

FAMILY COURT OF NOVA SCOTIA

Citation: *H.I. v. J.K.*, 2015 NSFC 22

Date: 2015 12 16

Docket: FLBMCA No. 089412

Registry: Bridgewater

Between:

H.I.

Applicant

v.

J.K.

Respondent

Judge: The Honourable Judge William J. Dyer

Heard: October 21 and 22, 2015, in Bridgewater, Nova Scotia

Memorandum of Decision: December 16, 2015

Decision:

Written Release of Full Reasons: March 29, 2016

Full Reasons:

Revised Decision: The text of this decision has been revised to protect the identity of certain parties. This revised version is released on

Counsel: May 25, 2016.

Ashlea Richard, for the Applicant

Jennifer Rafuse, for the Respondent

By the Court:

Introduction

[1] H.I. (“H.I.” or “the mother”) and J.K. (“J.K.” or “the father”) are the parents of two year old K.L. (“K.L.” or “the child”). Following a contested hearing in late February 2014, I approved an order under the **Maintenance and Custody Act (“MCA”)** which vested interim care and custody of the child in the mother pending further court order. At the time, largely based on J.K.’s prevailing employment circumstances, I also ordered that J.K. should have reasonable parenting times to include every weekend from 5 p.m. until Monday at 10 a.m., unless the parties mutually agreed otherwise. I ordered that J.K. should be responsible for his son’s transportation to and from the mother’s residence to exercise his parenting times, and that while K.L. was in the care of his mother she must initiate daily Skype contact between father and child each day at 6 p.m., assuming J.K. had the appropriate technology. While K.L. was with his father, I ordered that he should initiate similar contact between mother and daughter. There were other terms and conditions which will be mentioned later.

[2] The interim hearing and order occurred in the wake of the father’s unilateral removal of his son from the couple’s then residence and relocation to another residence several hours away. At the final hearing, I had the benefit of affidavit evidence and testimony on behalf of the respective parties, and the submissions of counsel. I commended both lawyers for their thoughtful and comprehensive efforts on behalf of their respective clients.

[3] Time constraints did not permit a written decision before a recent Holiday break in the court’s schedule. However, a Memorandum was released so that the parties would know the outcome of the case pending release of a full decision.

[4] The best interests of the child are paramount. The terms and conditions, and the directions, stated in the Memorandum are repeated for ease of reference.

[5] I ordered as follows:

1. H.I. shall have sole care, custody and control of the child and the child shall live primarily with her.

2. Having regard to J.K.'s current employment schedule, and until the child starts school, I approve parenting time for J.K. on the "two weekends on/one weekend off" rotation as proposed by H.I. [H.I. Affidavits, Exhibit 6, para 98; and Exhibit 7, para 3]. J.K. may pick up K.L. Wednesday evening at the mother's residence and return him to her care on Saturday mornings until the child starts school. When K.L. starts school, J.K. may pick up K.L. evenings after school and shall return the child to the mother's care Sunday evenings (with the same two weekends on/one weekend off rotation).
3. The parents shall share parenting times and annually alternate Holidays as proposed by H.I. [H.I. Affidavit, Exhibit 6, para 101].
4. By agreement the parties may expand, contract and substitute parenting times for J.K., and otherwise modify the arrangements. Significant changes shall be confirmed in writing.
5. The terms regarding telephone, social media, etcetera, contact between the respective parents and the child shall continue as stated in the interim order.
6. Responsibility for transportation remains unchanged – i.e., by J.K. or by a responsible adult approved by both parents. The parties are encouraged, but not ordered at this time, to consider shared or divided responsibility for transportation.
7. Transportation and transition arrangements contemplated by this decision are contingent on safe travel. Should weather or road conditions, or other unforeseen factors preclude safe travel, the parents shall adjust or modify the days and times, as need be. Should J.K.'s parenting times be cancelled or shortened because of weather or road conditions or for other reasons outside of his control, his missed parenting times shall be rescheduled or extended, at the earliest opportunity.
8. H.I. shall not be under the influence of alcoholic beverages or non-medically prescribed drugs while parenting K.L.
9. Both parents are equally entitled to information regarding the child's upbringing, health, education and general well-being, and must provide such consents or authorizations as may be reasonably required to give effect to this provision. This includes, but is not limited to, timely provision to J.K. of copies of medical, school and activity reports and schedules, and notice of professional appointments.
10. H.I. must keep J.K. informed of all major issues affecting the health, education, religious faith and general well-being of the child; and H.I. must consult J.K. on all such matters. For the purpose of clarity, J.K. has the right to be consulted in these matters. In the event of disagreement, H.I. has the right to make the final decision in relation to those matters.
11. Each parent has the power to authorize emergency medical care for K.L. and each agrees to notify the other of any emergency as soon as it is practical to do so in the circumstances.

12. The parents must not place K.L. in the middle of discussions concerning parenting issues. The parents must ensure that pick-ups and drop-offs as approved by the court are positive and child-focused without negative discussions/disagreements conducted in front of the child by them or others. Communications about parenting arrangements must be child focused and positive in nature without personal discussion or disparaging comments or remarks being made.

13. I recommend, but do not order at this time, that the parents seek counselling or other professional services regarding ways and means to improve their communications and cooperation, in their son's best interests.

14. I recommend, but do not order at this time, that the parents keep a journal in which they shall share relevant information about every-day issues that may impact on K.L.'s care and upbringing.

15. Neither party shall remove the child from the Province of Nova Scotia with the intention of relocation, without the expressed written consent of the other parent or the approval of a court of competent jurisdiction.

16. The parties shall bear their own court costs.

[6] There was no evidence, and there were no submissions regarding support. I directed that counsel for H.I. must inform J.K.'s counsel whether support is being sought. If so, J.K. was directed to make full financial disclosure in accordance with the **Child Maintenance Guidelines**. And, counsel were asked to keep the Family Court Office advised regarding the child support issue pending conclusion by negotiation or by court decision.

[7] My fact-findings and reasons in support of the result follow.

J.K.

[8] The father submitted an affidavit and testified. He wrote that after the interim order was approved in late February, 2014 the parties agreed between themselves that he would pick up K.L. at 12:00 p.m. on Friday and return him to H.I.'s care by 12:00 p.m. on Monday. He cited the distance between his then residence and the mother's (i.e. about two hours each way) and also cited K.L.'s age. (The original order had provided that his parenting time would be every weekend from Friday at 5:00 p.m. until Monday at 10:00 a.m.)

[9] J.K. said that effective September 1, 2015 he secured a two bedroom apartment at Kennetcook, that he had been employed with Autoport since April 2015, and that he is now part of the unionized full-time work force. His regular

hours are 8:00 a.m. to 4:30 p.m., Saturday to Wednesday. He is off work on Thursdays and Fridays. Because of his work schedule and potentially missing parenting time with K.L., J.K. asked H.I. for a change (knowing she is unemployed). He said the parties eventually agreed to another re-adjustment to his parenting schedule to the current one, namely from 9:00 a.m. Thursday until 9:00 p.m. on Friday when K.L. goes to his grandfather, G.F.'s and his partner, M.M.'s home for the night. K.L. is then returned to the mother at 11:00 a.m. on Saturdays.

[10] J.K. seeks primary care of K.L. with access to H.I.. He stated that he has no criminal record and no child protection history. He said he does not drink alcohol or use drugs. In his affidavit, he identified a number of concerns and provided some elaboration. They included so-called humping behaviours by K.L., alleged "autistic tendencies", concerns that the mother was not referring K.L. for professional assessments, worry that K.L. may have some hearing difficulties which have not been fully assessed or addressed, complaints about the child's hygiene including "severe diaper rash", and the mother's failure to keep him apprised of K.L.'s medical circumstances and other matters touching on his well-being. Asked whether he had requested the mother's permission or authority to speak directly with K.L.'s current physician, J.K. stated that he had not done so but complained that neither had the mother offered him that opportunity.

[11] He repeated his belief that the mother is incapable of providing for their son. He cited the mother's loss of other children to agency permanent care and custody, and the mother's past struggles with both alcohol and drugs. He acknowledged her episodic abstention from alcohol and drugs but underlined her episodic relapses "when she loses all control". J.K. also claimed that she is "quite heavily medicated", although authorized by a physician.

[12] J.K. acknowledged mutual affection and love between mother and son. However he asserted that he is best able to provide their son with stability, routine, guidance, care and attention. He alleged that the mother does not provide the same level or standard of care, etcetera. He carefully mapped out the proposed structure and routines for his household should he be granted care and custody of his son. He has made preliminary inquiries regarding daycare and other care arrangements for times when he is at work. J.K. has also made tentative arrangements for a family physician and dentist who could assume K.L.'s professional care. He gave assurances that he would attend to all of K.L.'s health and medical needs promptly and engage in any recommended services. He also gave assurances that he would keep the mother fully informed of anything going on in K.L.'s life and that she

would be welcome to attend any appointments of which he would give advance notice.

[13] On those Saturdays and Sundays when he is working, if K.L. is not visiting the mother, J.K. said his father and his step-mother could and would care for K.L. He proposed dropping him off at their home in the mornings on his way back to work and picking K.L. up again on the way home. He added that if they wanted to they would also be able to keep K.L. overnight occasionally, that is on Saturday nights.

[14] J.K. made reference to Daphne Goodine (discussed elsewhere). He said he will continue to work with her and the Kids Action Program in the future because he finds the service invaluable. Additionally, he gave general assurances that he would facilitate access or parenting times between K.L. and the mother.

[15] In his affidavit, J.K. made reference to past difficulties communicating with H.I. and wrote that most, if not all, communications with her are now through e-mail so as to reduce conflict and so that there is a record of everything that is said. He claimed this communication method works well and proposes that it continue. He asked for specified parenting times because of past conflicts over scheduling and flexibility. He noted that he has internet at his apartment and would be willing to Skype or Facetime so that the mother can have communication with K.L. when he is not with her. He also invited telephone contact “any time she wants”.

[16] During testimony, J.K. said that he was unaware of several professional referrals that the mother had made to look into his concerns – the inference being that this further exemplifies her inability or unwillingness to keep him informed.

[17] J.K. candidly admitted that his own father, unbeknownst to him, had on at least one occasion sent an inappropriate text message to the mother. His evidence was that when he learned of this he confronted his father and reprimanded him, and that to his knowledge there has been no repetition of offensive or inappropriate text messages or e-mails. He acknowledged that recent transitions of K.L. he has attended have generally gone better than in the past. However, he was unable to speak to those occasions when his father has carried out the exchanges or transitions. He stressed that his father is “just a transporter”, with some limited care or access time. Even during those times when K.L. might be at his father’s residence, he said M.M. is the person providing most of the care.

[18] Perhaps understandably, and depending on the outcome of the case, J.K. thinks it would be appropriate for both parents to share some, if not all, of the transportation costs incidental to K.L.'s parenting times. Neither he nor she introduced any clear evidence about expenses.

[19] During questioning, J.K. said that if he is not awarded primary care, that he would seek split custody/equal parenting time, or, in the final alternative, maintenance of the status quo with some fine tuning regarding transition times.

[20] The father reiterated during cross-examination that he would prefer to confine communications to the extent possible, to e-mail to reduce the potential for conflict. He weakly professed that any lingering resentment or personal hostility regarding the mother had dissipated over the last few months preceding the hearing.

[21] J.K. admitted that he did not inform the mother of his September 2015 relocation to an apartment and admitted that he did not offer any explanation or provide any particulars to her regarding this significant change. (He, as mentioned, had strenuously asserted that she does not keep him informed about important matters.)

[22] The drive between the residences is still lengthy – apparently depending on road conditions, etcetera, it still takes somewhere between an hour and a half, to an hour and three quarters each way. When pressed, he acknowledged that it is his father who is still doing most of the driving, not him. Asked about the absence of Mr. G.F. from the final hearing, he said he did not see any need to have his father testify given his somewhat limited role.

[23] Given the geographical realities, the child's age, and chronic conflict between the parents, I quickly determined fully-shared parenting to be an unrealistic proposition. School enrolment would put an end to such a regime, in any event.

M.M.

[24] M.M. ("M.M.") has been the paternal grandfather's [G.F.'s] common-law partner for about 15 years. In her words, she considers herself a step-mother to J.K. and a grandmother to K.L. She and G.F. live in a three bedroom at Noel, Hants County. Both she and G.F. are employed outside their home.

[25] M.M. alleged that when she met H.I. that H.I. disclosed that her doctor had told her that “since she smoked ‘pot’ during her pregnancy she should continue to smoke a joint around K.L. daily because he was an addicted infant”. Thereafter, M.M. claimed she had serious concerns about H.I.’s parenting abilities.

[26] M.M. offered her version of the events which occurred late on December 31st, 2013. I find it unnecessary to recount what J.K. told her on that occasion. The upshot was that she told J.K. to come to their home immediately with K.L. She confirmed that J.K. and K.L. stayed with her and G.F. for about two months until it was ordered that the child be returned to H.I.’s care. M.M.’s evidence was that while K.L. stayed at their residence, she observed J.K. to be an attentive and capable father who engaged in age appropriate play and activities. She assisted with K.L.’s care occasionally because she enjoyed doing so. She provided some evidence of the child’s routine which was unexceptional.

[27] Following the court order for return of the child to his mother, M.M. said that J.K. continued to live with them until early September, 2015. During this time, when access occurred every weekend from Friday until Monday, she observed that he generally provided most of his son’s care.

[28] M.M. confirmed her knowledge of J.K.’s employment change in April, 2015. She spoke of her understanding of the resulting conflict between the parents regarding the father’s parenting time and transitions. The upshot was a decision that K.L. would be returned to the mother’s care Saturday mornings at 11:00 am while J.K. was at work (as discussed elsewhere).

[29] M.M. has three adult children of her own. Her brother and his wife and their children live nearby and often come by to visit or play with K.L. on the weekends. According to M.M., it is important for K.L. to play and interact with other children. She supports and encourages this.

[30] Based on her observations, M.M. believes that K.L. is somewhat developmentally delayed and, in her opinion, spends too much time alone. Accordingly, she said that she and her husband work hard with him on the weekends to get him to play and interact. As of the hearing date, M.M. said that K.L. was “not yet able to talk”. She said they have been trying to teach him some simple one syllable words and that he has learned some.

[31] M.M. expressed concern about “very concerning behaviours” demonstrated by K.L. during his visits. According to her, K.L. can demonstrate a very bad

temper when he does not get what he wants and, to her, his conduct is “a bit extreme with throwing anything he can get his hands on and hitting anything close to him as well as screaming at the top of his lungs”. She also complained that when K.L. “is in your arms he will grab you by the hair on the back of your head and pull you close and kiss you very violently and long on the lips”. She also recounted that the child “will not keep his hands out of his pants and is so persistent with this that he is actually able to pull his penis out of his diaper”.

[32] More troubling to M.M. was what she perceived as unusual sexualized behavior. Her evidence included this:

17. A more disturbing and concerning behavior that K.L. has been showing is his “humping” everything in sight. I have observed him “hump” other people, dogs, blankets, and pillows. If you are sitting on the floor playing with toys with K.L., he will attempt to pull up your shirt and wrap his arms around you and start “humping”. If you are sitting on a chair he will go over to you and open your legs and pull himself into you and start “humping” you. I have even observed him to try to “hump” strangers in public.

18. I have noticed an improvement in K.L.’s “humping” behavior over the past months, however he does still do it.

[33] M.M. also advanced complaints about K.L.’s cleanliness and hygiene. She wrote:

20. I have observed K.L. arrive for visits on Friday with severe diaper rashes and diarrhea. J.K. worked diligently with providing Kaley with healthy nutritious food and by Monday the diarrhea was gone, and the diaper rash healed substantially. However, the next weekend he would arrive again on Friday with a severe diaper rash and diarrhea. While this did improve for a period of time, the past three weeks the diaper rashes have been very prevalent once again. This directly coincides with the birth of H.I.’s latest child.

21. I have observed K.L. to come to the home on Friday dirty and in dirty clothing, with long fingernails and toenails, and his hair dirty and messy. This has been especially so within the past three weeks since the birth of H.I.’s latest child.

[34] Currently, M.M. continues to help with K.L.’s care while the father is at work. She said she generally prepares supper for everyone on these days and that they have meals as a family. Should the court award the father primary care, she wrote that she would continue to help provide child care, if and when necessary.

[35] Not surprisingly, M.M.'s evidence was that she has no concerns about J.K.'s ability to parent K.L. on his own and she believes that he has genuine interest in doing what is best for K.L.

[36] M.M. gave evidence that she has been present at more than a dozen access transitions. She generally does not get out of her motor vehicle and there is little conversation with H.I. Although not clearly stated, it is most likely that G.F., not she, is always the driver.

[37] M.M. insisted that she has never communicated with the mother by electronic mail. Some of the content was contentious. But, she admitted she has permitted J.K. to use her e-mail account to send messages to the mother when he wanted to get messages to her. That said, M.M. professed no knowledge of the content of the messages sent by the father.

[38] M.M. also admitted that she is a "Facebook friend" [sic] with the custody/access assessor, Debra Reimer. However, she said this contact was created after Reimer's work was completed; and that it was done on her own initiative so that she could send photographs to Reimer. In response, she said that Reimer informed her that she was no longer involved with the case and could not or would not be doing anything with that which was provided.

[39] M.M. admitted that she reported or referred her so-called humping complaints to child protection officials on one occasion. She thought that G.F. may have also made one or more referrals. There was no discussion with the mother about the concerns and H.I. was not forewarned of the protection referrals. M.M. offered no explanation; G.F. did not testify.

[40] The referrals prompted investigation. They did not result in any agency intervention. But, they certainly fanned the flames of the already conflicted relationship between the parents and others.

Daphne Goodine

[41] Based in Hants County, Daphne Goodine ("Goodine") is employed as a Community Outreach Specialist for the "Kids Action Program". Goodine submitted an affidavit and testified. She stated the program has been publicly funded for about 20 years. Broadly speaking, it specializes in community, and healthy child and family development when extra assistance is needed. More specifically, she said that she works with young families, parents and children who

are experiencing isolation, poverty, special needs, poor health, poor nutrition, inadequate access to services, those lacking reliable transportation to medical appointments, and families experiencing domestic violence.

[42] Goodine has been with the program for about 13 years. She met J.K. in the spring of 2015 upon a referral from Debra Reimer. She acknowledged Debra Reimer is also the Executive Director of the program that employs her. The assessor's recommendations favoured the father. Despite the optics, she claimed that Reimer and she had only a brief telephone discussion about the referral, following which she contacted J.K. directly without further involvement by Reimer.

[43] Goodine has provided counselling support to J.K. and to his family. When she first met him, he was still living with G.F. and M.M. at Noel. She wrote that she observed the child, his father and the grandparents while visiting and described the interactions as kind and loving. She described the residence at the time as clean and safe, appropriately furnished, etcetera. She briefly recounted observations to the effect that J.K. and M.M. have demonstrated strong "attending skills" with K.L., following his cues and appropriate parental engagement, observation and nurturing.

[44] During some of her visits, Goodine personally observed K.L. "to not use many words" and she said "he often stares off into space and can be hard to engage in play". She also said she has seen episodic small involuntary mannerisms or ticks, such as eye flashes and a pinching gesture with his finger and the thumb of one hand. Sometimes she said he runs in small circles while doing this. She also wrote as follows, "I have also observed K.L. to appear frustrated for unknown reasons. He will throw himself down on the floor and thrust and grind with his penis, oblivious to anyone else near him and ignoring anyone talking to him. He becomes very upset and frustrated when redirected from "humping". During my visits with and K.L. I have observed K.L. as "humping" the floor, his blanket, toys, furniture, the household dogs (from behind) as well as people. I have witnessed K.L. climb on J.K., G.F., and M.M. and try to "hump" them. K.L. has also tried to do this to me more than once including the first time I met him".

[45] Goodine also claimed to have seen some very severe diaper rashes as well as some very loose watery stools. That said, she claims these concerns have subsided while the child was under his father's care. Based on her observations, the witness

advised the father that K.L. should be seen by a doctor, and perhaps referred for other professional services.

[46] At this point, I will say I did not attach much weight to hearsay evidence attributed by this witness to the father and members of the paternal family - except to give context to her work. In brief, several members of the paternal family have been worried about some of K.L.'s behaviours.

[47] In or about May 2015, Goodine took it upon herself to contact the mother directly and make very specific recommendations about parenting times and arrangements. H.I. was not receptive.

[48] Goodine was challenged on whether it was appropriate for her to make recommendations to the mother regarding the best parenting arrangements with little or no knowledge of the mother's circumstances, without any contact with collateral sources, and with no knowledge of the legal file. It was at this stage that Goodine declared that she sees herself not only as a caseworker, but as an advocate for the child. Not surprisingly, this served to enhance the submission on behalf of the mother that Goodine was not the independent observer and support person she professed to be, and that Goodine was clearly aligned with the father.

[49] And then Goodine admitted she was responsible for at least two referrals to child protection officials. She did not disclose this in her affidavit and was hard-pressed to defend her actions and the gap in her written evidence.

[50] Goodine wrote that she is aware of the father's current living circumstances. She has seen the father and child at the new apartment in the community of Kennetcook. There are no concerns about the physical surroundings. Broadly speaking, she expressed no concerns about J.K.'s ability to parent his son if his son was placed permanently in his care. She has also taken steps to help the father with potential day care arrangements and other involvements.

[51] Goodine last observed father and son at the father's apartment in late September, 2015. She said K.L. appeared to be relaxed and engaged with his father. She did observe some concerning behaviours but stated that they were "somewhat improved compared to what they had been previously". Goodine learned from J.K. that he had secured new full time employment which requires him to work Saturdays and Sundays. She also learned from him that the parents had made some adjustments to parenting times in light of the employment changes. Depending on the outcome of the case, Goodine said that she would continue to be

a support person for the father and would assist him with his parenting skills and, if needed, provide referrals if and when needed as well.

[52] I have received with caution her opinions which are “based on my discussions with J.K. and his family, and my own observations, that many of the child’s concerning behaviours were increasing in severity in direct correlation to the amount of time K.L. was able to spend or not to spend with his primary caregiver in infancy, namely J.K.”. She was not qualified to give expert opinion evidence and, more to the point, I conclude that many of her opinions are based on incomplete and incorrect information.

[53] The witness said that her meetings with the father and his relatives and the child were frequent. Some were relatively brief and some lengthy. She also said that there were exchanges of e-mails, text messages, and that there were telephone conversations – between her and the father. So-called “in person meetings” occurred at least once monthly for a considerable time. She vaguely stated that she may have saved some e-mails but provided no elaboration. Upon closer questioning, she admitted she had gone as far as to view and consider text and e-mail exchanges between the parents - but she professed no recollection of the mother’s substantive replies or response to the father’s various concerns. Again, surprisingly, she kept no records or case recordings. During cross-examination, she confirmed that she had contact with the mother just once, and justified that by saying that the mother lives outside of her territorial jurisdiction.

[54] Having expressed concerns about a number of matters, including the child’s speech development, she was asked if she knew about any referrals that might have been made to address those issues. It turns out she was completely unaware that pediatric and speech referrals have been made and that a family personal physician has been monitoring the child all along. She made no effort to contact anyone in the mother’s sphere to determine if similar observations had been made by others. In light of the foregoing, it is not surprising that her evidence was heavily skewed in the father’s favour.

[55] As an aside, apparently by way of the father, Goodine saw all of the court documents tendered at the interim hearing many months ago; but stated she has seen no court documents since then. She did not say how much of what she read, or did not read, might have affected her work.

Nancy Baker

[56] During the interim hearing, considerable attention was directed to child protection agency involvement with the family. A child protection worker testified and introduced voluminous case notes spanning the period from July 25, 2013 until February 17, 2014. Those case notes were not reintroduced at the current hearing and the worker who testified last day did not testify at the present hearing.

[57] There was no attempt to similarly introduce agency case notes from February 17, 2014 onward. However, this did not discourage the father from revisiting the topic. He called child protection worker, Nancy Baker (“Baker”) to testify. Her evidence was that there was (another) referral in late March, 2014 which was not substantiated at the conclusion of the investigation. Nonetheless, Ms. Baker said she was “still concerned because the child had been returned to the mother’s care”. She expressed no concerns about the father or his care of K.L. She said that the agency decided to reassess the case in light of developments, i.e. return of the child to the mother’s care.

[58] Baker said that there were 13 new referrals, some of which were investigated and some of which were not. She provided some elaboration regarding those which were unsubstantiated or otherwise not pursued further by the agency. For reasons best known to the parties, the agency case notes spanning this time frame were not introduced so that full particulars of the referrals or complaints are not before the court.

[59] Baker recounted some of her interactions with the mother which she found concerning. In particular, she referred to an occasion when the mother refused entry to her residence and presented as angry, agitated and guarded, etcetera. That said, she conceded that the mother eventually permitted access to the home and a period of observation which did not disclose any concerns regarding the child or the mother’s parenting. She stated that she had several telephone conversations with the father and at least one office visit with the grandfather – both of whom expressed ongoing concerns about the child’s care when with the mother.

[60] Baker also confirmed that she last saw the mother and child in the late fall of 2014, perhaps as late as December. Baker said that after K.L.’s return to his mother, she has launched six investigations and that others have been involved with three. Of those, she stated that it appears that five referrals, in total, were instigated by the father. She confirmed that there was no open child protection file as at the hearing.

[61] She also confirmed that despite the lengthy history of complaints and referrals that no proceedings have been started under the **Children and Family Services Act (“CFSA”)** and no other pro-active interventions were deemed necessary. She also confirmed the agency’s awareness of proceedings under the **MCA** which has not prompted any different tactic or strategy by the agency.

[62] Despite all the concerns, Baker confirmed that the agency did not follow up with the family after it learned the child had been repatriated to his mother. In short, the agency closed its file at the time and, as noted, there have been no referrals since early 2014.

Debra Reimer

[63] Debra Reimer (“Reimer”) is a social worker currently engaged in private practice who was retained to prepare a Custody/Access Report intended to assist the court in making decisions regarding the parenting arrangements for K.L. Reimer’s Curriculum Vitae appears as Exhibit 5. Her report was entered as Exhibit 4. It was received by the court in early March, 2015 at a time when K.L. was living primarily with his mother, attending day care during the week, and having parenting time with his father each weekend. As discussed elsewhere, at that time J.K. was still living at his father’s residence.

[64] Starting at page 5 of her report, Reimer mapped out background information based on disclosures attributed to the mother. As was the case with other interviewees, wherever she purported to be repeating what was said *verbatim*, the quotes appear in italics. In the same vein, she recounted J.K.’s version of the background circumstances. The conflicting disclosures attributed to the parents and to others were not independently verified by the assessor and would not normally fall within the scope of her retainer. Moreover, the parents and their witnesses provided direct testimony at the hearing which is the best context in which to assess the factual assertions and credibility of those involved.

[65] Reimer’s direct observations of the parents and their son are confined to three paragraphs at page 23 of her report. She observed H.I. to be very affectionate and described the mother’s residence as clean and tidy. There were toys, etcetera available for the child to play with. However, Reimer ventured that the mother “appeared to miss cues from K.L.” and opined or reminded that a child sometimes becomes overwhelmed when playing and needs a break to gather himself/herself.

[66] Reimer's observations regarding the father and son left Reimer with the "impression" that the interactions were more normal than was the case with the mother. She said that the father appeared to know what he was doing without much concentration when caring for the child and she exemplified.

[67] Starting at page 23 of her report, Reimer embarked on a lengthy narrative regarding children's needs. With respect, I find this was largely a "boiler plate" or template rendition of what appears in many of her reports. Interspaced in the narrative, are observations related to the present case. For example, Reimer's opinion is that K.L. requires a home without chaos and offered her opinion that there is "little predictability in the mother's home". This was connected to the mother's various health problems, a motor vehicle accident, relocation, and employment circumstances.

[68] Reimer acknowledged that both parents love their son and that he clearly loves both of them. However, she opined that the child seemed to have a greater connection with his father and a healthy attachment to him as compared to the mother. Reimer emphasized that she was not suggesting there is no attachment between mother and child; rather, the attachment appeared to be stronger to the father.

[69] Commencing at page 25, Reimer recapitulated what she learned from a variety of collateral contacts. I find Reimer's work was undermined at the hearing because several of the collaterals gave evidence contradicting or qualifying the report's contents – notably the statements attributed to them by Reimer. I have inserted excerpts [*in italics*] from Reimer's report where appropriate when discussing [below] what was attributed.

[70] Reimer interviewed G.F., J.K.'s father. While his disclosures provide one perspective about some of the background circumstances, G.F. did not testify. I attach little weight to this component of the report. Reimer also interviewed M.M.. I have considered that which was attributed in the report, but attached more weight to the direct evidence presented at the hearing (and discussed elsewhere).

[71] F.F., a "family friend" of J.K., did not testify but was contacted by the assessor. I find F.F. was clearly aligned with the father ("responsible", "nice", etcetera). F.F. does not know the mother, but did not hesitate to offer this: "... no baby deserves to be with H.I. and ... Ms. H.I. drank through all her pregnancies." And later, "H.I. shouldn't have children of any age. W.C was in foster care, then lived with her father and now she's at H.I.'s. She lets her do whatever she wants,

anything. She lets her smoke dope, she lets her sleep with boys in her home. [I asked how she knew this.] She replied, I shut Facebook with W.C. because it was so disturbing and she calls my daughter and leaves messages saying she's going to kill herself.” I do not attach any weight to these attributions. (Nor do I attach any to the comments of a former landlord who also did not offer affidavit evidence or testify.)

[72] I have similarly considered Nancy Baker’s comments to Reimer, but assigned the appropriate weight after considering her courtroom evidence.

[73] Reimer recapitulated her findings and opinions before making a series of recommendations. I have considered these, together with all of the other evidence. Given how much of her work was challenged during testimony (discussed elsewhere), there is certainly irony in this declaration by her:

There is a great deal to this case. However, when looked at in its entirety, I am left with questions and areas of concern. On a number of occasions information Ms. H.I. has provided has been contradicted by the people she attributed the information to.

[74] And,

I could continue to address the inconsistencies; however, I believe the readers of this report are capable of seeing them without each being individually highlighted. Given the information contained in this report and the many inconsistencies between information provided by Ms. H.I. and the collaterals she provided, I have many concerns. I do not have the same concerns with regard to Mr. J.K.. While he can be quite intense, he loves his son and I believe he puts his needs before his own. And, from all accounts this is supported, with the exception of Ms. H.I. and Mr. W.P.

[75] Reimer recommended that primary care be awarded to J.K., with specified parenting time for the mother, and that “the exchanges happen with minimal contact between the parties”. Most of the other recommendations were relatively benign and would pertain regardless of where K.L. primarily lives.

[76] Looking at Reimer’s evidence as a whole, I conclude that significant portions of her work were derived from limited or mistaken facts which, in turn, drove her to findings and conclusions which I find cannot be objectively sustained.

[77] With respect, I also find her opinions regarding so-called attachment issues must be received with caution – given her evidence regarding the origins of much of her material and her modest credentials in the subject area.

[78] Moreover, as will appear, the reliability of her methods - notably regarding interviews - was also legitimately called into question and thereby the weight to be assigned to her formal report was lessened.

[79] And, the delay between completion of her work and the final hearing also rendered some of her findings “out of date” in any event.

Cindy Hall

[80] Cindy Hall (Hall”) is a clinical therapist with the Nova Scotia Health authority. She has been H.I.’s therapist since the end of October, 2012. She has worked with H.I. on her addiction issues, including relapse prevention. Therapy has also been directed to helping H.I. cope with stress and anxiety.

[81] According to Hall, they developed an Addictions Relapse Prevention Program should H.I. feel or believe that she needs to drink alcohol. The plan includes accessing a local women’s group when needed and managing her anxiety. According to Hall, H.I. has enjoyed an extensive period of stability. However, she had what her profession prefers to as a “slip” in December, 2013. Since then, to Hall’s belief and understanding, H.I. has been sober. Hall said that she has observed no evidence that H.I. has resorted to alcohol and/or drug abuse/misuse.

[82] Hall candidly described her relationship with H.I. as sporadic. Sometimes she sees her every two weeks; sometimes only once monthly. Hall said there are sometimes breaks in attendance, but she asserted that H.I. always seeks her out when she wants counselling or feels a need to talk to someone supportive.

[83] Hall believes H.I. to be open, honest and up front during counselling. She noted that H.I. has brought K.L. to her appointments a few times and that the mother has always demonstrated appropriate parenting. Hall has never made a referral to child protection services regarding K.L.

[84] Hall has met H.I.'s current partner, W.P. There are no concerns surrounding his conduct while at the office. Additionally, if K.L.'s care is assigned to Mr. W.P. during the appointment, W.P. reportedly conducts himself appropriately.

[85] Hall's observations are that K.L. appears to have a very close attachment with both H.I. and W.P. and she described the interactions between K.L. and the two adults as loving, affectionate and appropriate.

[86] Hall said Reimer contacted her regarding her assessment. She said that the entire conversation was less than five minutes in duration. Hall has read that portion of the assessment where statements are attributed to her: "Ms. Hall reported the relationship was sporadic. She explained: I saw her in late October of 2012 and have seen her off and on. She would come for a few sessions and then not come. The sessions consisted of H.I. telling me how she was rebuilding her life. She talks a lot and quickly. I've seen her twice with her baby. Nothing happened during the time they were here. She brought K.L. with her in July 2014...he sat for the duration of the time in his stroller during the last appointment, that's not typical for that age."

[87] Hall's evidence was that the foregoing statements were "relatively accurate" - but she stated that the report did not provide any context and she stated that she does not believe the report accurately reflects what was meant by her. In this regard, Hall wrote as follows:

22. In speaking with Ms. Reimer, I was attempting to be careful of my therapeutic relationship with Ms. H.I. and was more than happy to answer questions Ms. Reimer had for me. However, I did not feel it my place to be forthcoming and therefore I responded "no" when she asked me if I had anything to add. I was hesitant to provide more information because I knew Ms. H.I. was feeling apprehensive toward the Agency.

23. The two questions Ms. Reimer asked did not provide me with a great sense of what she was looking for and I did not feel it my place to ramble on.

24. In counselling sessions with Ms. H.I., we discuss much more how Ms. H.I. is rebuilding her life. We discuss stressors, coping mechanisms and her slip with alcohol in 2013. We continue to do really good work together.

25. In my interactions with Ms. H.I., I have not observed anything that raises concerns about her ability to parent K.L..

26. I have never had a concern about Ms. H.I.'s parenting in any of my meetings with her or any disclosures she has made to me through our process.

27. In my professional role, if I had concerns regarding a child, I would make a referral to child protection. I have had to do this in the past. I will openly discuss this with the client and usually make this phone call in their presence as to not undermine our therapeutic relationship.

[88] During cross-examination, Hall conceded that her perception of H.I.'s past and present circumstances is largely based on self-disclosure by the client and she has not attempted to independently verify any of the disclosures made by H.I.

Dr. Gary Morash

[89] Dr. Gary Morash has been the family physician for H.I. since about 2009. Some excerpts from Reimer's report follow – to give context to his evidence:

Dr. Morash and I spoke for approximately 20 minutes. During that time he made the following points:

- He met H.I. about six years ago.
- H.I. was seeing P.P. at the time
- She had 5 or 6 kids taken. She was on crack cocaine, and all kinds of pills - 30 or more. She would come in every three weeks or so.

From there Dr. Morash told me that Ms. H.I. *started to get clean*. Eventually, *Percocet was the only thing she was on, not pot, she probably got it illegally, she didn't have a license then*. Dr. Morash did say Ms. H.I. may have taken Ativan at night to help her sleep. He also disclosed that Ms. H.I. got her license through him.

Dr. Morash stated that Ms. H.I. and her boyfriend, presumably Mr. J.K., left Liverpool and that she then became pregnant with K.L.. His sense was that Ms. H.I. and Mr. J.K. did not really get along. He went on to say that *H.I. has a job, she's a good mom - she does have adult ADHD and takes Percocets and medical marijuana. He's [Mr. J.K.] bringing up her past but I think she's okay. I know he probably wants his son too*.

Dr. Morash confirmed that Ms. H.I. had experienced two miscarriages and that one was particularly difficult...*she's in her forties I think. She's pregnant again, I don't know whether you knew that or not...she's about six weeks*.

Dr. Morash described Ms. H.I.: *She has ADHD, adult ADHD, no question ...sometimes it impairs her judgement. She has a dependent personality, hysterical personality, she needs attention. I see her once a month, I don't have the same kind of control over her now (as when she was Liverpool), I only see her once a month*.

Dr. Morash feels Ms. H.I. *is never drunk or doped up, she has enough to feed her dependency but not enough that she's really doped up. She was awful when she first came in, she's picked up since then. She still has ADHD and a dependency. She seems to be a good mother, she tries too hard sometimes like she wants you to see that she's good, it sometimes feels fake.* Dr. Morash has met Mr. W.P., he said, *her new man seems to be too good. She has a couple of daughter's hanging around now, one lives with her- I've met her. What you see is what you get with H.I.*

He spoke about Ms. H.I.'s medical marijuana license again. He let me know that people used to be able to buy marijuana from the government, from a designated grower or they possessed a license to allow them to grow their own. With changes that have been implemented, individuals must now register with a designated or government licensed grow operation. Dr. Morash informed me that his office had set Ms. H.I. up with a private company. They filled out the papers approximately two weeks prior to our conversation; he suggested Ms. H.I. had not heard back from the company as of this date. I asked Dr. Morash if he had advised Ms.H.I. that she could purchase marijuana off the street if someone had a license and could not afford it from a private company. He denied that he had said that; however, he did share that many individuals with licenses do just that. I also asked if Ms. H.I.'s marijuana was delivered to his office; he answered, no. Ms. H.I. had indicated this was the case.

I asked Dr. Morash about his impressions of K.L.. He said, *he's fine. H.I. comes in every month, she has to renew her prescription every month.* He went on to explain to me that narcotics require a prescription each time a refill is provided. *He's a happy little guy. I really should see him once a month. H.I. suggested it.* I asked if Dr. Morash saw K.L. once a month now or if it was something that would be starting from this point forward. He clarified that it would be from this point forward. *I don't see him once a month, I've seen him as much as any normal kid that age, for check-ups...I wouldn't see a normal kid that often.* Dr. Morash did confirm he was willing to see K.L. once every month or so.

I asked Dr. Morash if there was anything else. He reiterated that Ms. H.I. has adult ADHD and that she has a dependent personality - in other words, according to Dr. Morash this personality type speaks to her addictions. He also talked about Ms.H.I. having a hysterical personality. This personality type is defined as having a real need for attention, making loud and inappropriate appearances, they exaggerate their behaviours and emotions, and crave stimulation. They may also exhibit sexually provocative behavior, express strong emotions, and can often be easily influenced by others. Associated features include egocentrism, self-indulgence, continuous longing for appreciation, and persistent manipulative behavior to achieve their own needs.

At the end of our conversation, Dr. Morash restated that Ms. H.I. *is what she is, she's not perfect, she has issues.* He went on, *her new boyfriend looks good, almost too good to be true.*

[90] His courtroom testimony was that H.I. has a history of childhood trauma and drug dependency issues. H.I. self-disclosed that she engaged in alcohol and other substance abuse from the age of 19 and that she was still abusing alcohol and other substances such as narcotics when she initially started to see him. A medical marijuana license was secured for H.I. in about 2011. Thereafter, according to him, her social situation also improved when she ended an abusive relationship. According to Dr. Morash, H.I. had previously been on a number of psychotropic medications. However, she has stopped taking all medications except for Percocet and medical marijuana. According to him, she takes the medications for arthritis, fibromyalgia and drug dependency.

[91] As far as Dr. Morash knows, his patient is currently taking her medical marijuana as prescribed and a small amount of Percocet as prescribed. He said that she is stable on these doses and has been stable for about three years.

[92] Dr. Morash is also K.L.'s physician. H.I. arranges for her son's appointments and medical care. He said that she brings K.L. to see him about once monthly. However, medically, he said he does not need to see K.L. this frequently. Indeed, he said it may be "excessive" – but at her request, he still sees her son to alleviate her concerns swirling around her care. Dr. Morash was informed by H.I. that she makes these frequent appointments out of fear and due to numerous complaints to child protection authorities that had been launched against her since the breakup of her relationship with J.K. According to him, the mother seeks to continually want to prove herself to be a good parent because "she lost her older children to permanent care".

[93] Dr. Morash said that he has referred K.L. to a pediatrician at the mother's request to alleviate the father's concerns regarding the child's development.

[94] From his observations, H.I. appears to be a good mother although he perceives her to be "hyper" at times. His experience has been that the mother will follow through with what she says she will do.

[95] The doctor stressed that he has not diagnosed H.I. with a personality disorder. He wrote that she has adult ADHD (Attention Deficit Hyperactivity Disorder), fibromyalgia, arthritis, an anxiety disorder and some dependency issues which he believes are managed and stable at this time.

[96] In the office setting, the doctor has observed H.I. to be loving and nurturing to her child. He added that if he felt there were any child protection concerns he would report them as he is legally obliged to do. More to the point, he has never made such a referral.

[97] Dr. Morash was contacted by Debra Reimer and took strong exception to the statements and observations attributed to him [above]. Because, in my opinion, his evidence seriously undermines the reliability of the assessment, I reproduce the doctor's evidence as follows:

20. I have had the opportunity to review the portion of the Custody Access Report prepared by Ms. Reimer which addresses my conversation with Ms. Reimer. I was not provided an opportunity to review the report before it was filed.

21. This report does not accurately reflect my discussion with the assessor. In fact, it contains information that I did not provide to Ms. Reimer, and misinterprets statements I made. Some of my concerns with this report are as follows:

a. Ms. H.I. is an adult with ADHD. For clarity, I do not think her judgment is impaired because of this condition. She has anxiety issues. When stated in the report that I said, "she needs attention" I meant that she requires more of my time than a patient without her particular issues. She is somewhat dependant (sic) on others, such as Mr. W.P.

b. One does not have ADHD and adult ADHD which is stated on page 30 of the Report. She is an adult with ADHD.

c. Ms. H.I. does have ongoing dependency issues. Her addiction is currently managed through 3 grams of medical marijuana and 40mg of percocet per day. This dose does not make her "high" or "doped up". She is stable and has enjoyed a long period of stability on this regimen. I did not diagnose her with a dependent personality. As there is no such thing as a dependent personality disorder.

d. On page 30 of the Custody and Access Report, there is an alleged quote from me, "she seems to be a good mother, she tries too hard sometimes like she wants you to see that she's good, it sometimes feels fake." I do not feel Ms. H.I. to be fake. I did state that Ms. H.I. tries too (sic) please really hard. Ms. H.I. does feel the need to prove herself as a good parent because of Child Protective Services' involvement since Mr. J.K. and Ms. H.I. broke up. I did state, "what you see is what you get with H.I.", meaning I have always observed Ms. H.I. to be extremely honest, open and upfront. She is very truthful and forthcoming.

e. I do not have any issues or concerns with Ms. H.I.'s current partner, Mr. W.P., herein after "Mr. W.P.." He is not my patient but I have met him a number of times. Ms. H.I. seems happy with him and he appears to be a great support to Ms.

H.I. and K.L.. I do not think he is 'too good to be true' as is suggested in the report. I was trying to emphasize to the assessor the relationship. He appears to me as very mellow, very nice and does not appear aggressive or unpredictable.

f. Ms. Reimer's report quotes me as saying, "I don't have the same kind of control over her now (as when she was in Liverpool). I only see her once a month". I do not need control over Ms. H.I.. She is doing well in Bridgewater and if she needs help, an appointment, or to talk, Ms. H.I. accesses the appropriate resources. When Ms. H.I. was not stable I saw her more often to assist in managing her medications and relationship issues. She does not require the same level of care as she did prior to 2011.

g. I have at no time diagnosed Ms. H.I. with hysterical personality. There is no such thing as hysterical personality disorder. I did not provide Ms. Reimer with the particulars of this personality type as is listed on page 31.

h. The discussion on page 31 contains information that I did not provide to Ms. Reimer. At most, I would say that Ms. H.I. can demonstrate hysterical personality traits.

i. The elaboration provided by Ms. Reimer in the Report (p.31 para 2) is the definition of a histrionic personality disorder. I at no time discussed that personality disorder with Ms. Reimer as it was not relevant.

j. I have seen K.L. approximately once a month since he was born, which is contrary to what the report states on the bottom of page 30. I would have stated, I only need (sic) to see him as much as any normal kid. This is because K.L. is a normal healthy child.

22. I have not observed any concerns regarding Ms. H.I.'s parenting when she attends at my office; her children appear well cared for. K.L. appears to be a happy and healthy little boy and is meeting developmental milestones.

[98] Dr. Morash provided additional evidence that H.I. sees him monthly to obtain prescription refills and as part of her harm reduction program. To his observation, she has not engaged in any suspicious behavior surrounding her medication usage nor has she attempted to obtain additional prescriptions from him. He assisted her in obtaining a medical marijuana license and a dispensary for her where she could obtain the marijuana.

[99] During testimony, Dr. Morash also said that episodic rashes apparently reported by the father are normal. He also underlined that there is nothing "pathologically obvious" about problems with the child's hearing or speech. Nonetheless, he agreed to refer for further assessment of both and appointments are

pending as at the hearing. He has observed no developmental delays. He has observed the child as active, but not unusually so.

[100] Dr. Morash has seen no reason to refer the mother for psychological or psychiatric assessment and provided some elaboration on medical terms which might suggest or imply that she is need of such.

[101] Dr. Morash confirmed that the father used to attend some of the appointments before the couple separated. His recollection is the father conducted himself appropriately at the time. He acknowledged that the mother has not asked him to provide or forward to the father any written reports that may be within his file or chart. However, the most pressing referrals have been relatively recent and as of the hearing no significant written reports were available, in any event.

W.P.

[102] W.P. (“W.P.”) is the son of M.P. and F.P. and the current partner of H.I. He submitted an affidavit and testified. His affidavit provides some history regarding his residency, education, training, etcetera. As at the hearing, W.P. was unemployed and in receipt of public assistance benefits, although hopeful regarding self-employment prospects.

[103] W.P. met H.I. in 2013 while she was still in a relationship with J.K. and expecting her son, K.L. W.P. and H.I. started to cohabit in April, 2015. He characterized his relationship with H.I. as generally positive, and said that he has grown “very close with her son”, and that he loves K.L. very much. However, he stated he respects J.K.’s status as K.L.’s biological father and fully understands J.K.’s role in K.L.’s life. However, he wrote that “I will also always love K.L. as my own”.

[104] According to W.P., he and H.I. share K.L.’s parenting and ordinary domestic responsibilities. H.I. and W.P. are now the parents of their first child who was born in mid-September, 2015.

[105] W.P. is aware of H.I.’s addictions issues and history. However, his evidence was that he has not observed H.I. drink alcohol since he has known her. He also said that he has taken her to some of her counselling appointments and looked after K.L. in her absence. W.P. also professes a close relationship with H.I.s’ daughter, W.C., who resides in the same home. He provided some elaboration of his interactions and activities with K.L. There is nothing exceptional or extraordinary

about these involvements. He spoke of the involvement of his parents with K.L. who appear to treat him as one of their own grandchildren. He provided a short precis of the routines and schedules within the household. Again, there is nothing extraordinary about his recounting.

[106] W.P. is aware of the conflict between H.I. and J.K. He said that he is usually present for K.L.'s transitions or exchanges. To W.P.'s observation, J.K. often bullies and criticizes H.I. and she takes some comfort in his (W.P.'s) presence at these times. According to him, J.K. frequently criticizes what K.L. is wearing as well as H.I.'s parenting and that this is often done in front of the child. He wrote that he has often observed J.K. and the paternal grandfather to be "rude, ignorant and condescending to H.I. in front of K.L. during exchanges". He added that there have been multiple incidents where both of them have cursed and sworn at H.I. in the child's presence.

[107] W.P. also alleged that J.K. forewarned H.I. and him that he would be likely to prevail in the ongoing court proceedings. W.P. referred to a few instances during exchanges (notably in February and March of 2014) when the police were called. According to him, this is because J.K. and his father would be verbally aggressive towards him and H.I. That said, W.P. conceded that Mr. G.F. has been much better in his behavior over the six to eight months preceding the final hearing.

[108] Consistent with other evidence before the court, W.P. said that J.K. disclosed to him and to H.I. that he (J.K.) had called child protection officials on numerous occasions. More broadly speaking, W.P.'s observations are that J.K. has been consistently demanding and uncooperative when dealing with H.I.

[109] W.P. presented as a relatively articulate individual who easily gave elaboration on J.K.'s conduct and behaviours when pressed during questioning. During testimony, he provided examples of positive developments in K.L.'s language and related skills.

[110] Asked about some of the so-called humping behavior described by several other witnesses, W.P. said that he had not observed much of this behavior at their home but knows that J.K. had brought it to their attention some time ago. He corroborated the mother's evidence to the effect that they attempt to distract the child when these behaviours occur and have attempted to teach him about appropriate behaviours. Certainly not an expert in the field, W.P. nonetheless

believes that some of the child's behaviours may be stress-related. He has observed no challenges or problems surrounding K.L.'s hearing.

[111] W.P. was carefully cross-examined regarding his employment skills and efforts which, although somewhat vague, were nonetheless, generally credible.

[112] Coincidental with Mr. G.F.'s improved conduct over the last several months, W.P. also acknowledged that some of the transportation and exchanges are being handled solely by G.F.

M.P.

[113] M.P. is the mother of W.P.. She also has a daughter. She is in her late sixties. She worked as a certified nursing assistant for many years and thereafter as a personal care worker until July, 2015. She is aware of her son's relationship with H.I. whom she met in the Spring of 2014. She has been to the H.I./W.P. household on many occasions and often sees them two or three times weekly. To her observation, her son's and H.I.'s home is always clean, tidy and safe for children.

[114] M.P. has also developed a relationship with H.I. and her son's newborn daughter, L.W. To her observation, H.I. is extremely affectionate and attentive to K.L. and the baby. She said there are age appropriate children's toys in the homes as well as books and other learning activities. She provided some elaboration on the types of interaction by H.I. with her son K.L. and the quality of it, etcetera.

[115] According to M.P., around May 2014, she attended at an exchange of K.L. when she met J.K. for the first time. She has since seen him on a couple of other occasions but only from a distance. During the May exchange, her daughter L.D. was also present. Her evidence was that she witnessed J.K. whispering to H.I.. She said she overheard him making comments that she perceived to be "nit-picking about milk and clothing" that H.I. had provided for K.L.. She also said she "observed him to be bullying her and I felt uncomfortable witnessing the exchange". However, during cross-examination, she conceded that she heard only "bits and pieces" of the conversations and that her perception regarding bullying was admittedly based on her observations of facial expressions and body language at the time.

[116] M.P. said that she agreed and offered to be a collateral information contact or source for Reimer, but that she was not contacted by the assessor. Her evidence

was that she has not observed H.I. to be under the influence of alcohol and that H.I. appears to be very protective of her son and effective and attentive to his needs.

[117] She described K.L. as happy and healthy and invariably affectionate. She added that K.L. interacts well with her and her husband as well as her son, W.P.

[118] M.P. said that she treats K.L. as if he were her own grandson. She visits and sees him regularly and provides gifts, games, etcetera, when appropriate.

Janine Knickle

[119] Janine Knickle (“Knickle”) is a community home visitor with the enhanced Home Visiting Program and employed by Public Health. Her evidence is that she provides services through a program called Healthy Beginnings. The program is voluntary and targets families with children age zero to three years and builds on strengths of the people enrolled in the program. Her evidence was that it helps to develop parenting skills and assists families connecting with community resources.

[120] Knickle has been with Healthy Beginnings for over ten years. She has been working with H.I. since just after K.L.’s birth. She works with H.I. about once weekly for about one and a half hours.

[121] When she first started working with H.I., H.I. was still in a relationship with J.K.. She observed the father to be “very intense”. She said that he did not really participate in her visits before the parties separated. However, after the separation, she did provide him with information for the same type of programs in the father’s area.

[122] Knickle has helped H.I. in developing her parenting skills, understanding developmental milestones, dealing with any behavioural issues such as temper tantrums, hitting, etcetera and other normal behavioural issues of a young child.

[123] Knickle attended court in late February, 2014 as a support person for H.I. At the conclusion of the interim hearing, primary care was changed to the mother. She said it was apparent to her that the father was very upset at the court’s decision. Thereafter, she said that the father called her directly to complain about her support for the mother. Knickle wrote that her manager contacted her after the interim hearing to recount a complaint (by J.K.) to the same effect, i.e. that she was

providing support to the mother by attending court. To Knickle's understanding, her support of the mother is within the scope of her responsibilities and practice.

[124] Knickle said she has observed the father to have a "short fuse" and said he demonstrated poor behavioural conduct outside the courtroom which included "dirty looks towards myself and Ms. H.I.". She said she also observed him create a scene outside the courthouse when he confronted one of H.I.'s witnesses. She said he yelled at her in the parking lot over her involvement as a witness for H.I.

[125] On another occasion, she said she observed K.L.'s exchange between the parents at a time when Mr. G.F. was also present. Inside the house at the time, she said she could see through the main door and also hear what was being said. According to her, the father was very combative and dismissive of the mother during the transition when she was trying to give him information about their son.

[126] She said she has observed H.I. parent K.L. both while she and the father were still together, and after their separation. She confirmed that she continues to work with H.I. weekly. She candidly said that H.I. has a tendency to be "hyper; she talks a lot and quickly. She is very upfront and honest".

[127] Knickle stated that she has observed the mother to be a fully capable and competent parent and noted that she is extremely affectionate and loving towards K.L. Regarding W.P., she said he is very supportive and a competent partner. She has observed W.P. to work well with K.L. and to have a close relationship with him.

[128] Knickle has no concerns about Ms. H.I. or her ability to parent K.L.. She has not observed the mother to be under the influence of alcohol at any time during any of her interactions and acknowledged that the mother confided in her that she had made two slips in December, 2013.

[129] Here are some excerpts from the Reimer report:

Ms. Knickle visits Ms. H.I. for approximately one and one-half hours each week; this has been happening for 14 or 15 months. Ms. Knickle described the program as interactive. She spoke about W.C. saying, *she's good with him [K.L.]. She's stepped up to the plate taking [K.L.] to daycare and picking him up.* Ms. Knickle felt that W.C. attended Parkview School and that she picked K.L. up after she was finished school.

Ms. Knickle described Mr. J.K. as intense. She said that he and Ms. H.I. would both speak at once and appeared *keen on co-parenting when they were together*

*and then the sh** hit the fan.* She reports that Mr. J.K. called her and then her manager because *she was supporting H.I. and he felt she shouldn't be...* Ms. Knickle saw herself as supporting K.L. through that period.

Ms. Knickle talked about Ms. H.I.'s neighbour. She informed me that the neighbour has had major head injuries and calls the police all the time. She also shared that Mr. J.K. *makes a bit of a scene...saw one exchange that wasn't pleasant.*

Ms. Knickle said of Ms. H.I.: *There seems to be a fair bit of chaos...two miscarriages, a car accident and now she has this job. She's off Tuesdays and Wednesdays to spend time with K.L.. It's just who she is, she seems to be in a good place...she has her daughter there and W.P.*

I inquired with regard to how Ms. H.I. is with K.L. in terms of his care. Ms. Knickle stated that Ms. H.I. has a certain amount of routine and is very affectionate with K.L. She also stated that there is some adjustment when K.L. returns from his father's.

Ms. Knickle believes Ms. H.I. is in a better place now. She said Ms. H.I. had a slip last Christmas and is really trying to pull herself together. She believes Ms. H.I. has a fear of people in positions of power and referred to Nancy Baker, CPS, Bridgewater, as a '*pitbull*'. She feels Ms. Baker is looking for something where Ms. H.I. is concerned and that she doesn't always follow the rules. Ms. Knickle alleges she reported Ms. Baker for not following protocol and that Ms. Baker was reprimanded.

I asked Ms. Knickle what she knew about Ms. H.I.'s previous landlord. Ms. H.I. had been renting from L.L. Ms. Knickle responded by saying it was her understanding that the location Ms. H.I. was renting sold and that she was required to move because of the sale. Ms. Knickle believes Mr. Mosher to be a *good landlord...H.I. was a little behind in the rent but the building sold and that's my understanding of why she had to move.*

Ms. Knickle reports K.L. is meeting milestones and that they are looking at language now. He has a few words. She also stated, *I hate seeing that TV on all the time - I tell them to tum it off. I've seen him look at books with lots of focus and the bead thing. That TV is too big, you can't focus.*

I asked Ms. Knickle if she had any concerns about either parent. *She replied, No, no concerns. I never witnessed abuse. Things are going well with W.C., she speaks highly of her Mom...she just came for a visit and stayed. W.C. has a lot of respect for Bruce too.* When I asked about W.P., Ms. Knickle responded with, he's odd, harmless and great with K.L..

[130] Knickle reviewed the Reimer assessment. She claimed that the report included misunderstandings and that the report does not accurately reflect the

conversations at the time. Given Knickle's strong rebuttal of the comments and observations attributed to her, they are repeated as follows:

24. The report suggests that I called Nancy Baker of Child Protection Services a pitbull. What I said was that Ms. H.I. has a fear of people in positions of power and she feels intimidated by them. Ms. H.I. feels as though Ms. Baker is a pitbull because she feels harassed by Child Protection Services. I understand why H.I. feels this way because of H.I.'s history with Child Protective Services and because of the number of referrals that have been made to Child Protective Services since K.L. had been returned to her care. I also reported to Ms. Reimer that Ms. H.I. feels harassed by the Agency.

25. There was an incident I was aware of through my work at Healthy Beginnings, where Ms. Baker questioned an individual on a file and did not obtain consent from the person under investigation to discuss her file with the individual. I only knew that Ms. Baker was no longer on the file after the individual complained that authorization had not been provided.

26. Since that time, I have been informed Child Protective Services does not require authorization and that cases are moved to other workers dependent on their case weight.

27. I have never reported Ms. Baker for her actions at any time. I did not tell Ms. Reimer at any time during our conversation that I reported Ms. Baker and she was reprimanded.

28. It appears that Ms. Baker was provided a copy of the Custody/Access Report regarding Ms. H.I. and Mr. J.K. I was informed by Ms. Baker and verily believe to be true, Mr. J.K. provided her with a copy.

29. I attend Ms. H.I.'s home on an almost weekly basis. I have always observed it to be clean, tidy, and full of age-appropriate toys for K.L.

30. In relation to the "television comments" in the Custody/Access Report on page 27, this too was inaccurately reflected. I stated to Ms. Reimer that when I attend homes of all clients I always have them turn the television off during visits. I did not intend to imply that Ms. H.I. has the television on all the time because that would be inaccurate. I was attempting to explain to Ms. Reimer my role and process with clients in general.

31. I think W.C. and Mr. W.P. are great with K.L. as well. I have no concerns about K.L. being in their care.

32. In the course of my work with Healthy Beginnings I would make a referral to child protection if I deemed it necessary, and I have done so in the past. I have never made a referral regarding K.L. and have no concern that I would have to make one in the future.

[131] Asked to elaborate on some of the father's combative or dismissive contact, she gave an example of an occasion when she provided an information package to J.K. who promptly threw the booklet away. She said the father can be "intense" at times, but this appears to be "part of his personality".

[132] To Knickle's observation, there is nothing extraordinary about K.L.'s speech but she conceded that the child is still very young. She added that she has not observed any problems with so-called diaper rash. Regarding allegations of K.L. "humping", Knickle admitted that she has seen this conduct but gave evidence to the effect that such behaviours are not uncommon and that she has observed other children in the age range of one to three who appeared to derive some sensation or pleasure from the activity. Generally she recommends redirecting the child and that the child not be shamed for this type of conduct. Knickle's understanding is that when these behaviours were disclosed, that the mother took her son to her family physician.

[133] Regarding concerns about a potential autism spectrum diagnosis, Knickle has no direct knowledge of the topic and suggested that such would have to be assessed and determined by a pediatrician. To her understanding, this referral is forthcoming but she underlined that she has seen no obvious signs of the condition.

[134] Knickle has also seen the newborn L.W. Her observations are fairly recent and there are no concerns.

[135] Returning to the issue of humping, she frankly characterized the behaviour a form of masturbation which usually is outgrown by children by the time they reach four years of age. She stressed that if there are any speech delays they are minor and reiterated that she would defer to professional assessments. Currently, she said Knickle is assisting and encouraging proper language use and development, and despite the father's concerns, insists that there is nothing strikingly unusual about K.L.'s development.

D.C.

[136] D.C. ("D.C.") had owned and operated a day care facility in Bridgewater for about three years. She recently closed the service to resume her education. D.C. was contacted by Debra Reimer. Some of what Reimer wrote follows:

K.L. strikes Ms. D.C. as *a very fun, normal 17-month-old to me. "I have no concerns, he's a happy content little boy. His behaviour is typical. I write everything down and I've looked back. I don't see anything, he seems content, and he eats well ...he could use a little more play time with other kids.* I asked about her observations with regard to K.L.'s interactions with his parents. From her observations, K.L. is happy to see whoever.

When I spoke to Ms. D.C. on February 19, 2015, she reported that K.L. is still doing well. He engages with the other children but likes to do his own thing too.....

... Ms. D.C. reported that K.L. is sometimes clingy when he is dropped off after a weekend with his father. She also stated that Ms.H.I. has asked her to keep a log and to document everything. She does that and feels K.L. is *a normal kid with typical behaviours.*

... Ms. D.C. talked about an encounter with Mr. G.F., Mr. J.K.'s father on Friday February 19, 2015. She began with an incident that had taken place earlier in the week.

On Tuesday, G.F., the grandfather, left K.L.'s winter wear. I don't know if he thought K.L. was here or not but he showed up looking for the clothes. I asked him how he was and he said, "Still dealing with that stupid psycho", then he asked about dropping K.L. off on Monday. I said no, K.L. has a doctor's appointment and he rolled his eyes and left.

Ms. D.C. talked about the children hearing those kind of comments and being exposed to such anger; she felt it was unacceptable and would need to be addressed...

[137] At the hearing, D.C. said that K.L. had attended daycare from November 2014 to mid-August 2015. She had no concerns about K.L. and, based on her interactions with both parents, she perceives both parents to be capable parents. She said that H.I. instructed her to take notes regarding K.L. and their interactions. D.C. observed H.I. to be "extremely affectionate, emotional and protective of K.L.". She confirmed that transitions or exchanges of K.L. would often occur at the day care facility. She also confirmed that G.F. often picked up K.L. there regularly.

[138] D.C. recalled the incident in February 2015 [quoted above] when G.F. referred to H.I. as a "stupid psycho" in front of the child and other children at the daycare. She also had other minor complaints about G.F.'s conduct at the daycare centre. After K.L. stopped attending on a part time basis, she said transition or

exchanges no longer occurred at the centre. D.C. confirmed that she has never made a referral to child protection officials about either parent or their child.

[139] D.C. conceded that the father “freaked her out at their first meeting” and cited his rudeness and refusal to provide her with identification. However, after that she said that she had no concerns regarding his conduct or behavior. She confirmed that the father expressed concerns to her about his son’s behavior such as the humping behavior, etcetera. However, from D.C.’s perspective, the presenting behaviours were insufficient to report to her director or to child protection authorities.

[140] As mentioned above, D.C. confirmed that after their first meeting the father was generally polite and respectful but she characterized him as “emotionally intense and very concerned about his son’s well being”. She noted that K.L. was attending daycare part time as of March, 2015 and that she has not seen the father since then.

H.I.

[141] Like J.K., H.I. submitted affidavits and testified. Like J.K., she provided photographs demonstrating that she can continue to provide appropriate accommodations for K.L.. She did not take issue with J.K.’s evidence along the same lines.

[142] H.I. provided background and personal history evidence through her affidavit. She is an admitted alcoholic and has been so since approximately 19 years old. She recounted her history with L.M. by whom she had three children and acknowledged the involvement of child protection services while they were living in British Columbia. She cited her own alcohol abuse and L.M.’s marijuana use. In all, she and L.M. had five children. She asserted that she was sober from alcohol and psychotropic drugs from 2014 onward when she began using “medical marijuana” until she moved from British Columbia to Nova Scotia in February, 2007. Upon her relocation, she said she lost her medical marijuana license and resorted to prescribed psychotropic drug once again. She also admitted to having relapses with alcohol use. She provided no elaboration but admitted that she “lost all five of my children to permanent care due to my alcohol use in 2009”.

[143] She wrote that she has been diagnosed with panic anxiety disorder, adult attention deficit hyperactivity disorder, depression, insomnia and arthritis. She

also cited a diagnosis of cervical cancer in the year 2000 for which she is now in remission.

[144] H.I. said she secured a federal medical marijuana license in and around February, 2011. She said her current family doctor, Dr. Morash, assisted in her application for the license. Once she obtained her marijuana license, she said she was able to cease all psychotropic and prescribed medication except for a small amount of Percocet (40 mg per day) which is prescribed by Dr. Morash. She claimed that she ceased all alcohol use.

[145] H.I. candidly admitted to drinking alcohol twice since obtaining her medical marijuana license. One occasion was in late December 2013 when she attended J.K.'s parents' home as a family and later on December 31st, 2013 when she said J.K. bought alcohol for them to drink on New Year's Eve. She claimed she has not consumed alcohol since January 1st, 2014. She said she is working very hard to be healthy and to be a good mother to her children.

[146] H.I. admitted she has a criminal record with the last substantive offence occurring in February, 2011. She admitted to a "breach" in mid-January, 2012 for failing to comply with a condition of her undertaking on a previous charge. However, she says that since 2012 she has had no further charges and has enjoyed an extended period of personal and legal stability.

[147] H.I. recounted the history of child protection services involvement, from her perspective. This is canvassed elsewhere and need not be repeated insofar as the agency's investigations and the outcomes are concerned.

[148] H.I. briefly reviewed her employment history. She said that she is not seeking full-time employment currently due to the arrival of her child, L.W. (father W.P.). She characterized herself as a "full-time stay at home mother".

[149] H.I. also briefly recounted her relationship with W.P. which is complimentary to the evidence of W.P. discussed elsewhere.

[150] H.I. said that she currently attends a women's support group in the local area with K.L. and that she has been attending for about three years. As at the hearing, she was also attending a "baby group" with K.L. regularly – at least up until the time that J.K. requested a changed parenting schedule because of his work.

[151] H.I. also wrote about her addictions counselling with Cindy Hall which is discussed elsewhere. Currently, she contacts Hall whenever she feels the need to talk or requires support. She also made reference to seeing Janine Knickle weekly for support, education and parenting information. There are cross-references to Dr. Morash and others, also discussed elsewhere.

[152] Regarding her current medications, H.I. wrote that she does not smoke cigarettes or marijuana in her home or in the presence of K.L. She said her husband prescribed three grams of marijuana per day but claimed she only smokes one gram (approximately three joints) daily. She takes two Percocet tablets every six hours as prescribed. The total is 40 mg daily. She also said that she has a prescription for Lorazepam to take as needed during periods of extreme stress or anxiety. She professes to be able to manage all of her pain, anxiety and health issues with medical marijuana and Percocet as prescribed by her doctor. She claims she is now enjoying a stable and healthy home life on this medication regime.

[153] H.I. provided full particulars of her medical marijuana prescription and related issues. She asserted that she keeps her medications and medical marijuana in a safe location not accessible to children, including one of her daughters who is 18 years old.

[154] H.I. wrote about K.L.'s relationship with his father and her relationship with J.K.:

63. I do not speak poorly of Mr. J.K. in front of K.L.. When Mr. J.K. and I exchange K.L., I always tell K.L. that I love him and have a good weekend with his dad.

64. Upon K.L. being returned to my primary care in February 2014 I have tried very hard to work with Mr. J.K. and accommodate his parenting time, providing him with additional access outside of what was ordered by the court, despite Mr. J.K. seeking only one hour of supervised access between myself and K.L. per week.

65. We have changed the access schedule on numerous occasions to accommodate Mr. J.K.'s work schedule. The current arrangement is Thursday morning at 9:00 a.m. until Saturday at 11:00 a.m. I offered Wednesday nights to Mr. J.K. as well, but he chose Thursday mornings. Sometimes Mr. J.K. requests additional time outside of the regular arrangements and I accommodate as best I can.

66. I make an effort to encourage K.L. to be excited for visits with Mr. J.K..

67. I firmly believe that Mr. J.K. loves his son and is a good dad to K.L..

68. I also believe that K.L. loves his father very much and I want to encourage and facilitate a relationship between K.L. and Mr. J.K.

69. Since that time, I have done my best to accommodate Mr. J.K. and facilitate a relationship.

My relationship with Mr. J.K.

70. I frequently try and keep Mr. J.K. updated on how K.L. is doing while he is in my care. I send him this information through text messages, verbally in person, or by phone.

71. When K.L. is in Mr. J.K.'s care he often minimally responds to my texts and does not keep me informed. Please find attaches as Exhibit "B" to this my affidavit, a copy of text messages between myself and Mr. J.K. demonstrating Mr. J.K.'s non-responsiveness.

72. The first few exchanges after our Interim Court Order, Mr. J.K. and his father, G.F., herein after "Mr. G.F.," would show up to my home and be belligerent towards me in front of K.L. This prompted me to call the police on the number of occasions.

73. Mr. J.K. often speaks negatively to me and makes negative comments about me and my parenting of K.L. in front of K.L.

74. Mr. J.K. is very aggressive and does not take into consideration my perspective. When I have interactions with Mr. J.K., he very often makes negative comments towards me and attempts to dictate the way access will take place. Please find attached as Exhibit 'C' to this my affidavit, a copy of a text message with Mr. J.K. through Mr. G.F.'s phone. I verily believe this conversation to be with Mr. J.K., as we often communicate through Mr. G.F.'s number. I provided more time to Mr. J.K. than the Court ordered. On one occasion I asked Mr. J.K. for access which impacted this extra time, but was in line with the Court Order and he refused.

75. Mr. G.F. also makes negative comments towards me and sends nasty text messages.

76. Mr. J.K. often attempts to bully me and makes remarks in person and via text messages that insinuate I should enjoy my time now because soon K.L. will be in his care. Please find attached Exhibit 'D' to this my affidavit, a copy of some of these text messages.

77. I was informed by my day care provider D.C., and verily believe to be true that Mr. G.F. attended the daycare to pick up K.L. and referred to me in front of K.L. and the other children at the daycare, as a "stupid psycho." This incident is also referenced in the Custody Access Report on page 29.

78. Mr. J.K. refuses to use anything I provide for K.L., including his shoes and coat. This is very hurtful to me and as K.L. gets older, I worry about the impact

that may have. Please find attached as Exhibit 'E' to this my affidavit, a copy of a text message of Mr. G.F. or Mr. J.K. commenting about K.L.'s winter clothing. A misunderstanding that occurred because of Mr. J.K.'s refusal to use clothing I provided.

[155] H.I. referred to Debra Reimer's contact with F.F., a friend of the J.K. family. According to H.I., F.F.'s mother, M.F., fostered three of her children when she lost them to agency permanent care. However, H.I. said she has, "never met M.F. or F.F.". She challenged F.F.'s observations and opinions as recounted by Reimer by stressing that she has never met F.F. or had any dealings with her or her mother personally. Not surprisingly, since F.F. may provide some care for K.L. should J.K. achieve primary care, H.I. expressed a great deal of concern given F.F.'s apparent feelings or bias.

[156] More broadly, H.I. characterized K.L. as an active and healthy two year old. She underlined that K.L. has been back in her primary care since late February, 2014. She reiterated attendance at the Healthy Beginnings Program, K.L.'s regular doctor's appointments, a referral to Speech and Hearing, and a pediatric referral.

[157] In an apparent attempt to improve communications with J.K. and the paternal family, H.I. said that she has started a Facebook page for K.L. to which she posts pictures and updates for family and friends regularly. She says that she continues to maintain the father and the paternal grandparents as "friends" on the page so they can be kept updated on what is going on in K.L.'s life.

[158] In her affidavit, H.I. made some specific proposals for the parenting arrangements on a go forward basis which in brief would include joint custody with primary and day to day with her. She proposes that K.L. have two weekends in a row with J.K. and then one weekend at home with herself and the maternal family. She proposes Wednesday night to Friday night parenting times for J.K. to accommodate his current work schedule, at least until K.L. starts school.

[159] H.I. supplemented her affidavit evidence with oral testimony. In the courtroom, she presented as anxious and somewhat hyperactive – not inconsistent with her own characterization of her personality traits and explanations for her current medical status.

[160] She updated the court regarding her son's current community and family involvements and the rationale for her proposal for the father's parenting times.

H.I. insisted that she has tried to keep J.K. informed regarding their child's well-being. She said that she tries to respond to his e-mail communications but uses some discretion if the messages stray into areas unrelated to parenting. She said she also now speaks to him directly regarding transportation and transitions.

[161] She defended her admitted failure to provide written reports from the family physician to the father on the basis that the physician generally does not provide her or anyone else with written reports. However, she undertook to provide any and all other professional reports as they become available to her.

[162] H.I. underlined that when she became aware of the father's allegations about a possible autism spectrum condition that she consulted with the family physician and others and was reassured that his conduct and behaviours are not unusual, rather typical. In the same vein, she has specifically discussed the humping conduct with professionals and been provided with similar reassurances. Her evidence was that the child rarely engages in this kind of behavior at her home and, in any event, does not perceive the conduct as inherently bad. She said she and her partner redirect the child whenever these things happen.

[163] Regarding perceived speech deficits or developmental issues, the mother said that she had already arranged for a professional referral before the father launched his complaints. As at the hearing, assessments and reports were pending. However, she said that her understanding is that it would be premature to complete that professional work before the child reaches the age of three.

[164] H.I. reiterated in testimony that she was not informed by the father that he had relocated to a new apartment and that there were changes in his employment circumstances until he disclosed these things in his affidavit evidence. In that sense, she claimed that he has been as bad as her in terms of disclosure and information.

[165] H.I. admitted that there was episodic conflict between her and the paternal grandfather and, indeed, the father, which did not sit well with her and which she used as a rationale for not informing the father of her own current address. Once the transition issues settled down, however, she said she finally disclosed her address. Indeed, in recent months she said the paternal grandfather has been civil and calm at transitions by comparison to past unpleasant experiences.

[166] H.I. gave her own version of events as recounted previously by the witness Goodine in or about May, 2015. She asserted that she was ambushed by Goodine's observations and opinions, and perceived them as unfair and unjustified.

[167] Referring to allegations of her "slips" regarding alcohol use, her understanding was that local child protection officials were well aware of the circumstances and insisted that there were no other infractions, i.e. other than what she has admitted to in her evidence.

[168] Regarding her current financial circumstances, H.I. clarified that she plans to stay at home for approximately one year, that she is not entitled to maternity benefits and is unable to apply for employment insurance benefits.

[169] She said there is a possibility that she may return to work at some point in time but that is not her current intention. She admitted that the child has not been to formal daycare in recent months; but insisted this is related to her current status as a full-time stay-at-home parent.

[170] H.I. agreed with the suggestion that J.K. has an "intense personality" as advanced by other witnesses. In a surprising claim, she likened J.K. to a cross between two characters in the television comedy "Big Bang Theory", i.e. a cross between the characters Leonard and Sheldon.

[171] H.I. lays a lot of the blame for the parents' inability to communicate with each other at the father's doorstep. She said that he has been chronically disrespectful of her and has consistently laid all of the responsibility for their problems at her doorstep.

[172] She conceded that she has little or no idea as to how J.K. is currently parenting because they rarely speak. That said, she does believe that her son is happy during his parenting times with his father and she did not seriously challenge his capacity or abilities to parent.

[173] As at the hearing, the mother was still waiting for results of assessments and tests at a local hearing and speech clinic and with a local pediatrician. According to H.I., she did provide the father with a preliminary hearing and speech report and will be getting future reports as they become available to her.

[174] H.I.'s access to internet service and telephones was somewhat confusing. Apparently she currently uses her daughter's computer for substantive internet

work and communication but she also uses a personal phone for texting and routine voice conversations.

[175] As at the hearing, H.I. said that she continues to go to a local family support group every week for a couple of hours. As at the hearing, H.I. confirmed that she now has current phone numbers for both the father and the paternal grandfather. Asked about potential use of Skype for enhancing father/son communication, she said that she does have a telephone app for that purpose but doesn't have appropriate internet capability at home "other than what her daughter might agree to".

B.K.

[176] B.K. ("B.K.") is the 17 year old daughter of H.I. She attends high school in the local area.

[177] I have considered and weighed what was attribute to her by Reimer against what was offered during the hearing. A few passages authored by Reimer are illustrative of the differences:

I began by asking B.K. to talk to me about her mom. She informed me that they do not get along and that she had been in and out of Foster Care because of her drinking and stuff. She said she does go to her mother's presently to see her brother and sister; however, she shared that she was soon going to stop going up there at all. When I asked why that was, she told me the following.

I lost my first baby to care, it's an open adoption - I was 16 then. I'm nineteen now and I am pregnant again. I'm getting support and will have it when my baby is born too. I talked to my therapist and going to Mom's isn't a good idea. We argue about everything, taking a baby there will just cause problems...I don't want to do anything to lose the baby or mess things up.

... When I go for visits, she'll play with him [K.L.] for a few minutes but most of the time she gets someone else to do whatever. Every time K.L. needs something, she has someone else do it. She gets my sister to watch him after school if her boyfriend isn't there. My sister isn't able to take care of a baby, I wouldn't leave my baby alone with someone not able. K.L. had a rash at Christmas [2014] that was bleeding. I had to buy Penaten Cream to help the rash; he'd scream when his bum was wiped. I told her to take him to the doctor but she said no.

When J.K. and Mom were together he did everything for K.L....he washed him, bathed him, fed him, changed him...half the time Mom wouldn't get out of bed and he'd have to put K.L. on her boob...she didn't want to buy formula, she refused.

She's doing okay herself but not okay enough to raise a child. He [K.L.] only has two teeth. I asked her [mother] if she had taken him to the doctor to see if he's developing properly. I don't know what she did when she was pregnant.

She puts him [K.L.] in front of the TV, doesn't read to him...that's helpful, I'm taking a parenting course and learning all about this, it's important, they need that. When J.K. was there, he read to him all the time.

[178] And later:

I asked B.K. when the last time she saw her mother was; she said Christmas. When I asked B.K. what she thought in terms of her mother raising K.L., she replied, J.K. would do a far better job. B.K. went on to say once she has her baby, she will not be around her mother at all. *Mom charged at the social workers when my baby was born and they (CPS) came in, they had to call security to remove her.*

[179] At the hearing, W.C. acknowledged that she was placed in the permanent care of a child protection agency in 2009. As a result of that, she said she relocated to Ontario to reside with her biological father. She returned to Nova Scotia in late June 2014 to visit her mother. After a brief stay, W.C. decided she wanted to live once again with her mother because of “the positive changes I had observed during my visit and I wanted to work on rebuilding our relationship”.

[180] Since her return home, W.C.’s evidence was that her mother no longer drinks or abuses alcohol and that she has demonstrated herself to be a capable and loving mother for her half-brother, K.L. According to W.C., her mother works hard to ensure that she and her sibling are safe, loved and happy.

[181] H.I. said that her step-father, W.P., and she have a very good relationship and that she is treated by him as though she were his own daughter.

[182] W.C. said that in February 2015 she moved and lived in Saskatchewan for a brief period of time with her boyfriend. She said she did this over the objections of her mother. With hindsight, she said her decision was a bad one. She broke up with her boyfriend and returned to her mother’s home in May, 2015.

[183] Since her last return, according to W.C., things have been going very well. She said her mother imposed a number of rules including school attendance, completion of homework, a curfew, etcetera. Daily household chore have also been assigned to the daughter.

[184] W.C. said that she has not observed her mother drink alcohol, nor has she observed her mother to be under the influence of alcohol. W.C. described herself as being a “big sister”, to K.L. and helps out with his care whenever she can.

[185] W.C. provided examples of activities and involvements that the family unit is involved with.

[186] W.C. conceded that in the past she had some feelings of resentment against her mother but since her mother is doing well now she professes to be proud of her. She made a broad assertion that since returning to her mother’s care she observed some of K.L.’s exchanges. She described J.K. as “often rude” to her mother and that he does not let her say goodbye to K.L. before they leave.

[187] W.C. supports her mother’s legal position in the current case. During testimony, she said that K.L. is articulating some words but said that he does not always speak in complete sentences. She reiterated that J.K. is episodically rude to her mother and claimed that she spoke only briefly with Debra Reimer incidental to the assessment.

[188] Asked whether she had sent to J.K. a Facebook invitation to be a “friend”, if I understood her testimony correctly, she did so with a view to ensuring her contact with her sibling if J.K. should be successful in the current court case. She acknowledged that he agreed to do this. However, she denied saying to J.K. that he was right about things he reportedly said to her about the mother. As it happens, the Facebook entries in question were not entered into evidence.

[189] In the same vein, she denied saying to J.K. or writing to J.K. that K.L. would be better off with him than with H.I.. And she stated that J.K. can be “kind of harsh” and “intense” in what he says and does.

[190] W.C. clarified that her observations regarding J.K.’s conduct and demeanour arise from transitions which she has observed or participated in.

Discussion/Decision

[191] It is common ground that section 18 of the **MCA** pertains. To paraphrase, the father and the mother of a child are joint guardians and equally entitled to the care and custody of their child unless otherwise provided by statute or ordered by a court of competent jurisdiction. In any proceeding under the **MCA** regarding care,

custody and access or visiting privileges, the court must give paramount consideration to the best interests of the child. The concept of "best interests", necessarily includes consideration of all relevant circumstances including those set out in section 18(6) of the **MCA**. I do not propose to pigeon hole the evidence to fit it under subsections (a) through (j) of section 18(6) but have considered all of the evidence regarding relevant circumstances.

[192] I am satisfied on the evidence that since the child was repatriated to his mother, that his physical, emotional, social and other needs, including his need for stability and safety, have been met and continue to be met. The evidence is that he is well settled and generally doing well under his mother's care. I find the mother's new partner has been a positive influence on her as well as the child. I am satisfied that there is no intention by her partner to usurp the role of the biological father and that there are no obvious negative impacts which would adversely affect the child.

[193] On the evidence, I find that there are no substantiated child protection concerns which might reasonably influence the outcome of the case, one way or the other. On the evidence, I find that the mother has addressed, or is in the process of addressing, a relatively small list of concerns which the father has identified. Although the mother could have been more forthcoming and timely in her disclosures to the father about what she has been doing proactively to respond to his concerns, nonetheless the evidence is that she has responded appropriately.

[194] It was submitted on behalf of the father, that Reimer's assessment and recommendation should be given considerable weight in crafting an outcome. But, for reasons discussed elsewhere, I find the weight to be afforded Reimer's work was seriously undermined by countervailing evidence offered on behalf of the mother at the hearing and for the other reasons mentioned.

[195] With the arrival of a young sibling, I find that the mother and her partner are able to care for the newborn appropriately and quite adequately without interfering with their capacity to meet K.L.'s needs.

[196] I find that each parent professes a willingness to support the development and maintenance of K.L.'s relationship with the other parent. However, the parents have historically been unable or unwilling to put aside their personal animosity and distrust in favour of a regime that would see them focused on their child and that would see them set aside their differences. I am mindful that many of these differences spring from the father's perception and position that the

mother's past challenges with addictions and related issues render her an inappropriate person to primarily parent their son.

[197] The father's perceptions and concerns are clearly at the root of large volume of child protection and other referrals which have only served to further undermine the prospects for improved communication and cooperation between the parents.

[198] Against this background, I do not see any reasonable prospect for improved cooperation and civil communication that would support a joint custody regime in which joint decision-making would be a hallmark. The mutual distrust and lingering hostility warrants vesting sole custody in the mother, subject to terms and conditions to protect the father's interests as best as can be expected in the circumstances. (These are set out in the Memorandum.)

[199] I recognize that the father did make considerable effort to put child care, medical, and other arrangements and services in place to support his proposals. He is to be credited for those efforts which I am sure were sincere. In the same vein, he should be credited for establishing an independent residence and for maintaining stable employment and an apparently solid lifestyle.

[200] On the evidence as a whole, and giving credit to the father where due, I find it would not be in the child's best interests to authorize a wholesale upheaval of his current living circumstances and to award primary care and custody to the father. The father's preferences must be given weight, but they should not trump the other considerations pointing to K.L.'s best interests at this time.

[201] At the risk of invoking an overused term, I conclude the parents' relationship, at least until very recently, was bordering on "toxic". To my observation, the conflicted personal dynamics among many of the adults was palpable as at the hearing. As noted, the interactions and dynamics associated with the paternal relatives are still troublesome. Yet, there was no evidence from the paternal grandfather who, as discussed elsewhere, continues to be active in transportation and transition arrangements, and is involved with the child's care.

[202] I cannot order non-parties to engage in education or counselling services that might improve the level of communication and cooperation among the adults. However, I would suggest that paternal relatives may wish to consider something along these lines.

[203] My Memorandum sets out the full results. Although it constitutes an order, I invite counsel for the mother to submit a formal order to finalize the parenting matters.

Dyer, JFC