WARNING

THIS IS AN APPEAL UNDER THE

CHILD AND FAMILY SERVICES ACT

AND IS SUBJECT TO S. 45 OF THE ACT WHICH PROVIDES:

45. (7) The court may make an order,

(a) excluding a particular media representative from all or part of a hearing;

(b) excluding all media representatives from all or a part of a hearing; or

(c) prohibiting the publication of a report of the hearing or a specified part of the hearing,

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

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.

45. (9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

COURT OF APPEAL FOR ONTARIO

CITATION: Children's Aid Society of Oxford County v. W.T.C, 2013 ONCA 491
DATE: 20130723
DOCKET: C55909

Hoy A.C.J.O., Feldman and Simmons JJ.A.

BETWEEN

Children's Aid Society of Oxford County

Applicant (Respondent in Appeal)

and

W.T.C.

Respondent (Appellant in Appeal)

John Schuman and Rachel Healey, for the appellant

Lorne Glass, for the respondent

Katherine Kavassalis, for the Office of the Children's Lawyer

Heard: July 4, 2013

On appeal from the order of Justice Johanne N. Morissette of the Superior Court of Justice, dated July 20, 2012 dismissing an appeal from the order of Justice Peter R. W. Isaacs of the Ontario Court of Justice, dated September 2, 2010.

Feldman and Simmons JJ.A.:

[1] L.H. was born in June 2007. In March 2008, an order was made under the *Child and Family Services Act*, R.S.O. 1990, c. C.11 (the "CFSA") designating her a Crown ward with no access. In February 2009, L.H.'s mother brought a

status review application, seeking an order that L.H. be returned to her care, subject to supervision by the Children's Aid Society of Oxford County (the "Society"). The trial of the status review application commenced in November 2009 and was completed in February 2010. On September 2, 2010, the status review application was dismissed.

[2] The mother's first level appeal from the dismissal of the status review application was dismissed by a Superior Court judge on July 20, 2012.

[3] On appeal to this court, the mother raises several issues relating to both the decision of the Superior Court appeal judge and the decision of the status review judge. In our view, the central issue to be determined is the impact of the fresh evidence applications filed by the mother and the Society.

A. BACKGROUND

[4] L.H. was apprehended by the Society shortly after her birth in June 2007, before she left the hospital. She has four siblings: three older sisters, D.S. (born in December 1995), T.C. (born in September 2000) and T.C. (born in October 2002), and a younger brother, W.H. (born in October 2008).

[5] L.H. and her sister, D.S., were made Crown wards with no access on March 14, 2008; similar orders were made in relation to T.C. and T.C. on April 7, 2008. The mother's issues at the time of the Crown wardship orders included a

transient lifestyle, exposure to domestic violence and drug use. Nonetheless, during the time these children were in foster care, their mother continued to have access to them until December 2007.

[6] Like L.H., her younger brother, W.H., was apprehended soon after his birth and before he left the hospital. W.H. was made a Crown ward, with specified access, on December 22, 2008.

[7] While the mother was pregnant with W.H., she began taking steps to try to turn her life around. In February 2009, she initiated status review applications in relation to all of her children who had been made Crown wards. The proceedings relating to T.C. and T.C. were dismissed in June 2009 because the two girls were adopted in January 2009, before the status review applications were commenced.

[8] By the time of the trial of the status review proceeding for L.H., which began in November 2009, the mother had a job at Wendy's and an apartment. She had been drug free for over a year and was continuing to pursue drug rehabilitation programs. Her progress was such that the Society was prepared to return her oldest child, D.S., and her youngest child, W.H., to her care, subject to supervision orders. At the trial of the status review application, the foster mother of W.H. attested to the mother's bond with W.H. and to the appropriateness of the mother's parenting.

[9] Despite its position concerning D.S. and W.H., on the status review application, the Society took the position that L.H. had special needs and that it was not in her best interests that she be returned to her mother's care.

[10] Evidence adduced at the hearing indicated that L.H. was born five weeks premature, that she was exposed to cocaine while in the womb and that she developed feeding problems while in care, necessitating first the use of an "NG" tube in her nose and later the insertion of a "G" tube into her stomach to ensure that she received sufficient nutrition. The evidence also indicated that L.H. was developmentally delayed and required the services of several professionals, including a speech therapist, occupational therapist and nutritionist.

[11] In addition, the Society led evidence at the hearing indicating that, in her first foster home, L.H. went through an initial period – about three months – of extreme irritability, screaming and crying for hours. The foster mother also testified L.H. was a wilful child, given to tantrums.

[12] By the time of the status review hearing, L.H. had been placed with a potential adoptive family – a mother, a father and three boys – for several months, since June 2009. L.H.'s foster mother testified that she helped train the potential adoptive parents in the use of the G tube and that feeding using the G tube could take up to an hour or more.

[13] According to the foster mother, by the time of the status review hearing L.H. was feeding orally much of the time. However, she still had choking episodes and was fearful about eating. On some days, she needed supplementary nourishment through the G tube with a pump.

[14] L.H.'s adoption worker testified that L.H.'s needs were such that her potential adoptive mother initially left her employment to be at home full time to care for her. During cross-examination, the worker indicated it had taken six months for the relationship between L.H. and her potential adoptive mother to develop. She also expressed the opinion that it would be damaging for L.H. to go through the placement process again.

[15] The trial concluded in early January 2010 and written submissions were filed on February 26, 2010.

B. THE STATUS REVIEW JUDGMENT

[16] In reasons released on September 2, 2010, the status review judge dismissed the status review application.

[17] Based on the submissions of the parties, he approached the issue before him as being whether the mother's changed circumstances constituted "a material change in circumstances … so as to justify the remedy sought."

[18] The status review judge concluded that a change in the disposition of Crown wardship was not justified taking account of several factors:

- because L.H. was born premature and medically fragile, it had been necessary to place her with experienced foster parents;
- L.H.'s first foster mother had provided compelling evidence that parenting L.H. required a significant commitment, both because of her medical needs and her temperament;
- although the mother's drug use had significantly improved, it remained possible she could relapse;
- the mother had not demonstrated a real understanding of the commitment and effort that would be required to successfully parent L.H.;
- the mother had not provided specifics concerning how she would acquire the knowledge and experience to feed L.H.; and
- L.H.'s best interests required that she be "placed in a safe, stable, secure home with parents who are capable of providing the time and expertise that is necessary in order to prepare [L.H.] for long term development."

[19] Further, the status review judge concluded that "[n]othing ha[d] been produced to demonstrate that access to [L.H.] by [the mother] will be either beneficial or meaningful for the child."

C. THE SUPERIOR COURT APPEAL JUDGMENT

[20] On July 20, 2012, a Superior Court appeal judge dismissed the mother's appeal from the status review order, holding that the mother had failed to demonstrate any palpable and overriding error in the status review judge's reasons. The Superior Court appeal judge made no comment on the mother's fresh evidence application.

D. ISSUES RAISED ON APPEAL

[21] On appeal to this court, the mother argues that the Superior Court appeal judge erred in declining to admit her fresh evidence.

[22] Further, the mother submits that the status review judge failed to apply the correct test on a status review application and that he failed to appreciate that the evidence led by the Society did not support a finding that L.H. continued to be in need of protection. In the alternative, the mother contends that the status review judge erred in failing to order access.

[23] As an additional ground of appeal, the mother submits that neither the Superior Court appeal judge nor the status review judge gave adequate reasons for their decisions.

[24] Further, after this appeal was perfected, the mother delivered a notice of constitutional question, giving notice of her intention to seek a remedy under s.

24(1) of the *Canadian Charter of Rights and Freedoms*. In that regard, the mother claims that delays in dealing with this matter have infringed her right to security of the person under s. 7 of the *Charter*.

[25] Both the mother and the Society have applied to introduce fresh evidence on appeal. However, the Society contends that such evidence is relevant only if this court determines there has been an error in the courts below.

E. ANALYSIS

[26] As we have said, in our view, the central issue to be determined on this appeal is the impact of the fresh evidence applications filed by the parties. Before turning to that issue, we will briefly explain why we would not give effect to the other grounds of appeal raised by the mother. We will deal with the mother's notice of constitutional question and the issue of delay as a separate matter.

(1) Preliminary Issues

[27] Although this is an appeal from the Superior Court appeal judge, the mother's grounds of appeal focus primarily on the status review judge's reasons. In the circumstances, we take the mother to be asserting that the Superior Court appeal judge erred by failing to identify a material error in the status review judge's reasons: see *Children's Aid Society of Toronto v. G.S.*, 2012 ONCA 783, 299 O.A.C. 24, at para. 20.

[28] The mother and the Society both submit that the test to be applied on a status review application is set out in *Catholic Children's Aid Society of Metropolitan Toronto v. C.M.*, [1994] 2 S.C.R. 165, at p. 200:

1. Does the child continue to be in need of protection?
2. Which of the available range of orders is in the child's best interests?

[29] That said, the mother and the Society disagree on the precise meaning of the test articulated in *C.M.*

[30] On the mother's interpretation, the first step of the test requires the status review judge to determine whether the child continues to be in need of protection as that term is defined in s. 37(2) of the CFSA.[1] According to the mother, the Society could not meet that test on the status review application based on the evidence adduced at the review hearing for two reasons.

[31] First, the mother had addressed the protection concerns raised by the Society in its initial application – a fact that was demonstrated by the Society's agreement that two of the mother's children be returned to her. Second, according to the mother, the Society failed to adduce evidence on the status review application of L.H.'s needs, or other aspects of her situation after the Crown wardship order that could demonstrate new protection concerns. In these

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[1] The full text of relevant sections of the CFSA is included in Appendix A.

circumstances, no finding that L.H. continued to be in need of protection was available and it was necessary that L.H. be returned to her mother.

[32] We do not accept the mother's interpretation of *C.M.*, namely, that the first step of the test requires the status review judge to determine whether the child continues to be in need of protection as that term is defined in s. 37(2) of the CFSA. At p. 200 of its decision in *C.M.*, the Supreme Court of Canada made it clear that, in addition to the factors enumerated in s. 37(2) of the CFSA, a finding of a continuing need for protection could also be premised on the need to protect a child from emotional harm arising from removing the child from caregivers to whom the child had become attached and whom the child regarded as psychological parents.

[33] Although the status review judge did not specifically address the issue in this way, taking account of his view of the mother's evidence, we are satisfied that if he had considered the full *C.M.* test, he would have come to the conclusion that a continuing need for protection existed and that it was in L.H.'s best interests to maintain the order for Crown wardship with no access.

[34] Contrary to the mother's submissions, the Society led evidence at the status review hearing relating to L.H.'s circumstances following the Crown wardship order. That evidence consisted, in part, of the evidence of L.H.'s first foster mother concerning her experience with L.H. as a child living in her home

as well as her experiences in assisting the proposed adoptive parents in learning to feed L.H. In addition, the evidence included the testimony of an adoption worker who spent time with the proposed adoptive parents, visited with them as recently as November 2009, and opined, when asked to do so by the mother's hearing counsel, that it would be damaging for L.H. to go through the placement process again.

[35] It is clear that the status review judge considered this evidence in arriving at his decision. He referred to the need to place L.H. in a stable environment that could ensure her long-term development. This evidence demonstrated that L.H. still had significant needs relating to feeding and arising from her developmental delay, that she had experienced difficulties in settling into new environments, that she had formed an attachment with her proposed adoptive parents, and that, despite her initial difficulties, she appeared to be making progress in her proposed adoptive parents' home.

[36] When this evidence is combined with the status review judge's findings about the challenges that the mother would face in coping with L.H.'s needs and the needs of her two other children, as well as the evidence establishing that the mother had not seen L.H. since December 2007, we are satisfied that, in making his disposition, the status review judge believed that there would be a significant risk of harm to L.H. if she were removed from the potential adoptive parents' home and that her best interests, as defined in s. 37(3) of the CFSA and as more

broadly described in *C.M.*, would be served by making an order that would facilitate her adoption – Crown wardship with no access. In our view, this conclusion is supported by the evidence at the hearing.

[37] Neither counsel made submissions to us about the amendments made to the provisions of the CFSA generally and relating to status review applications that came into force in 2000; nor did they make submissions about the case law from lower courts and commentary suggesting that those amendments may have resulted in a shift from the two-step *C.M.* test to a pure best interests test.[2] In these circumstances, we consider it unnecessary to address the effect, if any, of the 2000 amendments.

[38] In light of our conclusion concerning the status review judge's application of the test on a status review application, it is unnecessary to address the ground of appeal relating to the adequacy of his reasons. The Superior Court appeal judge's reasons were responsive to the submissions that were made to her, which did not include submissions about the test on a status review application. Although we agree that the Superior Court appeal judge should have addressed the mother's fresh evidence application, the fresh evidence that was tendered is not before us. Accordingly, we are not in a position to comment on whether that failure gave rise to reversible error.

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[2] For example, see Jeffrey Wilson, *Wilson on Children and the Law*, loose-leaf (Markham: LexisNexis, 1994), at s. 3.251; *Catholic Children's Aid Society of Hamilton v. M.A.M.*, [2003] O.J. No. 1274 (S.C.), at paras. 34-35.

(2) The Parties' Fresh Evidence Applications

[39] On appeal to this court, both the mother and the Society bring motions seeking to introduce fresh evidence. This evidence relates to events that happened following the status review application hearing and to the current status of both the mother and the child.

[40] The mother's fresh evidence is in the form of her own sworn affidavit. The mother explains that while she could not get medical training relating to L.H.'s specific needs, she did take other medical courses to better prepare herself to provide for L.H.'s care. She also explains that she graduated from a medical lab assistant/technician course that included some health-related components. The mother states that her career has improved dramatically since the original hearing, that she now has a part-time managerial position at a restaurant, and that she owns a home with a new partner that has space to accommodate L.H. The mother also deposes that D.S. and W.H. have been living with her and are thriving.

[41] The Society, for its part, submits an affidavit from the private adoption practitioner who supervised the placement of the child with her prospective adoptive parents. The affidavit confirms that L.H. no longer requires a feeding tube, that the abdominal opening for the feeding tube was surgically repaired in January 2013, and that L.H. is in good general health. Without any specific

supporting information, the practitioner states that the child "has become very secure and appears to be well attached to her prospective adoptive family." It is also noted that the proposed adoptive parents, who also have three boys, have separated since the time of the adoption home study but that they "cooperate and focus on the needs of the children when arranging their time." The affidavit confirms that the prospective adoptive family "do[es] not feel comfortable with any openness in an adoption" and that L.H. has not seen her older sister D.S. since the placement. The affidavit also includes a hearsay statement from the adoptive mother speaking to the child's current status and needs.

[42] The Society argues that we should only consider the fresh evidence if we are satisfied there was an error in the court below. We do not accept this submission.

[43] In *C.M.*, at pp. 188-89, the Supreme Court of Canada indicated that a flexible standard should be adopted for the admission of fresh evidence in family law cases involving children, in circumstances where accurate and up-to-date information concerning the best interests of children, when considered with the evidence adduced at trial, might reasonably affect the outcome of the appeal.

[44] Further, in *Children's Aid Society of Peel v. W. (M.J.)* (1995), 23 O.R. (3d) 174 (C.A.), this court noted, that having regard to the flexible standard, the admission of fresh evidence will not lead inexorably to reversal of the trial

judgment or ordering a new trial. Rather, the fresh evidence, if admitted, "must be reviewed with the other evidence in determining what the appropriate disposition of the appeal should be": at p. 193.

[45] In our view, this is just such a case requiring the admission of fresh evidence to determine the proper disposition of the appeal.

[46] The evidence submitted by the Society indicates that the proposed adoptive parents have now separated. The status review judge's reasons make it clear that the stable two-parent home provided by the proposed adoptive parents was a key factor in his decision to uphold the order for Crown wardship with no access. If stability – and harmony – and two supportive parents – are no longer features of the proposed adoptive home, those are factors that could impact the outcome of the appeal.

[47] In our view, in its role as the statutory protector of L.H.'s best interests, it was incumbent on the Society to seek to introduce fresh evidence relating to the separation of the proposed adoptive parents and the impact of the separation on L.H., so that this court can satisfy itself that the order under review remains in the child's best interests.

[48] On our review, the Society's evidence is not adequate to permit us to do so. Although the adoption practitioner states that the proposed adoptive parents remain co-operative and child-focused, her evidence in that respect is supported

by little in the way of facts capable of permitting us to assess the accuracy of her statements. She did not disclose the particulars of the financial arrangements between the parties concerning the children in the mother's care, nor did she indicate how the financial or access arrangements have been formalized. Equally important, the adoption practitioner's evidence does not provide us with facts to permit us to assess the impact of the proposed adoptive parents' separation on L.H.

[49] In all the circumstances, we consider this an appropriate case for the Society to provide an assessment of the proposed adoptive parents and L.H. to address: the impact of the separation on the ability of the proposed adoptive parents to parent L.H., the impact of the separation on L.H., and whether access with her birth mother and her siblings in her birth mother's care would be in L.H.'s best interests. The assessment should be in the form contemplated by s. 54 of the CFSA. The parties shall have ten days following the release of these reasons to select an assessor and submit the name of the assessor to the court. The assessor shall submit an assessment report to this court within 30 days of the date of appointment.

(3) Constitutional Remedy

[50] In bringing the appeal to this court, the mother served a Notice of Constitutional Question on the Attorney General of Ontario and on the Attorney

General of Canada, stating that her s. 7 *Charter* rights were infringed by the institutional delay in the progress of this case, which caused L.H. to remain in the care of the prospective adoptive parents from June 2009 to the present with no access to the mother. This delay effectively created a situation where L.H. has lived with the prospective adoptive family for four years and therefore had the exclusive opportunity to bond with them.

[51] In her factum, the mother asked for a declaration that her *Charter* rights had been breached. In oral argument, on the issue of remedy, counsel confirmed that the mother was asking for the same relief that she was already seeking on the appeal, or a monetary award, although he noted that the mother is not really seeking such an award. She is seeking custody of or access to her daughter.

[52] No one on behalf of either Attorney General appeared nor did anyone seek to take part in this appeal. We also note that the Notice of Constitutional Question that was served did not seek any remedy from the Attorneys General.

[53] The basis of the mother's s. 7 claim is the institutional delay that occurred in this case. The chronology began in March 2008 when the order for Crown wardship with no access was made for L.H. The mother applied for a status review under s. 65.1 of the CFSA on February 20, 2009, returnable on April 6, 2009. Although Rule 33 of the *Family Law Rules*, O. Reg. 114/99 provides that a status review hearing must be completed within 120 days, for reasons

unexplained in the record, the status review hearing in this case did not begin until November 16, 2009. In the meantime, in June 2009, L.H. was placed with the prospective adoptive family with whom she continues to reside today. The hearing was continued on January 5, 2010 with written submissions on February 26, 2010. The reasons of the status review judge were released on September 2, 2010.

[54] For the purposes of the appeal to the Superior Court, the mother ordered the transcript of the hearing on January 29, 2011, but it was not prepared for 13 months until March 7, 2012. The appeal record to the Superior Court was filed on April 23, 2012. The Superior Court appeal judge released her reasons on July 20, 2012. Because her reasons were given orally, the transcript of those reasons had to be ordered for the purpose of the appeal to this court. The transcript was not produced until December 17, 2012. The mother was also not able to perfect her appeal to this court without orders of the two lower courts, which could only be obtained with the Society's cooperation.

[55] In summary, the mother submits that her rights under s. 7 of the *Charter* have been violated by delays she did not cause. Although she initiated the status review in February 2009, the decision of the court only came in September 2010. Her appeal was then delayed for 13 months because the transcript of the hearing, which was required, took that long to prepare. There was then an additional delay in bringing the further appeal to this court because the oral

reasons of the appeal judge, which were very brief – just two pages (plus 17 pages of submissions) – were not prepared for several months.

[56] It is evident that expedition of the proceedings is particularly important in child welfare cases, where the lives of a child, her family and in some cases such as this one, a potential adoptive family, are put on hold awaiting the outcome.

[57] Counsel for the Society suggested in oral argument that the onus was on the mother to move before the court for orders expediting the transcripts. We disagree. As custodian of the process, it is incumbent on the Society to use its best efforts to ensure that the process moves expeditiously, in the best interests of the child. In that role, it is the Society that should be alerting the court to any delays that may be occurring and asking the court to make the necessary orders to remedy those delays.

[58] Having said that, institutional delays, such as in transcript preparation, are not the fault of either party to the process. The mother argues that the delays in this case have affected the fairness of the review process and have thus violated her s. 7 *Charter* rights.

[59] It is clear that in child welfare matters, where the fate of a child is determined through the CFSA protection process, including appeals, hearing dates must be timely and transcripts must generally be produced on a priority

basis. Where that does not occur, the rights of the child and of her family can be affected.

[60] However, whether any of these delays can amount to a *Charter* breach, whether they do in this case, and if so, who is responsible for them and whether there is an appropriate remedy that does not affect the court's disposition regarding the child, are questions where the court would benefit from submissions on behalf of the Attorney General of Ontario.

[61] These reasons shall be provided to the Attorney General of Ontario by the Registrar. The court requests the Attorney General to provide written submissions to assist the court within 30 days. If the Attorney General would like to make oral submissions, arrangements will be made as well.

F. DISPOSITION

[62] Based on the foregoing reasons, the appeal is reserved pending receipt of further material.

Released: JUL 2 3 2013

K.F.
J.A.

Kathryn Feldman J.A.

J.A.

I agree Alexandra ACSO

APPENDIX A

Child and Family Services Act, R.S.O. 1990, c. C.11

Paramount purpose and other purposes
Paramount purpose

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

Other purposes

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

1. To recognize that while parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.

2. To recognize that the least disruptive course of action that is available and is appropriate in a particular case to help a child should be considered.

3. To recognize that children's services should be provided in a manner that,

i. respects a child's need for continuity of care and for stable relationships within a family and cultural environment,

ii. takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children,

iii. provides early assessment, planning and decision-making to achieve permanent plans for children in accordance with their best interests, and

iv. includes the participation of a child, his or her parents and relatives and the members of the child's extended family and community, where appropriate.

4. To recognize that, wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences.

5. To recognize that Indian and native people should be entitled to services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and

traditions and the concept of the extended family. 1999, c. 2, s. 1; 2006, c. 5, s. 1.

...

Interpretation
Child in need of protection
37. (2) A child is in need of protection where,

(a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,

(i) failure to adequately care for, provide for, supervise or protect the child, or
(ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

(b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,

(i) failure to adequately care for, provide for, supervise or protect the child, or
(ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

(c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

(d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in clause (c);

(e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;

(f) the child has suffered emotional harm, demonstrated by serious,

(i) anxiety,
(ii) depression,
(iii) withdrawal,
(iv) self-destructive or aggressive behaviour, or
(v) delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

(f.1) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

(g.1) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;

(i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;

(j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;

(k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or

(l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of age or older, with the child's consent, to be dealt with under this Part. R.S.O. 1990, c. C.11, s. 37 (2); 1999, c. 2, s. 9.

Bests interests of child

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

1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.

2. The child's physical, mental and emotional level of development.

3. The child's cultural background.

4. The religious faith, if any, in which the child is being raised.

5. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.

6. The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community.

7. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.

8. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.

9. The child's views and wishes, if they can be reasonably ascertained.

10. The effects on the child of delay in the disposition of the case.

11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.

12. The degree of risk, if any, that justified the finding that the child is in need of protection.

13. Any other relevant circumstance. R.S.O. 1990, c. C.11, s. 37 (3); 2006, c. 5, s. 6 (3).

...

Order where child in need of protection

57. (1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders or an order under section 57.1, in the child's best interests:

Supervision order

1. That the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months.

Society wardship

2. That the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding twelve months.

Crown wardship

3. That the child be made a ward of the Crown, until the wardship is terminated under section 65.2 or expires under subsection 71 (1), and be placed in the care of the society.

Consecutive orders of society wardship and supervision

4. That the child be made a ward of the society under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding an aggregate of twelve months. R.S.O. 1990, c. C.11, s. 57 (1); 2006, c. 5, s. 13 (1-3).

Court to inquire

(2) In determining which order to make under subsection (1) or section 57.1, the court shall ask the parties what efforts the society or another agency or person has made to assist the child before intervention under this Part. 2006, c. 5, s. 13 (4).

Less disruptive alternatives preferred

(3) The court shall not make an order removing the child from the care of the person who had charge of him or her immediately before intervention under this Part unless the court is satisfied that alternatives that are less disruptive to the child, including non-residential services and the assistance referred to in subsection (2), would be inadequate to protect the child. 1999, c. 2, s. 15 (1).

Community placement to be considered

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of him or her immediately before intervention under this Part, the court shall, before making an order for society or Crown wardship under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person. R.S.O. 1990, c. C.11, s. 57 (4).

Idem: where child an Indian or a native person

(5) Where the child referred to in subsection (4) is an Indian or a native person, unless there is a substantial reason for placing the child elsewhere, the court shall place the child with,

(a) a member of the child's extended family;

(b) a member of the child's band or native community; or

(c) another Indian or native family. R.S.O. 1990, c. C.11, s. 57 (5).

(6) Repealed: 1999, c. 2, s. 15 (2).

Idem

(7) When the court has dispensed with notice to a person under subsection 39 (7), the court shall not make an order for Crown wardship under paragraph 3 of subsection (1), or an order for society wardship under paragraph 2 of subsection (1) for a period exceeding thirty days, until a further hearing under subsection 47 (1) has been held upon notice to that person. R.S.O. 1990, c. C.11, s. 57 (7).

Terms and conditions of supervision order

(8) If the court makes a supervision order under paragraph 1 of subsection (1), the court may impose,

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

(b) reasonable terms and conditions on,

(i) the child's parent,

(ii) the person who will have care and custody of the child under the order,

(iii) the child, and

(iv) any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child; and

(c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services. 2006, c. 5, s. 13 (5).

Where no court order necessary

(9) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person

who had charge of the child immediately before intervention under this Part. R.S.O. 1990, c. C.11, s. 57 (9).

...

Status review, Crown ward and former Crown wards

65.1 (1) This section applies where a child is a Crown ward or is the subject of an order for society supervision under clause 65.2 (1) (a) or a custody order under clause 65.2 (1) (b). 2006, c. 5, s. 24.

Society to seek status review

(2) The society that has or had care, custody or supervision of the child,

(a) may apply to the court at any time, subject to subsection (9), for a review of the child's status;

(b) shall apply to the court for a review of the child's status before the order expires if the order is for society supervision, unless the expiry is by reason of subsection 71 (1); and

(c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child,

(i) from the care of a person with whom the child was placed under an order for society supervision described in clause 65.2 (1) (a), or

(ii) from the custody of a person who had custody of the child under a custody order described in clause 65.2 (1) (b). 2006, c. 5, s. 24.

Application of cl. (2) (a) and (c)

(3) Clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district,

(a) in which the parent or other person with whom the child is placed resides, if the child is the subject of an order for society supervision under clause 65.2 (1) (a); or

(b) in which the person who has custody resides, if the child is the subject of a custody order under clause 65.2 (1) (b). 2006, c. 5, s. 24.

Others may seek status review

(4) An application for review of a child's status under this section may be made on notice to the society by,

(a) the child, if the child is at least 12 years of age;

(b) a parent of the child;

(c) the person with whom the child was placed under an order for society supervision described in 65.2 (1) (a);

(d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 65.2 (1) (b);

(e) a foster parent, if the child has lived continuously with the foster parent for at least two years immediately before the application; or

(f) a representative chosen by the child's band or native community, if the child is an Indian or native person. 2006, c. 5, s. 24.

When leave to apply required

(5) Despite clause (4) (b), a parent of a child shall not make an application under subsection (4) without leave of the court if the child has, immediately before the application, received continuous care for at least two years from the same foster parent or from the same person under a custody order. 2006, c. 5, s. 24.

Notice

(6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

(a) the child, except as otherwise provided under subsection 39 (4) or (5);

(b) the child's parent, if the child is under 16 years of age;

(c) the person with whom the child was placed, if the child is subject to an order for society supervision described in clause 65.2 (1) (a);

(d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 65.2 (1) (b);

(e) any foster parent who has cared for the child continuously during the six months immediately before the application; and

(f) a representative chosen by the child's band or native community, if the child is an Indian or native person. 2006, c. 5, s. 24.

Six-month period

(7) No application shall be made under subsection (4) within six months after the latest of,

(a) the day the order was made under subsection 57 (1) or 65.2 (1), whichever is applicable;

(b) the day the last application by a person under subsection (4) was disposed of; or

(c) the day any appeal from an order referred to in clause (a) or a disposition referred to in clause (b) was finally disposed of or abandoned. 2006, c. 5, s. 24.

Exception

(8) Subsection (7) does not apply if,

(a) the child is the subject of,

(i) an order for society supervision described in clause 65.2 (1) (a),

(ii) an order for custody described in clause 65.2 (1) (b), or

(iii) an order for Crown wardship under subsection 57 (1) or clause 65.2 (1) (c) and an order for access under section 58; and

(b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out. 2006, c. 5, s. 24.

No review if child placed for adoption

(9) No person or society shall make an application under this section with respect to a Crown ward who has been placed in a person's home by the society or by a Director for the purposes of adoption under Part VII, if the Crown ward still resides in the person's home. 2006, c. 5, s. 24.

Interim care and custody

(10) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody. 2006, c. 5, s. 24.

Court order

65.2 (1) If an application for review of a child's status is made under section 65.1, the court may, in the child's best interests,

(a) order that the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months;

(b) order that custody be granted to one or more persons, including a foster parent, with the consent of the person or persons;

(c) order that the child be made a ward of the Crown until wardship is terminated under this section or expires under subsection 71 (1); or

(d) terminate or vary any order made under section 57 or this section. 2006, c. 5, s. 24.

Variation, etc.

(2) When making an order under subsection (1), the court may, subject to section 59, vary or terminate an order for access or make a further order under section 58. 2006, c. 5, s. 24.

Same

(3) Any previous order for Crown wardship is terminated if an order described in clause (1) (a) or (b) is made in respect of a child. 2006, c. 5, s. 24.

Terms and conditions of supervision order

(4) If the court makes a supervision order described in clause (1) (a), the court may impose,

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

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

(c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services. 2006, c. 5, s. 24.

Access

(5) Section 59 applies with necessary modifications if the court makes an order described in clause (1) (a), (b) or (c). 2006, c. 5, s. 24.

Custody proceeding

(6) Where an order is made under this section or a proceeding is commenced under this Part, any proceeding respecting custody of or access to the same child under the Children's Law Reform Act is stayed except by leave of the court in the proceeding under that Act. 2006, c. 5, s. 24.

Rights and responsibilities

(7) A person to whom custody of a child is granted by an order under this section has the rights and responsibilities of a parent in respect of the child and must exercise those rights and responsibilities in the best interests of the child. 2006, c. 5, s. 24.