'s birth in 1990, but only saw his daughter once. She subsequently lost contact with him and has not since been able to find him.

[66] In 1991, she lived with V.K.T.T.'s father periodically. Ms. V.J.L. told Dr. Perlman that she and V.K.T.T.'s father quarrelled because he was westernized while she was more traditional. In court, Ms. V.J.L. said that she left V.K.T.T.'s father because he was unfaithful. She has had no contact with him since 1999. However, near the end of this trial in April 2005, Ms. V.J.L. testified that V.K.T.T.'s father had just called her and they were talking frequently by telephone.

[67] When both C.W.L. and V.K.T.T. were very young, Ms. V.J.L. took them back to China to live with her family. She returned with C.W.L. when she was one year old and V.K.T.T. when he was six months old. Ms. V.J.L. went back and forth to China every six months. She was able to return to China despite claiming refugee status because she had two passports under two different names. When she came to Canada, Ms. V.J.L. said that she had already changed her name to the current one.

[68] Ms. V.J.L. told the court that, while living in Canada, she received undeclared money from family and friends, while collecting welfare. She was extremely evasive when asked about how much money she obtained last year from her family. Eventually she admitted receiving $50,000 (in U.S. funds) and indicated that she could get more. She said that she has income producing property in China. Despite this source of income, Ms. V.J.L. testified that she was unable to afford an interpreter to enhance the quality of her visits with C.W.L. and V.K.T.T. when the society had trouble finding one.

[69] The children returned to live with Ms. V.J.L. in 1995. C.W.L. was 5 years old and V.K.T.T. was 3 years. In 1996, Ms. V.J.L. continued to travel and left V.K.T.T. with his paternal grandparents in Toronto, while C.W.L. stayed with friends in Vancouver for two school terms. She later picked up both children, but again left them with friends.

[70] When asked why she traveled so much, Ms. V.J.L. said she was unhappy. She left the children with family and friends because they were born in Canada and needed to be in a Canadian environment.

[71] Ms. V.J.L. told Dr. Perlman that she met D.L.'s father in September 2001 and that he promised to marry her. She said that she hoped that they would have a future together. D.L.'s father left in May 2002 and Ms. V.J.L. thinks that he is in Afghanistan. D.L. was born on […] 2002, and Ms. V.J.L. says she that has not had heard from him.

[72] Ms. V.J.L. says that all of her pregnancies were planned and wanted by her. The fathers of the children were less enthusiastic, but Ms. V.J.L. reports she was willing to assume responsibility for the care of the children. Dr. Perlman's report of 17 June 2003 quoted Ms. V.J.L. saying that she would not get involved with men in the future so as to protect her children from abuse.

5.1(a): Employment and Gambling

[73] In 1999, Ms. V.J.L. began a tea business. She claims to work for a company called King of Tea Leaves Import and Export Company of Vancouver, which has an office in Toronto. Ms. V.J.L. says that she sells tea to restaurants, which she orders wholesale. She says that 90% of the business is cash. She did not file income tax returns in 2003.

[74] Ms. V.J.L. said that, in the same year, she became involved in gambling. She obtained the money to gamble from her fledging tea-leaves business and from people repaying her money that she had lent them in China. Ms. V.J.L. testified that she loaned the Canadian equivalent of $600,000 to various people with money she earned from the factory she owned in China.

[75] When asked how she had the resources to lend $600,000 when she deposed in her affidavit and had informed Dr. Gojer that she had "worked in a government factory manufacturing televisions", Ms. V.J.L. answered that she had her own factory in China, which employed 1,500 workers. Ms. V.J.L. said that C.W.L.'s father was the factory manager while she was the marketing manager. As a couple, they had a monopoly and significant assets. She claimed that, with her other businesses, she had $7 billion Chinese worth of assets and that lending $3 million Chinese was not a big deal. When asked how she could come to Canada claiming refugee status and collecting welfare, Ms. V.J.L. scoffed at the question and said the society's lawyer did not understand the Chinese government system.

[76] In her original affidavit, Ms. V.J.L. deposed that she had one sister and one brother. In her oral evidence, Ms. V.J.L. testified that she had two sisters: her younger sister is in

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landscaping and construction, while her older sister is retired from the diamond and gold business. She said that, while in China, her older sister held the shares in the diamond and gold business, but that she was in charge. Ms. V.J.L. said that she closed the business after the government changed.

[77] In her affidavit of 27 April 2004, at paragraph 13, Ms. V.J.L. said that she gambled from time to time when she first came to Canada. She said that she watched other people gamble for the first few years but, in 1999, began gambling herself. However, Ms. V.J.L. admitted going to Atlantic City in 1994 or 1995, when the children were in China; Las Vegas in 1993 or 1994; San Francisco; three times in Toronto and a few times in Vancouver. Ms. V.J.L. told Dr. Gojer that she began gambling in 1997, having been introduced to gambling by some friends. She began gambling more frequently and spending more and, by the year 2000, she was gambling every day. Ms. V.J.L. told Dr. Gojer that the children were left with a baby-sitter and she admitted spending less time with the children. As a result, on weekends, she would take the children to the casino, where she and other housewives with children would take turns looking after them.

[78] Sgt. Campbell testified that casino records show that Ms. V.J.L. went to Casino Niagara on 266 days between 8 March 1998 and 14 November 2000, and Casino Rama on 58 days between 1 February 1998 and 7 July 2000. Her buy-ins at Casino Niagara were $2,316,530.00 and $204,630.00 at Casino Niagara.

[79] By 2000, Ms. V.J.L. was placing bets of up to $10,000, which included money pooled together by her friends. She recalled once winning $100,000. She claimed to have met a man named Chung Sin Lai who, she said, gave her large sums of money to bet on his behalf because he felt she was lucky. He would give her up to $100,000 a day. Dr. Gojer suggested the possibility that Ms. V.J.L. may have been aiding others in money laundering. By 2001, Ms. V.J.L.'s luck was dwindling. Ms. V.J.L. told Dr. Gojer that she may have lost upwards of $1.7 million dollars, most of it belonging to Mr. Lai. She said there was no consequence to her for these huge losses. In court, Ms. V.J.L. denied telling Dr. Gojer that she lost $1.7 million dollars and blamed the doctor's interpreter for getting the figure wrong.

[80] Ms. V.J.L. admitted that her personal debts totalled $130,000. She told Dr. Gojer that she got involved in the marijuana grow operations to help to pay down her debt. In court, however, Ms Li testified that the debt was incurred between May and August 2001, after police allege she was involved in growing marijuana.

5.1(b): The Marijuana Grow Operation

[81] According to Dr. Gojer, Ms. V.J.L. reported that she became involved in the drug culture in the summer of 2001. Ms. V.J.L.'s guilty plea related to a period beginning 8 May to 16 August 2001. Police intercepted calls beginning in May 2001 between Ms. V.J.L. and others discussing marijuana growing.

[82] She did not want to disclose to Dr. Gojer any names, but said that these people gave her ideas on how to grow marijuana and make fast money. She needed the money to

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pay off her debts. Ms. V.J.L. told Dr. Gojer that her desire to gamble clouded her judgment and she allowed herself to be used by others. She acknowledged making a bad choice in turning to crime by growing marijuana to fund her gambling addition. She said that she bought a home in May 2001 from the money that she had made.

[83] At this trial, however, Ms. V.J.L. denied any knowledge about any marijuana grow operations and her involvement in the conspiracy.

[84] R.C.M.P. Sergeant William Campbell testified that his unit was involved in an investigation that began in February 2000 and ended in August 2001. He said that their investigation initially related to the importation and trafficking of ecstasy with Ms. V.J.L., from the beginning, being one of the targets. The investigation expanded or changed to marijuana grow operations in and around the Toronto area.

[85] After several days of evidence on a preliminary inquiry, Ms. V.J.L. pleaded guilty on 23 December 2003 to one count of conspiracy to produce marijuana. On 13 February 2003, additional facts in support of the guilty plea were read into court before Justice Petra Newton of the Ontario Court of Justice. The transcript from 13 February 2003 has been marked exhibit 12 at this trial.

[86] Counsel for Ms. V.J.L. at this trial opposed the society's attempt to have the R.C.M.P. officer testify about the police investigation. Mr. Gottleib said that his client pleaded guilty to the charge and all that I was entitled to know was in the transcript. I agreed with Mr. Gottleib that the society was not entitled to call additional evidence and retry the case. However, when Ms. V.J.L. testified before me, she denied participating in the conspiracy to produce marijuana for which she pleaded guilty. Had the society asked to call reply evidence, I would, in these circumstances, have permitted Sgt. Campbell to give additional evidence about the investigation.

[87] The following is a summary of the facts read into court on Ms. V.J.L.'s guilty plea: Police executed search warrants on four homes. Ms. V.J.L. owned a home at 43 Eric Clarke Drive in Whitby, which, she said, she bought with a friend from the casino. When police searched the home, they found 274 marijuana plants. There was a hydro diversion of $8,760.27 that Ms. V.J.L. repaid. Police also seized approximately $20,000 worth of hydroponics grow equipment. The Crown's position was also that Ms. V.J.L. was involved in the production of marijuana at 1606 Burnside and 538 Laurier. In these two other homes, police found 174 plants and 648 plants respectively. The Crown did not allege Ms. V.J.L. was the head of the conspiracy, but that she was (page 16 and 17 of exhibit 12):

> . . . at the higher level of the conspiracy, high enough to direct certain people to do certain things, and question certain people about certain things being done, such as "feeding the children", which, when translated, all leads to drug activity . . . she is enough of a controlling influence to direct people to do certain things at these other homes. These people obviously have access to these homes pursuant to her direction, whatever it is, and they appear to be responding to her directions and orders.

[88] In Ms. V.J.L.'s home, where she and the children lived, police found indicia of a

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grow operation but only 200 empty plant pots in the garage similar to the ones seized in the other raids.

[89] The Crown relied on surveillance evidence and judicially authorized intercepts of telephone communications to prove that Ms. V.J.L. and the others were involved in the conspiracy. Her criminal defence lawyer admitted on the pleas that Ms. V.J.L.'s boyfriend or "common law" partner lived at one of the other addresses.

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[90] Ms. V.J.L. contradicted herself about when she knew marijuana was being grown in her homes. On 26 November 2004, she testified that some men in the casino approached her and asked whether she was interested in growing marijuana to help to pay off her debt. The men asked her to store flowerpots in her garage to which she agreed. She said that she asked them whether they were afraid of being arrested and they said, "no". Ms. V.J.L. claimed that she did not know what marijuana was and what it was all about. When asked when she realized that what they were asking her to do was illegal, Ms. V.J.L. said that she could not recall.

[91] As for the house on Eric Clarke Drive that she co-owned, Ms. V.J.L. said people wanted her to buy the house and promised to pay her $2,500 per month in rent. She said that she initially did not know what the house was going to be used for. On 14 February 2005, at this trial, counsel for the society asked Ms. V.J.L. when she learned that Eric Clarke Drive was being used to grow marijuana. She initially answered "several weeks after the purchase", which was in May 2001. Later on in her evidence, she claimed she only became aware of the grow-operation three weeks before she was arrested on 16 August 2001. She again subsequently changed her evidence by indicating that she did not know until ***after*** she was arrested that marijuana was being grown there.

[92] Ms. Long, counsel for the society, asked Ms. V.J.L. about the wiretapped telephone conversations that were read into court on her guilty plea. Inexplicably, Ms. V.J.L. denied that any of the conversations related to drugs.

[93] The following are summaries of intercepted telephone communications read into court on Ms. V.J.L.'s plea of guilty and that were marked exhibit 12 at this trial. The Crown attorney submitted that the respondent and others discussed the production of marijuana using code words and phrases in an attempt to disguise the substance of their conversations:

- On 27 June 2001, police intercepted a call between Ms. V.J.L. and the others involved in the conspiracy arranging to meet at the Ambassador Chinese Restaurant. Surveillance police saw Ms. V.J.L. meet the two males at the restaurant, but Ms. V.J.L. denies that there was any discussion about marijuana.
- On 3 July 2001, police intercepted Ms. V.J.L.'s discussing with others the "kids", which, according to counsel, referred to marijuana plants. Ms. V.J.L. said she was discussing taking the children out for tea.
- On 18 May 2001, Ms. V.J.L. told an identified party that she was going to "Ah Kau's place" and "Ah Tung's place", which police say referred to the two other grow-operations. A man told Ms. V.J.L. that he had "some stuff for her". The

police followed Ms. V.J.L. to a restaurant where she met three persons. In court, Ms. V.J.L. said that "Ah Kau" did not live at the address. She admitted to having a meal at "Ah Tung's" place, but said that she never discussed drugs.

- On 19 May 2001, police intercepted another call while Ms. V.J.L. was at "Ah Tung's place". There she asked someone to, "Feed the daughter". The person replied, "Yeah, feed the goat-sheep some milk". Police say that the parties were discussing in code fertilizing the marijuana plants. Ms. V.J.L. said in court that "Feed the daughter" referred to her friend's looking after a baby and needing to feed the child. "Feed the goat", she said was meant as a joke.
- On 25 May 2001, Ms. V.J.L. and another individual discussed "cutting hair", referring to trimming the marijuana plants. In court, Ms. V.J.L. said it was normal for women to talk about cutting their hair.
- On 26 May 2001,Ms. V.J.L. discussed going to 1606 Burnside Drive to "do the watering". Burnside Drive is another residence that was converted to a hydroponics plant operation. Ms. V.J.L. claims that she knows nothing about this conversation. "Burnside Drive", she said was Ah Kau's home, a place where Ms. V.J.L. went for food, as Ah Kau was a good cook.
- On 3 June 2001, Ms. V.J.L. told a male party to "Take the rice and the rice container along". Police say that "rice" was code for nutrients and the discussion related to cultivating marijuana at Ah Kau's home at 1606 Burnside Drive. In cross-examination on 14 February 2005, Ms. V.J.L. said she referred to Ah Kau's place because he was a good cook and she could get a good meal. However, on 16 March 2005 in re-examination, Ms. V.J.L. gave a different answer. This time, she said she was talking to a friend who was moving and who had an extra rice container.
- On 15 June 2001, another party told Ms. V.J.L., "They are all cut", and she asked, "Where?" Ms. V.J.L. speculated on who had moved the plants. When police entered the residence later that day, the marijuana plants had been dismantled. Ms. V.J.L. later asked her associate whether Luong had gone to Ah Kau's place stating, "The master told her that someone had cleaned up the upstairs". She instructed another person to cut "the dry ones downstairs and move them to Tung's place", which was another grow house. Ms. V.J.L. denied these conversations.

[94] Ms. V.J.L. said that she has always maintained her innocence to her lawyer, but she pleaded guilty. When asked what was the "larger operation" to which she admitted involvement through her lawyer, Ms. V.J.L. told the court that some people wanted to use her name to buy land in the woods to grow marijuana, but that nothing had come of it.

[95] Ms. V.J.L.'s testimony was entirely unconvincing. She contradicted herself many times when giving her evidence, sometimes even on the same day. Her guilty plea made through counsel was clear and unequivocal. She has never appealed her guilty plea and conviction. Extensive facts were read into the record at the time of the plea and she had the benefit of a court interpreter. Ms. V.J.L.'s counsel carefully admitted only certain facts on her client's behalf. I have difficulty accepting much of Ms. V.J.L.'s evidence on material

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issues of fact as truthful.

5.1(c): The Videotape

[96] Mr. A.K. is the man in the sex video. Ms. V.J.L. testified that she met him in 1996 in Vancouver. In 1999, when she again visited Vancouver, Ms. V.J.L. said that she met him up with him and invited him to come to Toronto. Mr. A.K. subsequently moved in with Ms. V.J.L. and her children in February 2000. He did not have a job and spent most of his days talking with friends. Ms. V.J.L. said that he drank and smoked excessively. She did not charge him anything for rent or food. In her affidavit, she said that she felt sorry for Mr. A.K. because he had no immigration status and was in Canada illegally. Ms. V.J.L. said that he wanted to marry her to gain legal status. They lived in a "common law" relationship for a year until June 2001, when Mr. A.K. left with V.K.T.T. for Vancouver and Ms. V.J.L. was subsequently arrested.

[97] In his report dated 4 April 2003, Dr. Gojer indicated that Ms. V.J.L. told him that the videotape was made in April 2001. Ms. V.J.L. told him that Mr. A.K. gave her marijuana, 4 to 5 beers, ecstasy and a drug called GHB. She claimed to have rarely consumed any alcohol prior to that night. She said that she had only tried smoking marijuana years before and believes that Mr. A.K. may have slipped her another drug, but was uncertain. When Ms. Long, counsel for the society asked Ms. V.J.L. whether she told Dr. Gojer that she suspected that Mr. A.K. had given her "GHB" and ecstasy, Ms. V.J.L. asked to see the report before answering each question. She seemed unsure of what she had told Dr. Gojer and wanted to review it herself.

[98] Ms. V.J.L. claimed to have no memory of tape's being made, but recalled C.W.L.'s being in her bedroom. Although she said that Mr. A.K. brought C.W.L. into the room, I note that C.W.L. told Dr. Gojer that her mother woke her and asked her to videotape.

[99] C.W.L. told her mother what happened during the videotaping the next day after school. Ms. V.J.L. asked her whether Mr. A.K. had touched or hurt her, but C.W.L. said he had not. Ms. V.J.L. said that she had confronted Mr. A.K.; he promised that the tape had been destroyed. Instead of demanding that Mr. A.K. leave immediately, Ms. V.J.L. allowed him to stay. Ms. V.J.L. told Dr. Gojer that she let Mr. A.K. stay because she was involved with another man setting up a drug business to grow marijuana and Mr. A.K. was aware of this. She said that she was concerned that Mr. A.K. would report her to the authorities (report dated 4 April 2004 at tab18, exhibit 1 at page 3). In court, Ms. V.J.L. said something quite different. She testified Mr. A.K. kneeled down, apologized and promised that it would never happen again. She said that she was angry and wanted him to move out, but let him stay because he had nowhere to go and he treated V.K.T.T. well.

[100] Despite concerns that her daughter had been abused, Ms. V.J.L. did not take C.W.L. to a doctor. In addition, she continued to leave the children for long periods of time with the baby-sitter, on whom Ms. V.J.L. had always heavily relied. The baby-sitter and her husband lived in the basement 24 hours a day and, except when Ms. V.J.L. took C.W.L. and V.K.T.T. for "dim sum and grocery shopping", the baby-sitter took the children to school, managed

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their homework and took them to play dates and activities.

[101] At page 8 of his report dated 4 April 2004, Dr. Gojer wrote:

> It is my opinion that [Ms. V.J.L.'s] behaviour at the time of making the pornography video is more likely to be in response to a dominant partner and her need to please him.

I agree with counsel for the society that there is no evidence that Mr. A.K. was the "dominant partner" in the relationship. By contrast, Ms. V.J.L.'s evidence was that she allowed Mr. A.K. to stay with her and that Mr. A.K. wanted to marry her to secure his immigration status, all of which permits a contrasting inference.

[102] As well, Ms. V.J.L. told Dr. Perlman a different version of events. According to the doctor's report at page 5, Ms. V.J.L. indicated that Mr. A.K. wanted to marry her for his legal status, but that she was fed up with his drinking and had decided against marrying him. She said that Mr. A.K. was angry and left the home several times, only to return again. He finally left for good in June 2001.

[103] On either of these versions, there is still no evidence to suggest that Mr. A.K. was the dominant partner or exercised any control over Ms. V.J.L.

[104] According to Ms. V.J.L., Mr. A.K. was intoxicated a lot of the time. In relation to that, her baby-sitter had warned her to keep a close eye on C.W.L. Ms. V.J.L. said that she worried about her daughter and checked periodically to determine whether Mr. A.K. had done anything "impolite" to C.W.L.

[105] Despite the making of the videotape, Mr. A.K.'s excessive drinking and her purported concern over her daughter's safety, Ms. V.J.L. bought two tickets for Mr. A.K. to take V.K.T.T. with him to Vancouver in June 2001. The plan was for her son to spend the summer with Mr. A.K. because V.K.T.T. complained that he had never been to Vancouver. She said that she was aware that they would be staying with a man she knew only as "Big Guy". Ms. V.J.L. said that she knew "Big Guy's" wife and children and, although she did not know his address, she believed that she could find the house. Until her arrest in August 2001, Ms. V.J.L. was in frequent contact with V.K.T.T. and Mr. A.K. by telephone. However, when Ms. V.J.L. was arrested in Toronto, she could not reach either Mr. A.K. or "Big Guy", for the reason that Mr. A.K.'s phone was no longer in service and "Big Guy" had moved. Ms. V.J.L. has not heard from Mr. A.K. or "Big Guy" since her arrest — yet she does not appeared bothered by it. The baby-sitter arranged for V.K.T.T. to fly back to Toronto. When asked why "Big Guy" did not bring V.K.T.T. back to Toronto, Ms. V.J.L. said that he was busy with his construction business.

[106] Dr. Gojer was of the opinion that Mr. A.K. had paedophilic tendencies and was "grooming" Ms. V.J.L. and C.W.L. to accept sexual exploitation. Dr. Gojer defined "grooming" as a complex process involving the development or establishment of trust, intended to be extended not only to children who are the potential victims, but also to partners and other individuals involved. The friendship then progresses to befriending and performing special favours, thus creating special obligations within the child or adult. The

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"groomer" then finds a weakness in the adult or child and moves from hugging and touching a child into more sexually inappropriate behaviour. The videotape, in this view, was part of the desensitization of moving others towards more sexually explicit acts. Dr. Gojer relied on information provided by the children to Dr. Fitzgerald that they liked Mr. A.K. but that he was a disciplinarian, using an example where Mr. A.K. emptied their closets and then made them put their clothes back in. He also noted that Mr. A.K. gave C.W.L. money. In this way, Dr. Gojer viewed the children and Ms. V.J.L. as "victims". On the basis of his analysis, Ms. V.J.L. is relieved of further responsibility because she has been taken advantage of, along with her daughter, by a manipulative pedophile.

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[107] There is simply not enough evidence for me to conclude that Mr. A.K. was a pedophile and there is little evidence to support the theory that Ms. V.J.L. and her daughter were being groomed. Admittedly, there may be some evidence to support this proposition, if all other possibilities are excluded. C.W.L. told Dr. Fitzgerald that she felt uncomfortable around Mr. A.K. and Ms. V.J.L. told the baby-sitter to watch C.W.L. when she was around him. Ms. V.J.L. said that, when C.W.L. got her first period, she asked the baby-sitter to check whether Mr. A.K. had hurt her. Ms. V.J.L. said that she told C.W.L. that, if Mr. A.K. ever tried to touch her, "to shout to the baby-sitter" and not to make so many jokes around him.

[108] However, the evidence is also consistent with Ms. V.J.L.'s continually putting her own interests ahead of those of her children, both of whom reported to Dr. Fitzgerald that their mother had sexual relations with men in the family home, unbothered by the fact that her children were present. Mr. A.K. must have satisfied some need of Ms. V.J.L. because he certainly did not appear to be contributing anything to the family unit. Ms. V.J.L.'s lawyer at the criminal proceedings admitted that Ms. V.J.L.'s boyfriend or "common law" spouse lived at one of the other grow houses. Was counsel referring to Mr. A.K. or another man? Mr. A.K.'s sudden and unexplained disappearance after Ms. V.J.L.'s arrest leads to the reasonable inference that he, too, was involved in some form of criminal activity. Perhaps, as Ms. V.J.L. began to take more risks with her own personal safety and began associating with more unsavoury people, she became willing to risk her children's safety. From my viewpoint, Ms. V.J.L.'s behaviour was more consistent with being hedonistic and self-centred, rather than being a victim.

[109] As for C.W.L. and V.K.T.T.'s claims that their mother had sex with different men around the house, Ms. V.J.L. denied this. She said that V.K.T.T. would have been too outspoken to accept this and would have said something to her had it occurred. Actually, V.K.T.T. told Dr. Fitzgerald that he said to his mother, "you should have gone to a hotel and leave us with a babysitter".

[110] Dr. Gojer drew the following conclusion at page 8 of his report of 4 April 2003:

> The account given by [Ms. V.J.L.] suggests that she was involved in antisocial activity limited to the possibility of growing and distributing marijuana. It is not clear if she was involved in possession and distribution of other drugs. There is no indication that there has been any antisocial behaviour in any other field.

> There is no evidence to suggest that she has a major mental illness, a mood disorder or problems with anxiety or depression. There is no evidence to make a diagnosis of alcohol or drug dependence. There are no collateral sources to indicate that there has been any ongoing drug or alcohol abuse.
>
> In terms of sexual deviation, one has to look for a pattern of offending or a self-report of recurrent thoughts, urges or fantasies of a deviant nature. I have not interviewed the daughter and, from viewing the videotape, I cannot conclude that the daughter was involved in any prior production of pornography or that she was well groomed in such behaviour. She did not appear distressed during the episode but the mother appears to have been directing her from time to time. The CAS notes do not confirm any ongoing sexual abuse of the daughter or repeated production of pornography tapes involving either child. There are no prior convictions for any sexual offences in the past. [Ms. V.J.L.] denies any sexually deviant fantasies or behaviour. There are no readily available physiological tests at this time to evaluate [Ms. V.J.L.'s] erotic preferences.
>
> It is my opinion that [Ms. V.J.L.'s] behaviour at the time of making the pornography video is more likely to be in response to a dominant partner and her need to please him. The presence of alcohol and drug use may have had multiple roles. There could have been a disinhibiting effect, there could have been a stimulating effect with novelty-seeking behaviour, and the combination of the drugs could have clouded her judgment. Her stated lack of memory for details can be understood as being part of a black out or as a failure to take responsibility by attributing all behaviour and the black out to the consumption of drugs and alcohol. All the same time, she certainly used very poor judgment at the time of the alleged offences. Based on the information available to me, it is unlikely that she has a sexual deviation.
>
> A remote possibility to be considered is whether she was considering production of child pornography for commercial purposes and unrelated to any sexual deviation. There does not appear to be any evidence of this either.

[111] Dr. Gojer concluded that Ms. V.J.L. suffers from anti-social personality traits, but is not a sexual deviant. Her behaviour, he said, is likely the result of clouded judgment due to alcohol and drugs. He relies heavily on the fact that Ms. V.J.L. has accepted responsibility for her shortcomings, has received treatment and counselling, has co-operated with the society, has complied with the criminal court orders and has a stable and supportive relationship with her current boyfriend, Mr. Y.X.G., to conclude that she can safely parent her children.

[112] Dr. Gojer's opinion that Ms. V.J.L. is no longer a risk to her children is only as strong as the foundation upon which it is built. An underlying premise in his report is that Ms. V.J.L. accepts responsibility for her actions. It is clear Ms. V.J.L. does not accept responsibility for anything related to the marijuana grow operation. She admitted that she had a problem with gambling, but suggested that it was mainly other people's money that she gambled and lost; nonetheless, she said that she no longer gambles. As for the sexually explicit tape, she cannot deny its existence, but claimed that she was so drugged that she cannot remember anything.

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5.2: Dr. Thomas Li

[113] Dr. Gojer referred Ms. V.J.L. to Dr. Li, a psychologist trained in Hong Kong and whose practice is comprised of mostly Chinese or Hong Kong born patients. Since 2002, Dr. Li has had his own practice in Toronto. On 8 September 2004, he began to see Ms. V.J.L. and saw her five times before testifying in court on 4 October 2004. His main task was to conduct a psychological assessment based on culturally sensitive and altered standardized tests, while his goal was both to understand the circumstances leading to Ms. V.J.L.'s offences and to assess her suitability as a custodial parent. Dr. Li administered 3 psychological tests: the Chinese version of the M.M.P.I (*Minnesota Multi-phasic Personality Inventory*), the Beck Anxiety Inventory and the Beck Depression Inventory. He also made findings based on his clinical interviews.

[114] The M.M.P.I. showed no serious psychopathy, only elevated scales of anxiety and fear. Ms. V.J.L. told Dr. Li that she was very anxious and severely depressed as a result of the loss of her children. On the masculine-feminine scale, Ms. V.J.L. tended to reject the traditional roles and activities of men versus woman and seemed to relate more to the western scale, where women were more career-minded, more outgoing in business and more dominating. According to Dr. Li, this demonstrated Ms. V.J.L.'s motivation to take charge and guide the family. The Beck Anxiety Inventory showed that Ms. V.J.L.'s anxiety is situational. He felt that, with the return of the children, the respondent's anxiety would be reduced. On the Beck Depression Inventory, Ms. V.J.L.'s scores were very high, indicating a loss of pleasure and feelings of guilt. Ms. V.J.L. reported loss of sleep, restlessness and agitation, crying and feeling like she is being punished.

[115] Dr. Li recommended three areas upon which to focus in any future counselling:

- boundary issues;
- psycho-educational guidance relating to good practices of child care and rearing; and
- individual counselling focusing on her relationship with her partner and managing a home with many children all of different ages.

If the children were returned to Ms. V.J.L., Dr. Li recommended a staggered process of re-integrating the children back into her home.

[116] Ms. V.J.L. told the doctor that she agreed to a false marriage to V.K.T.T.'s father because she wanted to start a business and a family with him. The same pattern seemed to have emerged with Mr. A.K. Instead of asking him to leave, she remained in the relationship because she needed emotional support. Dr. Li reports that Ms. V.J.L. tried to divert Mr. A.K.'s interest in C.W.L. and became too accommodating by taking the drugs and alcohol before having sex. He described Ms. V.J.L.'s relationship with Mr. A.K. as "short term", even though it lasted for more than one year, as well as "unstable" and "strained". She also told Dr. Li that she had D.L. because she needed company.

[117] According to Dr. Li, Ms. V.J.L. reported her relationship with Mr. Y.X.G., her current boyfriend and father of A.L., as supportive and stable. Dr. Li, however, had never

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met Mr. Y.X.G. until he came to testify in this trial where he met him outside the courtroom. Dr. Li acknowledged that Ms. V.J.L. had never discussed Mr. Y.X.G.'s son, D.G., with him.

[118] Dr. Li attributed Ms. V.J.L.'s lapses in judgment to her being under the influence of alcohol and marijuana. He said that Ms. V.J.L. was in a state of loss and mourning, having lost contact with C.W.L.'s father; a state of emptiness and lack of direction in her life; and her need to adapt to a culturally different environment, absent family members, all of which contributed to her poor judgment in involving herself with illegal activity. Dr. Li concluded that Ms. V.J.L. has learned a lot from her previous mistakes and is now in a stable and supportive relationship.

[119] I accept Dr. Li's findings that Ms. V.J.L. does not suffer from any major mental illness or serious psychopathy. Dr. Li's findings supported Dr. Gojer's conclusions that Ms. V.J.L. has had a very troubled background, especially in terms of her relationships and that she could benefit from counselling. Dr. Li's over-reliance on Ms. V.J.L.'s reporting to him that her relationship with Mr. Y.X.G. is significantly different when compared to her other relationships tends to raise questions concerning the quality of his opinion that Ms. V.J.L. is presently capable of properly parenting her children. Dr. Li never met Mr. Y.X.G. to assess for himself the quality of that relationship.

[120] I will review Mr. Y.X.G.'s evidence later in this ruling and highlight the areas of my concern.

5.3: Irene Law — Hong Fook Society

[121] Since September 2003, as part of her conditional sentence order, Ms. V.J.L. has been attending monthly sessions at the Hong Fook Mental Health Association, an organization that offers supportive counselling for persons with mental health issues. Irene Law, Ms. V.J.L.'s caseworker, testified that she has helped Ms. V.J.L. to address issues of gambling and parenting. Ms. Law indicated that, largely on the basis of self-reports, she concluded that Ms. V.J.L. does not have a gambling addiction. Ms. V.J.L. continues to work, attend church, reports to probation, maintains her finances, and is physically well. She has referred Ms. V.J.L. to two parenting courses that she completed and found useful. Ms. V.J.L. told Ms. Law that she was pregnant with A.L. in February 2004 and discussed the pros and cons of reporting her pregnancy to the society. Ms. V.J.L. discussed problems raising D.G., but Ms. Law never asked whether Mr. Y.X.G. was the father of the baby. Ms. Law did not discuss with the respondent sexual abuse or boundary issues regarding children, nor Ms. V.J.L.'s relationships with different men. Ms. Law said that hers is non-directive counselling, which means that she discusses issues as they come up, and that she tries to give Ms. V.J.L. some suggestions. Ultimately, it is left to the client to make the choice and achieve the goal.

[122] Ms. Law is prepared to continue to work with Ms. V.J.L.

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5.4: Pastor Alex Wong

[123] In 2001, Pastor Wong was a volunteer minister when he met Ms. V.J.L. at the Toronto West Detention Centre, where she was detained pending her release. When she was released, Ms. V.J.L. began attending his church, commencing in the summer of 2003. She attends regularly and is completing her court-ordered community service there. Pastor Wong testified that Ms. V.J.L. has initiated questions about parenting and has told him that she wants her children returned.

[124] Pastor Wong is unaware of the details of the sexual exploitation charges. He has never met Ms. V.J.L.'s boyfriend, was unaware that Ms. V.J.L. was living with Mr. Y.X.G. and his young son, and did not know that she was pregnant with A.L.

5.5: Ms. C.C.

[125] Ms. V.J.L.'s counsel called Ms. C.C. to establish that, during the access visit of 25 September 2003 with D.L., Ms. V.J.L. did not raise her hand in frustration at the baby.

[126] More interestingly, Ms. C.C. described herself as a good friend for the past five years of Ms. V.J.L. She knew very little about the criminal charges except something related to "grass", and knew nothing about the videotape. According to Ms. C.C., since Ms. V.J.L. was given conditional sentences by the courts with virtual "house arrest" with limited exceptions, Ms. C.C. continued to go out for dinner and shopping with Ms. V.J.L. three or four times a week.

[127] Ms. C.C. has met Mr. Y.X.G., but does not know what he does for a living, as Ms. V.J.L. had never told her.

5.6: Probation Supervisors — Josh Driscoll and Jada Bider

[128] Josh Driscoll first supervised Ms. V.J.L. on her two conditional sentence orders until July 2004. At that time, Jada Bider took over his role. Between the two of them, they demonstrated a complete lack of understanding of the most basic and fundamental task, which is properly reading the orders.

[129] Ms. Bider was unaware until 1 October 2004 (the day she was called to testify) that Ms. V.J.L. was bound by a section 161 prohibition order restricting her contact with children under the age of 14 as well as from going to schools, playgrounds, public swimming pools and other places that children might be. Neither Ms. Bider or Mr. Driscoll were aware that Ms. V.J.L. was living with the Mr. Y.X.G.'s 5-year-old son D.G., a fact that would have brought the respondent in direct violation of the order.

[130] Until it was pointed out to her, Ms. Bider was not aware that the two conditional sentence orders were in conflict with each other in relation to when and for how long Ms. V.J.L. was permitted outside of her residence. Ms. Bider did not use an interpreter when reviewing the terms of the orders with Ms. V.J.L., yet failed to report any difficulty communicating with her.

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[131] Ms. V.J.L.'s conditional sentence order allowed her to be outside her residence for purposes of employment. Josh Driscoll was content to rely on Ms. V.J.L.'s word and a company cheque that she was working. In April 2004, Ms. V.J.L. told him that she was three months away from opening up her own business in a mall. He did not ask her when she had stopped working in her other business and did not vary the letter of permission that he had originally given her citing the hours she was allowed outside her home for work. He had not asked for proof of Ms. V.J.L.'s employment selling tea and had never asked to see any business records or the company's books.

[132] Mr. Driscoll never referred Ms. V.J.L. for gambling counselling as ordered by the court because it "never presented itself as a major problem". Mr. Driscoll assumed Dr. Gojer was dealing with the gambling and sexual abuse issues, even though he never confirmed this. As a result, Mr. Driscoll did not direct Ms. V.J.L. to any counselling as he thought he would be duplicating services. It turns out that Dr. Gojer was only doing assessments, not counselling, with Ms. V.J.L.

[133] Neither supervisor inquired of Ms. V.J.L. with whom she was living. Mr. Driscoll only found out that Ms. V.J.L. was pregnant on 14 July 2004, when the interpreter at this trial told him.

[134] It is difficult to know whether Ms. V.J.L. breached her conditional sentence orders by regularly having dinner and going shopping with her friend, Ms. C.C. Ms. V.J.L.'s conditional sentence orders have been so poorly interpreted and supervised that it is impossible to draw any conclusion in this regard. She certainly has not been charged with any criminal breaches of the order and has incurred no new charges.

6: Ms. V.J.L.'S PLAN FOR THE CHILDREN

[135] The plan proposed by Ms. V.J.L. is for C.W.L., V.K.T.T., and D.L. to return to live with her and her boyfriend, Mr. Y.X.G. The couple bought a home in Richmond Hill, a city just north of Toronto, in April 2004. After some renovations, Ms. V.J.L. and Mr. Y.X.G. moved in on 2 September 2004, the day on which baby A.L. was born and apprehended. It is a 5-bedroom house, with an unfinished basement, a backyard and a double garage. It is located near two schools available to the children. Ms. V.J.L. wants to have A.L. returned to their care and they also have plans to bring D.G. back from China. The couple say that they will hire a nanny to live with them, 24 hours a day with one day off per week. C.W.L. and D.L. will share one room; V.K.T.T. and Danny will share another room; and the baby A.L. will sleep with the baby-sitter.

[136] Mr. Y.X.G. has worked in the past as a cook and more recently as a self-taught renovator. He is currently a landed immigrant.

6.1: Background of Mr. Y.X.G.

[137] Mr. Y.X.G. came to Canada from China on 1 June 2000. Mr. Y.X.G. was working in his family's seafood business in China when he first met Ms. V.J.L., who was a customer.

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There is a 10-year age difference between the couple: Mr. Y.X.G. is 31 years old and Ms. V.J.L. is 41years old. The couple went out a few times. Mr. Y.X.G. telephoned Ms. V.J.L. when he arrived in Toronto in June 2000.

[138] Mr. Y.X.G. married in July 1997 and his son D.G. was born on […] 1998. He has an extended family in China, which includes his mother and several siblings. Mr. Y.X.G. left his wife and young son in China when he immigrated here in June 2003. On 10 October 2003, Mr. Y.X.G.'s wife and son arrived in Canada under his sponsorship. According to Mr. Y.X.G., a condition precedent to his sponsoring his family was that his wife was to relinquish custody rights to him. Initially, Mr. Y.X.G. and his wife and son lived with Ms. V.J.L. As part of their original agreement, Mr. Y.X.G.'s wife moved out of the house, one month after her arrival and he took custody of D.G. After his wife moved out, Mr. Y.X.G. and Ms. V.J.L. began to be intimate. Mr. Y.X.G. and his wife were divorced on 20 January 2004.

[139] Mr. Y.X.G. said that, between the time he left China in June 2000 and his family's arrival, he came to dislike his wife. He said that, in his absence, his wife and her family quarrelled with his mother. By the time his wife came here, "he did not like her" and "could not care less for her". He blamed his wife for not watching D.G. on an occasion when his son apparently fell and cut his forehead. He felt that it was her responsibility to take care of him. He said that D.G. did not listen to his wife because, even as a five-year old, his son did not like to listen to women but only to someone who is more intelligent and can argue better than him.

[140] After his wife moved out of Ms. V.J.L.'s house, Mr. Y.X.G. and Ms. V.J.L. hired a live-in baby-sitter for D.G. Again, Ms. V.J.L. was dependent on the baby-sitter. On this issue, Mr. Y.X.G. contradicted himself in relation to what responsibilities he had while D.G. lived with him. During this trial on 5 October 2004, Ms. V.J.L.'s counsel asked Mr. Y.X.G. whether the baby-sitter took D.G. to day care. Mr. Y.X.G. said that he himself took care of that task. October 2004, however, during cross-examination, Mr. Y.X.G. testified that the baby-sitter prepared the child's breakfast, took him to school, picked him up, cleaned the house, cooked the meals, taught D.G. how to write and generally "took care of D.G.".

[141] Mr. Y.X.G. paid the baby-sitter $1000 per month in cash for 6 days of work per week, including evenings and overnights. Should all five children return home, Mr. Y.X.G.'s original plan was to hire the 60-year-old baby-sitter, but then said he would try to find someone younger.

[142] In the fall of 2003, D.G. was originally enrolled in the local school near Ms. V.J.L.'s home. Ms. V.J.L. helped to register the child because Mr. Y.X.G. does not speak or understand any English. Both testified that D.G. was very hyperactive and "very naughty". Mr. Y.X.G. took D.G. to a number of medical specialists to check out his physical health. He was worried that D.G.'s fall while in his mother's care was related to his son's behaviour. In the end, D.G. was not prescribed any medication, but his teacher recommended that D.G. attend both the childcare program plus the half-day kindergarten program, presumably to help to socialize him.

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6.2: Concerns about Mr. Y.X.G.

[143] Mr. Y.X.G. admitted that D.G. initially had difficulty settling in — understandable because he had always been with his mother to that point. Mr. Y.X.G. began his evidence sounding very controlling about when D.G.'s mother could see the child; then his evidence shifted and he said his ex-wife only saw D.G. three times; finally, he added he had to beg her to come see the boy. Mr. Y.X.G. went out of his way to portray his ex-wife as negligent and ineffective. He blamed her for not watching D.G. when he fell and hit his head and said that she was incapable of controlling him. Yet, according to Mr. Y.X.G., when his wife asked whether D.G. could come to stay with her before she moved to Vancouver, not only did he oblige her and send D.G. to her, but he and Ms. V.J.L. arranged to change D.G.'s school. There was little coherence in this evidence.

[144] On 3 December 2003, D.G. was taken out of the local school near his father's home and was transferred to a one near his mother in York Region. I am sceptical that switching D.G.'s school occurred for the reason that D.G. was to spend a few weeks with his mother before she moved away to Vancouver. Changing schools in this manner permits the inference that it was part of a more permanent plan to have D.G. live with his mother because he was having difficulties settling in with his father.

[145] These plans fell through when D.G.'s mother left for Vancouver. On 8 January 2004, D.G. was transferred back to his original school.

[146] Throughout this period, the society was unaware that Ms. V.J.L. was living with Mr. Y.X.G. and D.G. or that she was pregnant.

[147] On 29 April 2004, on the eve of this trial, Ms. Frankie Holmes, the family service worker noticed that Ms. V.J.L. wearing maternity clothes and asked whether she was pregnant. Ms. V.J.L. denied being pregnant, indicating she was just gaining weight.

[148] Ms. Holmes's testified that she only found out about Mr. Y.X.G. on 3 May 2004, when Ms. V.J.L. filed her affidavit material for this trial, which set out her plan for the children. Ms. Holmes immediately tried to arrange a meeting with Mr. Y.X.G. and D.G., through a Chinese interpreter. Mr. Y.X.G. took the position he was too busy with work to meet with her.

[149] On 17 May 2004, having met with no success in arranging a meeting with Mr. Y.X.G. or D.G., Ms. Holmes went to D.G.'s school to speak with the teachers. She was advised that D.G. had not been at school since March 2004. The same day, another society worker and police went to the residence in an attempt to find the child. They were told that D.G. had been sent back to China to visit his sick great-grandmother. Mr. Y.X.G. said that his ex-wife took D.G. back home because his own passport was not ready.

[150] In court, however, Mr. Y.X.G. testified repeatedly that D.G. was sent to China on 18 May 2004, which would be the day after the family service worker came to his house.

[151] Until the society apprehended his daughter A.L. on 12 September 2004, Mr. Y.X.G.

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never contacted the society to meet with it or to discuss his plans for helping Ms. V.J.L. to reunite with her children. Mr. Y.X.G. said that he had been too busy moving houses and getting ready for A.L.'s birth to do so. Mr. Y.X.G. did not meet with Ms. Holmes until 17 September 2004, accompanied by his lawyer and counsel for Ms. V.J.L.

[152] I agree with the society's submissions that, had Ms. V.J.L. told Mr. Y.X.G. that the society intended to apprehend their baby when she was born, then his lack of cooperation with the society is disturbing. If Ms. V.J.L. did not tell him, then it speaks to their lack of communication and the strength of their relationship.

[153] Mr. Gottleib defends Mr. Y.X.G.'s position, arguing that he had to retain his own lawyer and receive legal advice before coming forward. I find that position untenable. Mr. Y.X.G. must surely have known that Ms. V.J.L.'s trial was to begin in May 2004, and that she was putting forward a plan in which both of them would be involved in the care of the children, should they be returned. To sit back and to wait four months to get legal advice before speaking to the society worker is inexplicable. This attitude is consistent with the rest of Mr. Y.X.G.'s evidence, which demonstrates a surprising lack of interest in the outcome.

[154] To date, D.G. continues to live in China and Mr. Y.X.G. has made no efforts to bring back his son. Although he visited his son in August 2004, Mr. Y.X.G. did not return with D.G. He said he wanted to wait because A.L. was about to be born. Since then, the great-grandmother whom D.G. was sent to visit has died and D.G. is living with Mr. Y.X.G.'s mother and his brother. He says that D.G. makes his mother happy and keeps her company. He says that he is thinking about going to get his son, but now wishes to wait until the trial is over. Mr. Y.X.G. says that he does not know how to contact D.G.'s mother in Vancouver. He says that, if anything happened, she would have to contact his family who, in turn, would give her his new phone number.

[155] When questioned on her own feelings about D.G., Ms. V.J.L.'s counsel had to ask her three different ways, before she said that she "loved" him. Initially, she was asked how she "felt" about him. She replied that D.G. listened to her, that he liked her, she helped him with his homework, he moved around a lot but that he cannot stop himself from being so active. She was then asked for her "feelings" towards D.G. Ms. V.J.L. responded she liked him, he was a new immigrant and he has some qualities that do not exist in other children. When asked about those differences, Ms. V.J.L. elaborated and said that he moves around a lot and cannot remember the things taught to him at school. He had difficulty learning to spell his name, but was very good at socializing with people. Finally when asked about what "emotions" she felt for him, Ms. V.J.L. responded she loved D.G. because he listened to her. She added that D.G. is very clean and, although he has difficulty writing, he is quick at other things. When asked whether she had any other "emotions" for Danny, Ms. V.J.L. repeated that she loved him, that she feels that he is intelligent in his own way and that she would try to find doctors to help him.

[156] Mr. Y.X.G.'s level of interest in Ms. V.J.L.'s criminal and family law problems appears minimal at best. When asked whether he went to any of her criminal court proceedings, Mr. Y.X.G. said that he did not as he felt that he did not need to hear about it.

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He said that he dropped her off at court and then went back to work. He was never worried about the possibility of Ms. V.J.L.'s going to jail. He said that he is aware of her convictions, but is satisfied that she has been punished for the crimes and that the past is behind her. Mr. Y.X.G. said that Ms. V.J.L. told him that she was charged with the marijuana offence but that she did not tell him that others were involved. Mr. Y.X.G. was not interested in finding out any details of her guilty plea. When asked about the sexual exploitation charge and the videotape, Mr. Y.X.G. said that Ms. V.J.L. was wrongly convicted because the man had drugged her. Again Mr. Y.X.G. was not interested in finding out any details. He said that he is content that both incidents were behind her and that she has paid her debt to society. Mr. Y.X.G. was not concerned that Ms. V.J.L. was sentenced to custody in September 2003 and, within one month, he had brought D.G. to live with her.

[157] Mr. Y.X.G. told the court that he was surprised that the society apprehended A.L. He said that the society had issues with Ms. V.J.L., but not with him. After she was born, A.L. was apprehended and remains in care in the same foster home as D.L. Mr. Y.X.G. said that he would rather that A.L. remain in care whether for days, months or years, rather than live apart from Ms. V.J.L.

[158] Mr. Y.X.G. thinks that he met C.W.L. and V.K.T.T. once or twice. It appears that he met with the two children on 29 January 2004, during a scheduled visit with their mother in Lindsay, Ontario. Mr. Y.X.G. was with D.G., but this was before the society knew that they were a couple and that Ms. V.J.L. was pregnant. Ms. V.J.L. introduced Mr. Y.X.G. to David Baird, the children services worker, as a "friend". The group ate while C.W.L. and V.K.T.T. played with D.G. Mr. Y.X.G. did not say much to the children because there was no interpreter.

[159] The second "visit" was on 21 May 2004, when Ms. V.J.L. had another scheduled visit with the children. Ms. V.J.L. testified that she told Mr. Y.X.G. that she was going to see the children, but he told her that he "had something to do". As it turned out, Mr. Y.X.G. went fishing with a friend in nearby Peterborough. Ms. V.J.L. told David Baird that she had a friend with her at MacDonald's restaurant. They drove by and Mr. Y.X.G. said "hello" to C.W.L. and V.K.T.T.

[160] As mentioned earlier, Mr. Y.X.G. does not speak English at all. He said that, since he arrived in Canada, he has been too busy to learn English. He said that, if he needs it to survive in Canada, he would learn the language. I note that Mr. Y.X.G. did not indicate that he would learn English the better to communicate with the children.

[161] Ms. V.J.L. said that she told C.W.L. and V.K.T.T. about Mr. Y.X.G. during a visit in either May or June 2004. She told them about their plan for all the children, including D.G., D.L. and A.L., to live together with her and Mr. Y.X.G. She said that V.K.T.T. asked whether he should stay in the foster home until he completed grade VIII. She told him that it would be better for him to agree to come back to live with them. Ms. V.J.L. said that V.K.T.T. did not say anything else. She indicated that C.W.L. also did not say anything, no doubt because an interpreter was unavailable.

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[162] D.G. has met C.W.L., V.K.T.T. and D.L. only once.

[163] Mr. Y.X.G. appears to be a simple man who was often confused by counsels' questions asked. Like Ms. V.J.L., his answers demonstrated daily inconsistencies. His arrangement with his former wife regarding D.G. is both unusual and seemingly one-sided. However, after having "won" custody of D.G., he sent him back to China at the same time that the children's aid society found out about his relationship with Ms. V.J.L. and wanted to speak to him about the child.

[164] I question the strength of the couple's relationship and the depth of commitment that Mr. Y.X.G. has to Ms. V.J.L. and her children. On the one hand, Mr. Y.X.G. appears very devoted to Ms. V.J.L. He would rather have his daughter, A.L. remain in care for what could be years, rather than plan separately from Ms. V.J.L. On the other hand, Mr. Y.X.G. has very little interest in Ms. V.J.L.'s criminal cases or C.W.L. and V.K.T.T.

[165] I find that, if C.W.L. and V.K.T.T. were ever to return to live with their mother, Mr. Y.X.G. would likely play a minimal and ineffective role in their lives. He has not taken any steps to integrate himself into the children's lives. Although communication remains a problem, Mr. Y.X.G. has not even bothered to attend the access visits. He has not taken Ms. V.J.L.'s difficulties either with the society or the law as his own. He would most likely view any issues with C.W.L. and V.K.T.T. as solely Ms. V.J.L.'s problems.

[166] Except for Dr. Gojer, none of the professionals currently working with Ms. V.J.L. know much about Mr. Y.X.G. Dr. Thomas Li knew of Mr. Y.X.G., but seemed uncertain when asked about D.G. When asked whether he was concerned that Ms. V.J.L. never told him about D.G., Dr. Li merely indicated that Ms. V.J.L. never discussed it. The conditional sentence supervisors only knew Ms. V.J.L. had a boyfriend but not his name nor that he had a son. Ms. V.J.L.'s good friend, Ms. C.C., knew little about him. Irene Law, from the Hong Fook Society, said that Ms. V.J.L. mentioned her "boyfriend" briefly because he was waiting for her, but did not introduce him. Pastor Wong knew nothing about Mr. Y.X.G. or D.G.

[167] I have serious doubt about the permanency and strength of Ms. V.J.L.'s relationship with Mr. Y.X.G. It remains unclear whether A.L.'s pregnancy was planned. Both Mr. Y.X.G. and Ms. V.J.L. said that the pregnancy was planned, but Mr. Y.X.G. also indicated that Ms. V.J.L. got pregnant the first time that they were sexually intimate. Assuming the pregnancy was planned, one would expect Mr. Y.X.G. to have been more interested in learning why Ms. V.J.L. had three children in care before embarking on another pregnancy with her.

[168] There are cultural differences here of which I am aware. For example, Mr. Y.X.G.'s decision to leave his son in the care of his ex-wife and his own family while he came to Canada can be seen as reasonable. Extended families in the Chinese community are very important and a temporary arrangement where a child stays with a grandparent is acceptable, according to Dr. Li. It is seen as a way for children to learn the language and culture and maintain a good relationship with the extended family. Yet once his son D.G. was in Canada, Mr. Y.X.G. made decisions for his son that do not appear to be in the child's best interest.

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[169] Cultural differences alone do not explain why their lives are not more interwoven, or why the important people working with Ms. V.J.L. know virtually nothing about Mr. Y.X.G. Because of Ms. V.J.L.'s past history with men, the question remains whether Mr. Y.X.G. offers Ms. V.J.L. a permanent and healthy relationship upon which they can build a future together or whether he is but one more of a series of men with whom she has children who are left for her to raise on her own. Both Drs. Gojer and Li appear to be satisfied that Mr. Y.X.G., unlike all the other men in Ms. V.J.L.'s life with whom she has had children, is somehow different. They rely on Ms. V.J.L.'s self-assessment of her status with him as stable and supportive.

[170] Were that the case, Mr. Y.X.G. should have been accessible from the beginning for any interviews and home visits. He could have planned separately for A.L. and tried to have her returned to his care to establish for the society and the court, a record of his ability to care for and parent a child. In the alternative, he could have brought D.G. back to Canada and parented him. Either way, he would have demonstrated his ability to be an effective and loving parent, and would have thereby indicated a measure of his willingness to take care of Ms. V.J.L.'s children.

[171] Counsel Mr. Gottleib countered that the society would never let Mr. Y.X.G. parent A.L. and its plan from the very beginning was to apprehend the child and to seek an order of Crown wardship. Mr. Gottleib is confident any plan offered by Mr. Y.X.G. would never have ever satisfied the society that Mr. Y.X.G. was a capable parent, and that really what the society intended to do was to apprehend D.G., had it had the chance.

[172] All of this is, of course, speculation. Mr. Y.X.G. has never tried to put forward his own plan of care for A.L. and he has made no attempts to bring D.G. back to Canada. It is easy for him to say "why bother", but the fact is he never did. There is no way to test Mr. Y.X.G.'s ability to parent not just one, but possibly four or five children, because he has never tried to parent. Ms. V.J.L.'s ability to parent is well documented.

[173] Since her two eldest children were apprehended, Ms. V.J.L. has continued to have relationships and more children. Instead of focusing on a plan to reunite C.W.L. and V.K.T.T. and dealing with her outstanding criminal matters, Ms. V.J.L. got pregnant and has continued to have children who have been apprehended. Ms. V.J.L. certainly is not the first parent to lose children to child welfare agencies, only to get pregnant again, perhaps trying to fill the void. Mr. Gottlieb countered by saying that his client is not work-focused and has different priorities than women who may choose career over family. That certainly is not the impression that Ms. V.J.L. left with the court or flow by inference from the psychological testing with Dr. Li. This is not a situation involving a debate between feminist values versus more traditional ones. Rather this is a case where, for most of her adult life, Ms. V.J.L. has made poor choices in her relationships with men because she is emotionally needy and self-centred. Ms. V.J.L. finds gratification in her relationships, which are often brief and unhealthy. She has continually put her own interests ahead of those of her children. This has been the pattern of behaviour that Ms. V.J.L. has exhibited for years. Her poor judgment has put both C.W.L. and V.K.T.T.'s physical and emotional needs at significant risk and there is very little evidence that she understands this or has made appropriate changes. Dr. Gojer and

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Dr. Li disagree and submit that part of Ms. V.J.L.'s plan with Mr. Y.X.G. is to establish a home for her and her children, and that she looks to him for stability. They contend that Ms. V.J.L. is attempting to put her children's interests first by finding them a stable home and father figure.

7: THE DISPOSITION

[174] It is the society's position that C.W.L., V.K.T.T. and D.L. continue to be children in need of protection and that best interests dictates for C.W.L. and V.K.T.T. an order of Crown wardship with access, and for D.L. an order of Crown wardship with no access for the purposes of adoption. The burden of proof is on the society.

[175] The legislation governing child welfare proceedings is the *Child and Family Services Act*. Its paramount purpose, according to subsection 1(1), is "to promote the best interests, protection and well being of children". The Act recognizes the importance of family and maintaining and supporting the family so long as the measures taken are consistent with the best interests, protection and well being of the child.

[176] In determining best interests, the court must under subsection 37(3) take into account a number of considerations, if relevant. In this case, they include:

- the child's physical, mental and emotional needs, and the appropriate care of treatment to meet those needs;
- the child's physical, mental and emotional level of development;
- the child's cultural background;
- the child's religious faith, if any, in which the child is being raised;
- the importance of the child's development of a positive relationship with a parent and a secure place as a member of a family;
- the child's relationships by blood or through an adoption order;
- the child's relationships by blood or through an adoption order;
- the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
- the merits of a plan for the child's care proposed by the society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child's remaining with or returning to a parent;
- the child's views and wishes, if they can be reasonably ascertained;
- the effects on the child of delay in the disposition of the case;
- 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 the parent;
- the degree of risk, if any, that justified the finding that the child is in need of protection; and
- any other relevant circumstance

[177] I find that C.W.L., V.K.T.T. and D.L. continue to be children in need of protection

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and that best interests dictate that the orders sought by the society are the least intrusive orders I can make.

[178] I find on the evidence that Ms. V.J.L. is incapable of meeting her children's emotional needs. She has shown a pattern of conduct in which she puts her own needs above those of her children, tending to put them at great risk. Ms. V.J.L. has not demonstrated that she sufficiently understands how her past misjudgments and misconduct have affected her children. The opinion of the psychiatrist called on her behalf is premised on Ms. V.J.L.'s accepting responsibility for her past transgressions and her willingness to correct them. Ms. V.J.L. has accepted responsibility at this trial for very little. Although pleading guilty for her crimes and going through the motions of accepting responsibility, Ms. V.J.L.'s evidence was at times incredible and astonishing. She was able to change the substance of her testimony from one day to the next while remaining unfazed. When she had difficulty with a particular question, she was either belligerent or dismissive in response. Her denial about being involved in growing marijuana and her argument that she was drugged during the videotape renders much of Dr. Gojer's opinions without foundation and of limited weight. Although I accept Dr. Gojer and Dr. Li's opinion that Ms. V.J.L. is neither a sexual deviant nor hardcore criminal offender, I cannot rely on the entirety of their conclusions.

[179] Depending on the circumstances, Ms. V.J.L. is also capable of putting her children's physical needs and safety in jeopardy. She has demonstrated an overwhelmingly lack of judgment by involving herself and her children in criminal activity. That degree of risk overwhelmingly justified the original finding. The evidence is clear that Ms. V.J.L. associated with numerous individuals, most likely involved in criminal organizations, in particular in drug trafficking and production and possibly money laundering. She put C.W.L. in direct risk of extreme harm by including her in the videotape; this included encouraging her to take off her clothes to show her body to Mr. A.K. Additionally, Ms. V.J.L. then sent V.K.T.T. to Vancouver with Mr. A.K. to stay with someone whose name she did not know and of whose address she was unsure. Mr. A.K. and "Big Guy's" sudden disappearance after Ms. V.J.L.'s arrest support the reasonable inference that those individuals were involved in some form of criminal activity as well.

[180] The most compelling argument favouring the return of Ms. V.J.L.'s children to her is their cultural background. Mr. Gottleib argued that the society has not provided for the best interests of these children in its planning for them, specifically relating to their cultural background, their views and wishes.

[181] Mr. Gottleib accused the society of deliberately placing C.W.L. and V.K.T.T. as far away from their mother as possible in the early stages of the proceedings, in an effort to ensure that their relationship with their mother was permanently severed. Counsel submitted that the society made virtually no effort to expose the children to any cultural or linguistic programs that would have facilitated their maintaining an ability to speak and understand Chinese. Once isolated from their mother and their community, C.W.L. and V.K.T.T. lost virtually all of their ability to communicate with Ms. V.J.L. Mr. Gottleib submitted that the worker has done nothing to ensure that D.L. maintains any of her connections. Counsel suggested that the society never intended for reunification to be a real alternative and

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deliberately thwarted all efforts to properly serve the needs of the children.

[182] It is disappointing to hear that C.W.L. and V.K.T.T. have lost their ability to communicate freely with their mother in Chinese and that more was not done early on to keep the children exposed to their heritage. In accordance with subsection 57(2), I must ascertain what efforts the society made to assist the children before intervention prior to making an order. I agree with Ms. Long that, in a perfect world, there would have been a Chinese-speaking home where both children could have been placed immediately upon their apprehension. I accept the fact that such a placement was not available. I also accept that placing the two children together was more significant in their best interest than in separating them, even if in an ethnically diverse community. But, in view of the disturbing nature of the events that brought the children into care in the first place and the serious weaknesses of Ms. V.J.L.'s plan to return the children to her, I am satisfied that there are more important considerations under subsection 37(3) that must take precedence.

[183] I am concerned that Ms. V.J.L.'s efforts to understand and deal with her shortcomings over the past several years have been superficial and ineffective. She has co-operated with Dr. Gojer and his referrals to the Hong Fook Society and to Dr. Li. All parties report that Ms. V.J.L. attends as required and is co-operative. But I must weigh the fact that all of the opinions from her experts are based almost exclusively on self-reporting. Ms. V.J.L. tells the doctors and counsellors that she used poor judgment and is very sorry for what she did. By contrast, when I listened to what Ms. V.J.L. was saying, she takes responsibility for virtually nothing. She told Dr. Perlman that she wants to focus on her children's return and would not get involved in any more relationships with men, yet continues to have further relationships and more children. She would have everyone believe her current relationship is different from the others and that it offers her stability and support. I find that difficult to reconcile with Mr. Y.X.G.'s minimal level of interest in Ms. V.J.L.'s background, court cases and her children.

[184] I conclude on the evidence that the children's cultural needs are outweighed by their need for physical, mental and emotional safety.

[185] In my view, the importance of the children's development of a positive relationship with a parent and a secure place as a member of a family is at risk if they are returned to the respondent. Ms. V.J.L.'s plan to have all the children returned to her and Mr. Y.X.G.'s care does not offer them a realistic hope of a secure place as a member of this extended family. Mr. Y.X.G.'s lack of interest in his own biological children, D.G. and A.L., and in C.W.L. and V.K.T.T. is difficult to comprehend. Mr. Y.X.G.'s unwillingness to meet with the society until A.L. was born and apprehended shows that he was not committed to helping Ms. V.J.L. with her other children. D.G.'s sudden disappearance, just as the society was trying to meet with him, is consistent with Mr. Y.X.G.'s lack of commitment to this case or possibly his wish to hide something.

[186] It is important that I consider the continuity of the children's care and the possible effect on them of disruption of that continuity. C.W.L. and V.K.T.T. have settled in nicely with their foster family. Through their lawyer, they have expressed a desire to remain there

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for the long term. To send them back to their mother, only to have them change schools, to find new friends, to adjust to their mother's new boyfriend and to leave what has been a relatively long period of stability, in my opinion, is counterproductive. As for D.L., she has lived in the same foster home since she was born. Unfortunately, with an order of Crown wardship for the purpose of adoption, D.L. will not be adopted by her foster family and will have to move. She will also have to lose her connections with C.W.L., V.K.T.T. and D.L. But from all accounts, D.L. is a very happy, secure and well adjusted child. She is also an adoptable child who has the benefit of only one placement for the past three years. Although the initial disruption of being placed outside her foster family's home will be upsetting, I am confident from what I have learned about her that D.L. will be able to make the transition successfully.

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[187] The merits of a plan for the child's care proposed by the society is unquestionably and significantly better for all of the children, including the proposal that D.L. be placed for adoption, when compared with the possibility of the children's return to Ms. V.J.L. The respondent's plan for returning all or some of the children is simply naïve. She has yet to demonstrate that she fully understands what has brought her children into care or what she needs to do to ensure they will be safe. Until she is able to focus on someone other than herself, Ms. V.J.L. will most likely continue to demonstrate poor judgment and risky behaviour. I am satisfied that the risk that the children may suffer harm from being kept away from their mother is far less significant than if they were returned to her.

[188] C.W.L. and V.K.T.T. have expressed, through their counsel, their wishes and preferences. At present, they want to remain with their foster family. However, Mr. Gottleib emphasized that, for the first 15 months that the children were in care, they continued to put as their number one wish a desire to live with their mother. Mr. Gottleib submitted that it is wrong to infer that, by V.K.T.T.'s decision to skip some visits with his mother, he no longer wishes to live permanently with her. He submitted that V.K.T.T. should have had a fixed access schedule and be required to discuss the issues with his mother. David Baird said that he would not force V.K.T.T. to see his mother if the child did not wish to. Counsel argued that the reasons for his missed access visits were not before the court and that I cannot speculate. Counsel opposed Mr. Baird's telling the court what V.K.T.T. had indicated to him were his reasons. The only reasonable inference that V.K.T.T. does not want to see, talk or be with his mother does require an element of speculation, but I can think of no position that would be favourable to Ms. V.J.L. or would support her position that V.K.T.T. should be returned home. On the basis of the evidence and their lawyer's submissions, I accept that C.W.L. and V.K.T.T.'s wishes have changed over time.

[189] The children have already been in care well beyond the maximum periods as set out in the Act. C.W.L. and V.K.T.T. have been in society's care and custody since 4 September 2001, which far exceeds the maximum of 24 months allowed under clause 70(1)(*b*). D.L. has been in the care and custody of the society since 17 October 2002, more than twice the maximum period of 12 months for a child under the age of 6 years allowed under clause 70(1)(*a*). The effects of delay in the disposition of the case would be contrary to the purpose for the time limits in the Act, as well as contrary to the best interests of the

children.

8: THE ORDER

[190] For all the foregoing reasons and having considered the evidence as a whole, I order that the children, C.W.L. and V.K.T.T. be made wards of the Crown, and committed to the care and custody of the Children's Aid Society of Toronto, with access to their mother.

[191] I am satisfied that an access order with respect to C.W.L. and V.K.T.T. is beneficial and meaningful to the children and the ordered access will not impair the children's future opportunities for a permanent and stable placement. Access will be for no less than once per month for a period of no less than four hours per visit taking into consideration the children's wishes and preferences. Access shall be increased if either child expresses a desire to see their mother more often, if the increased access is in the child's best interest and not contrary to the child's treatment needs.

[192] As for D.L., I order that she be made a Crown ward for the purposes of adoption with a no access order. Although there has been access between Ms. V.J.L. and D.L. since the child came into care and they have each enjoyed their visits, I am not satisfied that the relationship is beneficial and meaningful to D.L. and would most likely impair D.L.'s future opportunities for a permanent and stable home with an adoptive family.

[193] For all three children, the society has a positive obligation to ensure that the children are educated in their culture and make appropriate arrangements to have the children attend cultural events or otherwise ensure that they are exposed to their heritage.

9: COSTS

[194] On 14 September 2004, well after the trial was underway and the society had completed its case and while I was hearing Ms. V.J.L.'s witnesses, the society brought an application seeking to join the newborn, A.L., to the proceedings. Mr. Gottleib opposed the application and the matter was adjourned to 1 October 2004 for all parties, including counsel for Mr. Y.X.G. to prepare their materials. The trial did not continue on 14 September 2004. On 1 October 2004, the day set to hear arguments on the application, the society withdrew its motion. Counsel for Ms. V.J.L. argued for costs in the amount of $5649.60. I made the order and indicated that written reasons would follow. On that same date, I ordered that the society was not entitled to recall Dr. Fitzgerald, nor to introduce his updated report.

[195] The society's attempt to add the child A.L. to this trial that had begun on 3 May 2004 was ill conceived. I understand that the intention was to attempt to avoid having a separate trial for baby A.L., because much of the evidence would be the same. But Mr. Y.X.G., the child's father, was never a party to these proceedings and did not attend the trial except when he was called as a witness. In fact, as a witness, he was excluded from the courtroom although a request to have him exempted from the order would likely have been granted. Ordering transcripts of the previous 9 days of evidence would have been costly and time consuming. I would not have been prepared to adjourn the trial for C.W.L., V.K.T.T.

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and D.L. in order to wait for the transcripts and for Mr. Y.X.G.'s counsel to prepare. As well, trial time in this case was very valuable and regrettably there was a full day lost as a result of the society's application.

[196] I find that the costs sought by Mr. Gottleib who had to prepare for the motion and for a lost trial date were reasonable. As such, on 1 October 2004, I made the following endorsement,

> The Children's Aid Society of Toronto is ordered to pay the respondent, Ms. V.J.L., a fixed cost order of $5649.60 with respect to the withdrawal of its motion to add Mr. Y.X.G. as a party to the proceedings.

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