THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2016-04370

IN THE MATTER OF THE ACTION OF THE CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO TO PLACE THE CLAIMANT IN A HOME THAT IS NOT A COMMUNITY RESIDENCE AND SUBJECT THE CLAIMANT TO CONDITIONS AMOUNTING TO SOLITARY CONFINEMENT

AND

IN THE MATTER OF AN APPLICATION FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE CONSTITUTION BY B (by his kin and next of friend KAREN MOHAMMED) A CITIZEN OF TRINIDAD AND TOBAGO ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN CONTRAVENED AND ARE BEING CONTRAVENED IN RELATION TO HIM

BETWEEN

B
(By his kin and next of friend Karen Mohammed)

Claimant

AND

THE CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO

First Defendant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Wednesday 12th April 2017

Appearances:
Mr. Anand Ramlogan S.C. instructed by Mr. Ganesh Saroop for the Claimant
Ms. Sharlene Jaggernauth instructed Ms. Nazeera Ali for the First Defendant
Mr. Douglas Mendes S.C. instructed by Ms. Josephina Baptiste for the Second Defendant

RULING ON EVIDENTIAL OBJECTIONS

1. In the management of this claim for judicial review what falls for determination are the several evidential objections filed by the parties[1] with respect to the affidavits filed in these proceedings. Ultimately, I have overruled some of the objections and with respect to others I have either struck out some or all of the evidence to which the objections relate. As a matter of convenience for the parties I have set out in table form below the respective affidavits, the paragraphs to which objection was made, the grounds for the objections and my ruling. I will reserve the question of costs to be dealt with at the hearing of the claim on 25th and 31st May 2017.

2. A brief context and outline of my approach to these objections is necessary to understand the nature of the objections and consequential rulings. The claim for judicial review relates to a continuing saga of the detention of B pending trial for murder. In a previous High Court Action CV2015-02799, CV2015-3725 B challenged the decisions of the Chief Magistrate to remand him to the Youth Training Centre (YTC) as being contrary to the Children's Act 2012 (the Act) which required him to be remanded to a "community residence" within the meaning of that Act. He also complained that such detention violated his rights under the Constitution. On 24th May 2016 I delivered my ruling in those proceedings which in effect quashed the said decision to remand him to the YTC as it was found not to be a "community residence" within the meaning of the Act and to declare that his detention violated his constitutional rights of "due process". However, as the evidence in that action revealed there was at that time no suitable community residences to accommodate B. I further ordered inter alia that B be placed in a community residence approved by the Children's Authority and in default to be placed in the custody of the Children's Authority until further order.

3. In the aftermath of that decision B was taken in the custody of the Children's Authority as there was no community residence approved by the Children's Authority. In this action, unlike the earlier action, the focus is now on the Children's Authority and its facility in which he is being detained. The main complaint in these proceedings amounts to an allegation that B has moved from the "frying pan into the fire". He contends that the conditions in which he is being detained by the Children's Authority amounts to "solitary confinement" which he contends is

[1] The Claimant's Notice of Evidential Objections dated and filed 31st March 2017; the First Defendant's Notice of Evidential Objections dated and filed 31st March 2017; the Second Defendant's Notice of Evidential Objections dated and filed 6th April 2017.

illegal, in breach of the Act and violates his constitutional rights under section 5(2) (b) of the Act. Regulation 15 of the Children's Community Residences Regulations,[2] in providing regulations to govern the administration of community residences, specifically prohibits a child to be subject to "solitary confinement".

4. Among the issues to be resolved in this case will include:
    - What is meant by the term "solitary confinement"?
    - What are the conditions under which the child is being detained since the date of my order?
    - Whether those conditions amount to solitary confinement; and
    - Whether such detention can give rise to any breach of B's constitutional rights.

5. Importantly, the previous proceedings are subject to an appeal. However the considerations that gave rise to the child's present detention from that litigation does loom in the background and provides context for the present dispute. I had opined with the parties at the case management conference, that in effect what is being asked of this Court is to place it into the position of reflecting on its first order where B was ordered to be immediately placed in a community residence approved by the Children's Authority and in default be placed in the custody of the Children's Authority **until further order**. Of course this Court is functus in relation to the first High Court action, as an appeal has been filed. But through this present action the Court is being placed in almost an analogous position of an application under a "liberty to apply" to consider the question what order is appropriate in light of the prevailing circumstances that have transpired and that now exist. Of course the Court must consider the best interest of the child in the context of the prevailing circumstances of his detention and the best available options within the context of law and reality.

6. To that end I wish to "telegraph" to the parties formally that the intention of my order in the first action was not to have B detained in the custody of the Children's Authority indefinitely. That order may be found by the higher Courts to be correct or dead wrong. But ultimately, all parties must assist this Court as to what is being done with the available resources to place B in an approved community residence. This of course does not answer the question whether the

[2] Children's Community Residences, Foster Care and Nurseries Act Chap. 46:04.

conditions at the Children's Authority's residence amount to solitary confinement. That is the subject of this litigation but the parties are put on notice on the larger issues that are in play.

7. I have placed the evidential objections within that brief context so that the parties may be alive to what this Court will consider to be relevant or germane evidence for it to properly determine this matter on its merits and at the same time pay due regard to the interest of the child, a matter to which I addressed in my earlier judgment[3]. In that context I must confess that adopting a strictly adversarial approach of delineating strict lines across inadmissible evidence without at the same time balancing the need not to starve the Court with relevant information may be counter-productive. If the axis of the Court's enquiry should be to ensure that the conditions in which the child is detained is consistent with the regulatory environment and the best options available under the legislation, then some degree of latitude will be afforded to the parties to put their respective cases. For example, a linchpin in this case is that to date there is no residence or home approved as a community residence by the Children's Authority, the impact of such a suggestion goes beyond B's present accommodation and the Court ought not to deprive itself of having the question answered "are there any community residences ready and operational to house B?" (indeed as well so many others). To say to the Attorney General that a report filed in this action and prepared by the Children's Authority which provides an update on the readiness of the YTC to be approved as a community residence should be struck out as irrelevant or as offending the strict rules of hearsay is therefore disproportional to what is at stake and I may add this Court would be unduly naïve to do so. I have therefore adopted an approach of striking out evidence when the relevant party has clearly crossed the line in offending the well-known rules of hearsay, opinion and relevant evidence giving parties a reasonable latitude to produce their narrative and comply with the duty of candour.

8. These are in fact the three main limbs on which the parties have sought to strike out evidence contained in the affidavits in this matter: hearsay, opinion, irrelevance. Before addressing each of the objections in turn, I provided a brief outline of my approach to these objections and to the exercise of striking out evidence generally.

[3] See paragraphs 202-206 of my previous judgment.

9. The Court in exercising its discretion to exclude inadmissible evidence is in truth engaged in an exercise of giving effect to the overriding objective. A key component among the other considerations of Part 1 in the overriding objective of the Civil Proceeding Rules 1998 (as amended) (CPR) is proportionality. The Court must answer the question whether the evidence makes a sufficient probative contribution to justify its time and expense in its presentation. It must make an assessment of its value and worth in the context of the issues that fall for determination.[4]

10. For evidence to be admissible there should be adequate foundation evidence adduced, the deponent must be an appropriate person to give the evidence. It must not offend against the hearsay rule, subject to any relevant exceptions to that rule, and perhaps any residual judicial discretion to admit otherwise legally inadmissible evidence and it must not constitute opinion evidence, subject to the exception to the rule. See **Chaitlal v Attorney General of Trinidad and Tobago** HCA No. 2472 of 2003. The boundaries of admissible evidence is also set by Rule 31.3 CPR. The Court will also be alive to strike out matters that are scandalous, irrelevant or otherwise oppressive.

11. Relevance: This is more a question of degree determined by "common sense and experience". The probative value of the evidence must be balanced against the disadvantages of receiving it. Hearsay: There is a residual discretion which the Court can exercise in admitting hearsay evidence. See Alverstone CJ in **J.L. Young Manufacturing Company Ltd. v J.L. Young Manufacturing Company Ltd** [1900] 2 Ch 753.

12. It is noted that in ordinary civil litigation a party who intends to rely upon hearsay evidence must serve a formal notice, hearsay evidence, is frequently adduced in claims for judicial review without a hearsay notice. This is because unlike ordinary civil litigation claims for judicial review rarely turn on dispute of facts. See Judicial Review, Auburn paragraph 27.37. Excluding evidence which has very little probative value and offers little assistance to the Court in determining the issues that fall for determination are quite rightly to be struck out and are inadmissible in the Court's exercise of its overriding objective in managing the case.

13. Having said that, in the context of this dispute, the Claimant is a child who can only speak through his next friend. It would be an act of parsimony to strike out evidence of observations and

[4] See Zuckerman on Civil Procedure: Principles of Practice and **Post Office Counters Ltd v Mahida** [2003] EWCA Civ 1583.

conversations the next friend has had with the minor, leading of course inevitably to the question whether it is proportionate or even desirable for the child himself to depose to his own affidavit. This of course is not warranted in this case and I have considered section 26 of the Children's Authority Act Chapter 46:10 and do not consider such a course of action necessary having regard to the nature of the allegations made by the parent.

14. Opinion Evidence: The general rule is that opinion evidence is inadmissible. Halsbury's Laws of England, 2015, Volume 28 sets out the exceptions to the general rule under the heading "Opinions of ordinary witnesses." Opinion evidence will however be admissible in the some instances[5] such as evidence as to condition and **observations as to the conduct of a person with whom he is well acquainted which lead the witness to a conclusion which summarises the results of his observations.**

15. As one of the live issues in this case would be the conditions on which B is being accommodated and its impact on him there will be the natural tendency for persons (on both sides) observing him to draw their own conclusions. However, the Court must be alive to opinion evidence of an expert and the "opinion" evidence of the lay person. In **Phipson on Evidence** 18th ed it was noted "With respect to the mental condition of others, neither the opinion of witnesses who are experts nor general reputation is admissible in this country to prove insanity as distinguished from the conduct from which it may be inferred; though witnesses are sometimes allowed to give such evidence, not as opinion per se but as a compendious mode of eliciting facts. Nor are the opinions of witnesses admissible to prove another person's intention. Witnesses may however describe the apparent condition of people and things, for here the phenomena are often too numerous and vague to be otherwise conveyed. So statements of opinions as to the age of children have been received but the court can now decide the age from the person's appearance. The rate of speed of motorcars may be similarly proved. A witness can quite properly give his general impression whether the accused had taken drink, but he must describe the facts upon he relies. However, expert medical evidence is necessary to establish that the accused was unfit to drive through drink…."[6]

[5] Halsbury's Laws of England, 2015, Volume 28, paragraph 567.
[6] Phipson on Evidence, 18th Edition, para 33-93.

16. To say of a child "He is depressed" can convey a clinical diagnosis if it is said by an expert qualified to make such a diagnosis. If it is said of a parent the words must be taken in context as a parent will make an observation of her child that he is "depressed", a colloquial expression for saying that he is unhappy.

17. I turn then to the respective objections and my rulings.

RULING ON THE EVIDENTIAL OBJECTIONS FILED BY THE DEFENDANTS

1. AFFIDAVIT OF KAREN MOHAMMED FILED ON 5TH DECEMBER 2016		
PARAGRAPH	**GROUNDS/REASONS**	**RULING**
Paragraph 10, line 4 to 5: "He mentioned that he felt lonely as he was the only person detained at this facility". Line 8 – 9: "…he said they kept their interaction with him at a minimum".	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	Overruled. B must be given the opportunity to tell his story and legitimately so through his next friend. I will refer to this ruling for convenience later in this table as "child narrative". The Court will ascribe the relevant weight to such impressions observations and narratives of a child. In the context of this case it furthers the overriding objective and ensures procedural fairness to ensure all parties are heard.
Paragraph 11, line 6-8: "One day B mentioned to me he was frustrated and feeling depressed…and he just said he was "so lonely it hurt".	Same as above	Overruled "Child narrative"

Paragraph 12, line 2 -3: "He said he missed Sasha…"	Same as above	Overruled "Child narrative"
Paragraph 13, line 3-4: "…I realized that the isolation is affecting B mentally and psychology".	This amounts to expert opinion evidence regarding the child's mental condition which Ms. Mohammed is not qualified to give.	I have struck out the words "**psychology**" as the parent is not competent to make such an assessment. She is of course as a parent competent to speak to her observations of the child's mental state and development from her layman's perspective.
Paragraph 15, lines 3-5: "He told me that he climbed out the window and stood on an AC unit and jumped from on top the AC unit over the wall, into a business place next door from which he then escaped" Lines 8-12: "He told me it was fairly easy for him to escape as the security guards usually come and sleep downstairs throughout the night without paying attention to him. He was then able to walk down Ariapita Avenue, pass the Hasley Crawford Stadium and then take a Diego Martin taxi by Movie Towne. This all	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	Overruled "Child narrative" Overruled "Child narrative"

took place after midnight"		
Paragraph 16, line 1: "B told me that the taxi dropped him out by the corner of Sea Trace, Bagatelle." Lines 7-8: "He became very quiet and somewhat defensive when I asked about the money, saying he "you wouldn't want to know what I had to put myself through to get this money to escape!"	Same as above	Overruled "Child narrative"
Paragraph 16, lines 9-11: "…because it is only the adult security guard and caregivers who could possibly give him money and I have no idea what they made my son "do" to earn this money"	This statement is purely speculative and more prejudicial than probative	I agree that this evidence is speculative. More so it is unnecessary in the context of the other evidence provided by the parent to determine the conditions in which the child is being detained. These words are struck out.

Paragraph 18, lines 2-5 "B…started to scream that he did not want to go back to "that place". He broke down and started to cry and said "mummy I am lonely and suffering there; please don't send me back or else you might never see me again".	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	Overruled "Child narrative"
Paragraph 19, lines 1-8: "…B burst open and just started telling me what was going on and how he really felt. He said he was "going crazy with loneliness that made his head hurt" and begged me not to send him back. B told me that if I sent him back with the police I will lose him as a son because he will "end his life". He said he has no one to talk to and he continuously wished could just die."	Same as above	Overruled "Child narrative"
Paragraph 20, lines 6-10: "B told me that they treat him like a convicted criminal and want nothing to do with him so he just sits in loneliness and isolation for most of the day. **He said he had**	This is hearsay and double hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	The words **"He said he had overhead them telling people on the phone that they were working with a lil murderer"** are struck out. While I will permit latitude to the child to tell his story and to that extent allow some hearsay evidence I

overheard them telling people on the phone that they were working with "a lil murderer". Lines 10 to 13: "…**he said that the staff warned him that if he complained and made them lose their job or get any problems that they would "fix him". He said things were already so lonely for him he did not want to make it worse so he just pretended everything was ok**"	This is hearsay and evidence which is too vague to be admissible as it does not name the members of staff who allegedly made these statement.	will draw the line on double hearsay. Lines 10 to 13 are Struck out on the basis of inadmissible hearsay and moreover that that there is no proper identification of the staff that made such a comment and it would be unfair, prejudicial and disproportionate to allow such evidence.
Paragraph 21 "*Speaking to B at our home that day, I realised he was completely devoid of stimulation, that he was not reading or learning and that he was almost incapable of having a proper conversation like a normal 15 year old child because he was having no interaction with anyone, especially no one his age. His behaviour was strange and the more we spoke the more I realised that he was in a state of depression"*	This amounts to expert opinion evidence regarding the child's mental and psychoeducational condition which Ms. Mohammed is not qualified to give.	Overruled. This evidence will be admitted on the basis of it being the observations of a parent of her child and not that of an expert opinion. The Court will therefore ascribe the weight relevant to this evidence as that of a layperson and not an expert.

Paragraph 22- "*When B was returned to the facility by the Police, the security guard on duty did not even recognise him or know that the child he was supposed to be guarding was missing*".	This is speculative evidence which purports to speak to the state of mind of the security guard and is therefore inadmissible.	Overruled: the Court will ascribe the relevant weight to an observation being made by the deponent of the security guard and not as to his state of mind to which she can give no evidence.
Paragraph 24: "After class, he told me he watches television until late in the night"	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	Overruled. "Child narrative"
Paragraph 25: "I am scared as well that just how he managed to get tools to break out, he will get knives or other weapons and hurt himself, because it appears that security and supervision is lax at the facility and a teenager in a state of depression can be very unpredictable. I am scared that one day I will get a phone call saying that B committed suicide"	This is speculative evidence is inadmissible and has no proper evidential basis. It also contains opinion evidence regarding the degree of security at the premises, which Ms. Mohammed is not qualified to give.	Overruled. The Court will ascribe the relevant weight to the expressed fears of the mother in the context of the available evidence.
Paragraph 26	This is speculative evidence is inadmissible and has no proper evidential basis.	The words "**as I cannot help but wonder what it is that person is making my son do in**

"I am also extremely disturbed by the fact that someone has been giving him money as I cannot help but wonder what it is that person is making my son do in return for this"		**return for this**" are struck out on the basis of speculation.
Paragraph 27, Line 5: "…*he is now depressed and suicidal*". Lines 10-12: "My son continuously tells me how much he misses his sister and there is nothing I can do to make the situation better"	This amounts to expert opinion evidence regarding the child's mental and psychoeducational condition which Ms. Mohammed is not qualified to give. This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	The word "**suicidal**" is struck out. While the parent will be allowed to give her layman's impression of depression to speak of B as suicidal it would be preferred if expert opinion evidence is offered to this court for it to make a proper determination of the issues in this case. Overruled: "Child narrative"
Paragraph 31: "B started saying that maybe I should not have gone to Court in the first place to have him transferred out of YTC. He even said that he is worse off now because he is alone and depressed and that he preferred to be bullied and beaten, abused and threated	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	Overruled: "Child narrative"

instead of being alone like this". Paragraph 32 (the 2nd Defendant's objection)	Paragraph 32 contains material which is irrelevant and speculative and without foundational basis and is in breach of Rule 31 (3) of the Civil Proceedings Rules as amended.	Overruled: The evidence is relevant and the Court will not starve itself of information in relation to the place of detention.
Paragraph 33- "…I have witnessed the adverse changes…whereby he is becoming increasing depressed, and withdrawn" "In fact, since his attempted escape B is now treated even worse because the security who was on duty and did not realise that he escaped is still working there and gives B a really hard time, because he said B got him in trouble."	This amounts to expert opinion evidence regarding the child's mental and psychoeducational condition which Ms. Mohammed is not qualified to give.	Overruled: This evidence will be allowed on the basis of an expression of the parent's layman observation of her child and not that of an expert.
Paragraph 34 "B indicated to me that he is so alone that he is forced to resort talking to the security guard in the night as his only source of human interaction." "I am worried about the potential for abuse or a relationship formed out of necessity in such circumstances as B is in	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence. This is speculative evidence and is inadmissible and has no proper evidential basis.	Overruled: "Child narrative" Struck out: This conclusion and fear is speculative and prejudicial and outweighs its probative value.

an extremely vulnerable and exploitative predicament."		
Paragraph 35- "I am not in a position to make any allegation as I do not have the facts but I am extremely concerned that the solitary confinement of my son places him in an extremely untenable and difficult situation **that is not conducive to his rehabilitation,** but ironically causes him to be frustrated, anxious, depressed, lonely and even suicidal. **This makes him vulnerable and places him in an exploitative situation."**	The entire paragraph is **admittedly** speculative and purports to conclude that B is in fact in solitary confinement, a matter yet to be determined by this Court. Further, this amounts to expert opinion evidence regarding the child's mental and psychoeducational condition which Ms. Mohammed is not qualified to give.	The words: "**That is not conducive to his rehabilitation,**" and "**This makes him vulnerable and places him in an exploitative situation"** are conclusions to be drawn by this Court after assessing the relevant evidence and not by a lay person's assessment of his conditions. Whereas latitude is allowed to the parent to characterise the condition as solitary confinement, this is a conclusion to be made by this Court after considering all the relevant evidence.
Paragraph 37- "My grievance lies in the fact that he is now being kept in solitary confinement. The other complaints are but symptoms of that evil. The lack of airing compounds and intensifies my grievance as this would contribute to the stress and depression that my son faces on a daily basis. I believe that no teenage child should be in such a vulnerable and depressing situation."	The entire paragraph is **admittedly** speculative and purports to conclude that B is in fact in solitary confinement, a matter yet to be determined by this Court. Further, this amounts to expert opinion evidence regarding the child's mental and psychoeducational condition which Ms. Mohammed is not qualified to give.	Overruled.

2. AFFIDAVIT OF KAREN MOHAMMED FILED ON 10TH MARCH 2017		
Paragraph 3(d) "Mr. Maynard is taking revenge on B for escaping under his watch".	This statement is speculative as it purports to speak to Mr. Maynard's state of mind and is therefore inadmissible.	Struck out: Speculative
Paragraph 4(a) "Many times I would visit B and it was never logged in the book, especially when Mr. Maynard was not there."	The statement is purely speculative and Ms. Mohammed is not in a position to state definitively whether the visit was logged or not.	Overruled. This is based upon her own observations.
Paragraph 11(c) "I do not know the content of the conversations B has with the security officials however I aver that it is highly inappropriate for my son to be forced to interact with the Security Officer on duty at the time because no one else is at the facility."	This statement contains opinion evidence regarding the appropriateness of the interaction with between the child and the security Officer which is unfounded based on the evidence.	Overruled: Latitude will be afforded to the parent to state her case in this respect.
Paragraph 14 "Mr. Maynard did not even bother to notify the police that B escaped….The only police report was made by me and I returned B to the	This statement contains information is not within the knowledge of Ms. Mohammed and is purely speculative.	Overruled.

facility in the accompaniment of the police officers".		
Paragraphs 7, 12, 17	This is hearsay evidence as Ms. Mohammed is seeking to attest to what was told to her by the subject minor and is relying on these statements for their truth. Only the child can provide this evidence.	Overruled "Child narrative"

3. AFFIDAVIT OF HIRRAJ BANDOO FILED ON THE 10th MARCH 2017		
PARAGRAPH	**GROUNDS/REASONS**	**RULING**
The entire affidavit	That the entire affidavit contains material which does not address or concern the alleged breach of regulation 15 (b) of the Children's Community Residences Regulations 2014 as it relates to the minor child B and is therefore of no probative value, contains opinion and speculation, is irrelevant and scandalous and is without foundational basis and is in breach of **Rule 31 (3)** of the **Civil Proceedings Rules as amended**	Paragraphs 5, 6, 7, 8 are struck out. The evidence is unnecessary, lacks probative value. It will be disproportionate to the enquiry to permit an inquiry into these acts. Allowance is given to receive evidence generally from the family of the child.

RULING ON THE EVIDENTIAL OBJECTIONS OF THE CLAIMANT

1. AFFIDAVIT OF DAVID MAYNARD FILED ON 22nd FEBRUARY 2017		
PARAGRAPH	**GROUNDS/REASONS**	**RULING**
4 – The last sentence; "which I was advised by my Director….the Authority."	This evidence is hearsay as Mr. Maynard is giving evidence of what was told to him by the director of his Security Firm. He is seeking to rely on these statements for the truth of	Struck out on the ground of hearsay.

	what was told to him. The Security Firm is not a company and hence, only the Director can give this evidence.	
5 – in its entirety.	Same as above.	Struck out on the ground of hearsay.
6 – The first sentence.	Same as above.	Latitude will be afforded to the deponent to give context to his duties
8 – The second sentence; "I was advised by Ms. Keisha Mitchell…Sunday 26th June, 2016. The last sentence from: "Mr. Daniel Maynard…25th June, 2016 and…)	Same as above.	Overruled. Context allowed for this deponent to explain his actions. Relevant weight will be ascribed to such hearsay statements. Same as above.
9 – First sentence; "Much to the child's disappointment and chagrin" 9 – Last sentence; "The child…anymore."	Mr. Maynard cannot give evidence about the child's emotional state, opinion or state of mind. Furthermore, he cannot give evidence of what B said to him if he intends to rely upon same for truth of contents.	Overruled to the extent that the deponent will give his own impressions and the child's expressions to him. This evidence would be allowed. The Court will ascribe the relevant weight to it in the context of the other available evidence.
10 – in its entirety.	The general rule is that a party seeking to rely upon the contents of a document, in this case, the security log, must adduce primary evidence of those contents: **MacDonnell –v- Evans (1852) 11 CB 930.**	This evidence will be allowed on the basis that the security log is produced for inspection and copies filed and served within 14 days of this order.
11 – Second sentence; "Further….security personnel."	This is expert and/or opinion evidence which Mr. Maynard is not qualified to give. The Court already	Overruled.

	has comprehensive and detailed expert evidence before it.	
12 - in its entirety.	This is expert and/or opinion evidence which Mr. Maynard is not qualified to give. The Court already has comprehensive and detailed expert evidence before it.	Overruled. This is the deponents own observations and not being received as evidence of a qualified expert which he admits he is not.
13 – in its entirety	The security log was not exhibited.	This evidence will be allowed on the basis that the security log is produced for inspection and copies filed and served within 14 days of this order.
14 – Second sentence; "There has always…exception."	The Defendant is attempting to rely on a security log (document) which was not adduced as evidence. A basic application of the best evidence rule suggests that this should be struck out.	This evidence will be allowed on the basis that the security log is produced for inspection and copies file and served within 14 days of this order.
15 – Last sentence; "The atmosphere…duties."	This is opinion evidence that is of no probative value.	The words "**well documented**" and "**Crafted by the child**" are struck out on the basis of the absence of any foundation.
16- Second sentence – "This has never happened at any point in time."	Mr. Maynard can only give evidence of what transpired when he was on duty. He cannot make such a categorical statement without first laying the evidential foundation by giving evidence that he was on duty every single night for the relevant period.	Struck out: No weight can be attached to such an absolute statement.
16 – Fifth sentence; "This was a matter of deception, not sleep."	This is opinion evidence that is self-serving, largely irrelevant and of no probative value.	Struck out: The deponent would be restricted to facts

		and not argument or submission.
16 – Last sentence; "When the other guard went to check, the child banged his football around the room as cover."	This is hearsay and is, in any event, irrelevant. The "other guard", is the only person who can give this evidence.	Struck out: Hearsay
17 – Third sentence to the penultimate sentence; "I am informed by…continued to undermine over time."	Mr. Maynard cannot give evidence about what the other security office, Boyce, saw and observed.	Struck out: Hearsay
18 – Last sentence.	This assumption is speculative and irrelevant.	Struck out: Speculative
19 – "Saying he had been recovered in Bagatelle."	This is hearsay evidence.	Struck out: Hearsay
20 – Last sentence from: "between…form."	Mr. Maynard could only give evidence about his conduct. He cannot give evidence of how other security offices would have interacted with the minor."	Overruled: The deponent will be allowed to state his case.
21 – The entire paragraph.	This evidence is highly prejudicial and is of little or no probative value. It is also hearsay. Mr. Maynard is not a child psychologist nor is he an expert.	The words "**with the security staff**" are struck out on the ground of hearsay.
22 – The entire paragraph.	This is opinion evidence. Mr. Maynard can only speak as to what transpires when he is on duty – he cannot give evidence about what happens with other officers.	The words "**I wish to state**" to "**preposterous**" and "**Usually**" to "**approaches**" are struck out on the grounds of hearsay and speculation.
24 – The entire paragraph.	This is expert opinion evidence which Mr. Maynard is not qualified to give. A degree in psychology does not necessarily qualify him to give such evidence and no details were provided regarding his knowledge,	Overruled. The evidence will be received as the deponent's own observations and not that of a qualified expert.

	training and experience in child psychology.	
27 – Second sentence; "It is our…weekend."	Mr. Maynard can only speak to his own personal observations.	Overruled: This is his own observation.
28 – Last sentence; Rather…to the ground floor."	This is speculation and opinion evidence.	Overruled: This is his own observation.
29 – First sentence; "B has told me…upon arrival.	This is Hearsay.	Overruled: "Child narrative"
30 – Second sentence; "The Security Officers…dealing with B."	Maynard can only speak as to what transpires when he is on duty – he cannot give evidence about what happens with other officers.	Struck out: "**The Security Officers stationed at the facility**". Hearsay.
32 – Last sentence; "Can confirm no security guard has ever slept in the room with the child."	Mr. Maynard can only say what transpired when he was on duty.	Overruled: It is his own personal observation when he is on duty.
33 – in its entirety.	He cannot give evidence about how other staff members treated B.	"**no other officer to Attempt**" Struck out on the ground of hearsay.
34 – in its entirety.	Mr. Maynard is making reference to and basing his findings on a security log which was not exhibited.	Overruled.

2. AFFIDAVIT OF KEISHA MITCHELL FILED ON 22nd FEBRUARY 2017		
PARAGRAPH	**GROUND/REASONS**	**RULING**
6 – in its entirety.	This is highly misleading since many of the items listed as I-xi were never started, implemented and/or continued.	Overruled.

9 – In its entirety.	Ms. Mitchell is attempting to relay on a security log (document) which has not been exhibited.	This evidence will be allowed on the condition that the security log is produced for inspection and copies file and served within 14 days of this order.
11 – Second and Third sentence; "I am advised…Recommendations. "	This is hearsay.	Struck out: Hearsay
12 – First sentence; "I state that…without her."	This is Hearsay.	Overruled: "Child narrative"
12 – Last sentence; "Although…secure location."	This is opinion evidence. Although Ms. Mitchell possesses a degree in psychology, which was not exhibited, she is not a child psychologist and therefore not in a position to determine whether B is frustrated or suicidal.	Overruled: "Child narrative"
17 – In its entirety.	Ms. Mitchell could only give evidence on what she did or did not do. She cannot give evidence on behalf of the other staff members.	Overruled.
20 & 21 – in its entirety.	This evidence is hearsay, is largely irrelevant and of no probative value.	Overruled this is relevant to the context of the Court determining the best interest of the child.
22 – Second to sixth sentences; "Ms. Ackbarali-Ramdial…14th September, 2016."	This is hearsay.	Struck out: Hearsay
28 – in its entirety.	This is highly misleading and prejudicial. The document annexed as **"K.M.2."** clearly indicate that it is not a certificate. It is therefore false to suggest that "B was successful in obtaining his School Leaving Certificate in 2016."	The evidence will be received on the basis of the contents of the exhibit which is self-explanatory.

3. AFFIDAVIT OF CHRISTALLE GEMON FILED ON 22nd FEBRUARY 2017		
PARAGRAPH	**GROUND/REASONS**	**RULING**
In its entirety	The entire affidavit of Ms. Gemon should be struck out as being irrelevant to present case at hand as those facts and matters were already dealt with before His Lordship the Honourable Mr. Justice Kokaram in CV 2015-02799. There is nothing in the affidavit of Ms. Gemon which addresses, denies, touches or concerns the alleged breach of Regulation 15(b) of the Children's Community Residences Regulations, 2014 and it is therefore of no probative value to the issues at hand.	Overruled. This evidence is relevant in the context of the nature of this dispute and the exercise the Court is engaged to deal with the 'best interests' of the child.

4. AFFIDAVIT OF ELVIN SCANTERBURY FILED ON 17th FEBRUARY 2017		
PARAGRAPH	**GROUND/REASONS**	**RULING**
13 – in its entirety.	It is for the Children's Authority to say whether the child's rehabilitation centre at Golden Grove has met its requirements. Mr. Scanterbury is not a member of Cabinet and hence cannot properly give evidence of a Cabinet minute or any other document. There is no evidence that the Committee he sits on was established by the Cabinet, such that it is a sub-committee of the Cabinet and it is for the Children's Authority to give evidence of its own status reports. Also, the entire affidavit of Mr. Scanterbury should be struck out as being irrelevant to present case at hand as those facts and matters were already	Overruled. In the context of this dispute and the overarching issue of whether community residences are ready or can be in a state of readiness for approval, the evidence is relevant. It relates directly to the relief sought against the Attorney General and the 'best interests' of the child.

	dealt with before His Lordship the Honourable Mr. Justice Kokaram in CV 2015-02799. There is nothing in the affidavit of Mr. Scanterbury which addresses, denies, touches or concerns the alleged breach of Regulation 15(b) of the Children's Community Residences Regulations, 2014 and it is therefore of no probative value to the issues at hand.	

Cross examination

18. I had asked the parties to file their relevant notices to cross examine deponents and this Court will rule on them. The parties are aware that cross examination in judicial review proceedings are rare because these proceedings ordinarily deal with questions of law. Cross examination in these proceedings if permitted is not "at large". The onus is on the party to demonstrate the necessity for cross examination. I would have expected the parties to have set out the basis for cross examination in their notices, which they did not.

19. The Court retains the discretion to order or permit cross examination where there is a critical factual dispute central to a material issue or which infringes the duty of full and frank disclosure.[7] Ultimately the Court will have to determine if the oral evidence with cross examination is necessary in order to determine the claim fairly and just by taking into account a number of factors such as the nature and importance of the dispute and the views of the parties.[8]

20. I am guided by the following principles in reference to the question of leave to cross examine. In **R (Al-Sweady) v Secretary of State for Defence** [2009] EWHC 2387 (Admin), though it concerned a dispute concerning Article 2 and 3 of the European Convention of Human Rights, it was noted that consideration should be given for cross examination where it is clear that the

[7] **Sasha Seepersad v Her Worship Magistrate Marcia Ayers-Caesar et al** Claim No. CV2015-02944, paragraph 10.
[8] Judicial Review Principles and Procedure by Jonathan Auburn, Jonathan Moffett and Andrew Sharland, paragraph 27.99.

determination of a factual dispute might affect the outcome of a judicial review proceedings. Scott Baker LJ stated at paragraph 19:

> "19. In our view, it was necessary to allow cross-examination of makers of witness statements on those "*hard-edged*" questions of fact. We envisage that such cross-examination might occur with increasing regularity in cases where there are crucial factual disputes between the parties relating to jurisdiction of the ECHR and the engagement of its Articles."

21. In **Gopichand Ganga et al v The Commissioner of Police and Police Service Commission** CV2006-01420 Madame Justice Rajnauth-Lee observed at paragraph 10-11:

> "10. It is a well-accepted principle that cross-examination in proceedings for judicial review is extremely rare. In the text Judicial Remedies in Public Law by Clive Lewis (2004), it is made clear that cross-examination may be allowed if there is a dispute on a critical factual issue and it is necessary to resolve that issue by cross-examination. (Emphasis mine). [Paragraph 9-096].
>
> 11. The Court of Appeal has succinctly set out the law as to when cross-examination is permitted in judicial review proceedings. Cross-examination in judicial review proceedings is only permissible when it is relevant to an impugned decision, and it is linked to a ground of challenge of procedural impropriety, but a prior consideration is that the affidavits either contain conflicts of facts central to a material issue in the case or infringe the duty of full and frank disclosure. It is for this reason that cross-examination in judicial review proceedings is understandably rare (CA 2007–21, the Honourable Patrick Manning the Prime Page 6 of 22 Minister v. the Honourable Satnarine Sharma the Chief Justice - Outline of Reasons given on the 20th April, 2007)."

22. In the context of this dispute and in the absence of any identification by the parties of any critical factual dispute which is relevant to the main issues for determination, no cross examination will be allowed.

Vasheist Kokaram
Judge