Date: 20020516
Docket: SFHCAA 013786

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
[Cite as: J.E.A. v. C.L.M. , 2002 NSSC 128]

BETWEEN:

J. E. A.

APPLICANT

- and -

C. L. M. and A. D. M.

RESPONDENTS

D E C I S I O N

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

HEARD: **At Halifax before The Honourable Justice Walter R. E. Goodfellow on May 6, 7, 8, 9, 10, 2002**

DECISION: **May 16th, 2002**

COUNSEL: **Christopher S. Berryman and Sarah Davis A/C for the Applicant, J. E. A.**
Craig M. Garson, Q.C. for the Defendant, C. L. M.
Myrna L. Gillis for the Defendant, A. D. M.
Alan J. Stern, Q.C. for the Child, K. M. A.

GOODFELLOW, J.:

BACKGROUND

[1] J. A. and Doctor C. L. M., who now goes by her maiden name S., met in March, 1990 and were married in Earlham, Iowa on November the 1st, 1990. Mr. A. had custody of his son, J., from a previous marriage. They moved to Minnesota where Doctor S. obtained employment as a Staff Physician and Assistant Fellowship Director in Emergency Services at [...] Hospital. Their daughter, K. A., was born January the *, 1992 and the parties moved back to Earlham, Iowa in May of 1992, as Doctor S. had been recruited to set up a Paediatric Emergency Department at [...] Hospital in Des Moines. The parties separated in September, 1992.

[2] On April the 24th, 1993 the Iowa District Court for Madison County granted Doctor S.'s Petition for Divorce and recited that both parents were joint legal custodians of K., with the mother having "physical care". On March the 10th, 1995 Doctor S. applied for a variation of the access provisions and this resulted in the father's visitation with K. being suspended pending reports by investigators of the Iowa Department of

Human Services. Subsequently, supervised access was reinstated. There were a number of assessments made which I will refer to in my determination with respect to the issue of whether or not Doctor S. has demonstrated under Article 13 of the Hague Convention that there is a grave risk K.'s return to Iowa would expose her to physical or psychological harm or otherwise place her in an intolerable situation.

[3] In summary, Doctor S., not finding the legal process to her liking obtained, by fraud, passports for herself and daughter, K., and contacted the "underground". She and K. disappeared surfacing shortly thereafter at Saltspring Island in British Columbia where Doctor S. met and entered into a relationship with a Doctor A. M., whom she married on October the 3rd, 1996, her fourth marriage. They have a daughter, E. A. M., born May the * , 1997 in British Columbia. In July, 1997, Doctor M., Doctor S., K. and E. moved to Nova Scotia where Doctor S. and Doctor M. separated in May of 2001. There has been a measure of litigation between them and particularly in relation to their daughter, E.. Doctor M. was concerned with respect to the possible absconding by Doctor S. with their daughter, E., and there have been a number of Interim Orders, the consistent feature of which neither party is to remove either children, K. or E., from the Province of Nova

Scotia without Order of the Court. The R.C.M.P. being advised of the divorce proceedings apparently conveyed the whereabouts of Doctor S. and K. to the authorities in Iowa.

[4] Mr. A., who engaged the services of Missing Children Agencies learned around July, 2001 of the whereabouts of his daughter, K., who the mother had kept in hiding for approximately six years and Mr. A. has proceeded to file this Application pursuant to the Child Abduction Act, R.S.N.S. c.67, which incorporates the Convention on the Civil Aspects of International Child Abduction, commonly referred to as the Hague Convention.

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Article 1

The objects of the present Convention are:

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal and retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by

the Central Authority or other competent authority of the child's habitual residence.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

REVIEW OF EVIDENCE

Carole Dunham Meade -

[5] Ms. Meade is an Art and Play Therapist in Iowa and her findings, advice and beliefs have been advanced by Doctor S. as justification for Doctor S.'s

flight with K.. My own assessment is that Doctor S. was determined to take flight in any event, however, there is no doubt that Ms. Meade's involvement was significant in relation to what has happened.

[6] Her evidence was taken by video conferencing and she was subject apparently for the first time to cross-examination. She acknowledges from the outset that she does not do child abuse investigations, however, she has extensive qualifications in counseling, the effects of trauma on children/adults and treatment.

[7] My assessment of her evidence is that she, like almost everyone else that came into contact with Doctor S., began the relationship with a foundation of respect and acceptance of what was being advanced by Doctor S. to such a level that it impaired objectivity.

[8] In Ms. Meade's case, she indicated her first involvement with K. was by referral from a Doctor Steve Elliott. In fact, she received no documentation, written referral or verbal referral from Doctor Elliott and what happened was simply that Doctor Elliott had given her name to Doctor S.. It was not, therefore, a referral in the normal sense and the foundation came not from Doctor Elliott, but solely what was related to Ms. Meade by Doctor S.. Had Ms. Meade spoken to Doctor Elliott, she would have learned that his

involvement related to a mark on K.'s buttock which he described as pink and which was elevated by Doctor S. to red welts. Ms. Meade spoke to Doctor S.'s mother who was one of the caregivers for K. but at no time spoke to Mr. S., who was also one of K.'s caregivers. Ms. Meade acknowledged that Doctor S. would have a better knowledge of child abuse by virtue of her being a pediatric specialist. In her Affidavit, Ms. Meade referred to being aware K. was seen by professionals in Cedar Rapids, but on cross-examination, she simply said that would have been someone who worked for the Child Protection Centre in Cedar Rapids and she neither knows them by face or name. Her Affidavit refers to these professionals being "retained by J. A." and she acknowledges that she assumed Mr. A. was paying for them and further acknowledges that their involvement could have come about by considering what is referred to in Iowa as "C.I.N.A. proceedings", an acronym for Children in Need of Assistance. As it turned out, Trish Jacobs, a social worker trained in the investigation of the sexual and the physical abuse to children, did recommend C.I.N.A. proceedings but it was felt that there was inadequate evidence available and no such proceeding took place.

[9] In her report, Ms. Meade made specific note that Doctor S. denied any history of sexual abuse in Doctor S.'s family. She acknowledges that if Doctor S. had advised her of her own sexual abuse that it would have made her more aware of some possible parenting flaws and, in her view, such would possibly make the parent, as relates to her own children, i.e. K., hyper vigilant. When Ms. Meade sensed that K.'s grandfather, a caregiver, had been involved with sexual abuse of Doctor S. and her sisters, she became somewhat defensive and even more supportive of Doctor S. and became reluctant to acknowledge the possible significance.

[10] Ms. Meade has not seen K. since the summer of 1995. Under cross-examination by Ms. Gillis, she acknowledges the totality of the representations that were given to her to commence her opening hypotheses for therapy came solely from Doctor S..

[11] With respect to the failure of Doctor S. to disclose her own sexual abuse, Ms. Meade went on to acknowledge:

> **Q.** Now there is a fairly often diagnosed condition which occurs when someone who has been sexually abused and has not dealt with that abuse will project upon their child at an approximate age that

they were abused, the abuse they suffered themselves. Is that not correct?

A. That can happen, yes.

Q. And that is one of the critical components of the intake process for you as a clinician to determine whether or not you need to explore that possibility with your referring parent, is that fair to say?

A. That's fair.

Q. Now you indicated today that you were unaware of the fact that C. S. was sexually abused as a child. Is that correct?

A. That's correct.

Q. And is today the first time that anybody has presented that information to you?

A. Yes, it is.

[12] Ms. Meade confirmed that there were no physical findings of sexual abuse nor were any disclosed by K. to her. Ms. Meade acknowledged that if a three year old child was sodomized by a grown man, there would be an

expectation that there be some physical finding. As to the failure of Doctor S. to advise her, the following is significant:

> **Q.** So, when C. S. did not, as a professional, ... a health care professional, did not provide you with extremely valuable information for you to form ... to formulate your therapeutic hypotheses, she, in effect, interfered with your therapy with K.. Is that fair to say?
>
> **A.** Yes.
>
> **Q.** Do you mean by the parent or just in general?
>
> **A.** A child who is under ... a pre-school child, clinically, from your literature, a pre-school is more susceptible to their parents' influence on what to say then a child who is not pre-school.

[13] On the fourth session Ms. Meade had with K., she acknowledged:

> **Q.** So the day ... the therapy session leading up to the disclosure, "I also read her a book about a little girl whose Daddy was mean to her but she was afraid to tell anyone". Well, Ms. Meade, that at the very least sounds to me like a very suggestive story. Is that fair to say?

A. That's fair to say, yes.

Q. After you read her that story, which you concede yourself as a suggestive story, you have here, "at the end of the story I asked her if she wanted to tell me anything". She wanted to talk about animals and cages.

A. Uh-mm.

Q. You gave her the story. You gave her the lead?

A. That's correct.

Q. And she didn't bite.

A. You open lots of doors for children and find out if they're going ... what they're going to tell you.

Q. Do you open doors or do ... I would suggest that that was a pretty leading story. I don't think you were opening a door. You were ... that story was a suggestive story. You can't put it any other way. It was a suggestive story.

A. It was. I read that book to lots of children.

[14] At a subsequent session, Ms. Meade's notes indicated that C. mentioned K. asking if C. was going to die and Ms. Meade acknowledges bringing that into the therapy session in a leading manner and progressed to reading a story on March the 6th to K. (by coincidence, the same day Doctor S.'s solicitor filed a response to Mr. A.' citation for finding Doctor S. in contempt). The reporting by Ms. Meade of the father utilizing terminology "secret" finds its birth in the following:

> **Q.** Now, you ... again, we've talked about the story you read about mean Daddy. "Now, I read her a story about good touch, bad touch and secret touch". Prior to March the 6th, did K. ever spontaneously disclose to you the words "secret touch"?
>
> **A.** No, she did not.
>
> **Q.** She asked about each kind of touch. "I asked her to tell me about people who give her good touch, bad touch or secret touch". Ms. Meade, that implies to me that you're leading her to tell you what people give her bad touch and secret touch and you don't allow her to illicit her own response as to whether or not there is such ... anyone in her world giving her a bad touch or a secret touch.
>
> **A.** Well, if they're not, children will say no.
>
> **Q.** Oh, children will say no if you ask the child ...

A. If they won't come up with a name ...

MR. GARSON: Why don't you let her answer the question first. You asked it, let her finish it.

A. They will ... they will come up with a name or they'll say that doesn't happen to me.

Q. She started talking about Mom dying. Now, this is a critical component to your recording, Ms. Meade. "Then she told me that Daddy tried to touch her and she doesn't like it". Does that accurately reflect how K. expressed to you what happened to her?

A. Yes.

Q. Now, those are K.'s words, is that correct.

A. Yes.

Q. Or as much of a recollection that you would have recorded of how K. communicated it to you?

A. I was in a habit of writing down what children told me very directly.

[15] Doctor S., at this stage at least, referred to K.'s father as J. and certainly that is how K. began to refer to her father. Finally, Ms. Meade acknowledged that what she reported after several sessions was Doctor S.'s stated justification for flight.

Q. So it is on that basis of that March 6th disclosure from your involvement that the ball got rolling with the Department of Community Services about the fact that J. A. was the perpetrator of possible sexual abuse against his daughter and at that point in time the identification of Dad as J. A. is one that you have made?

A. Yes.

[16] In fairness to Ms. Meade, her evidence went on to disclose:

Q. Do you, at this point in time, have any concerns about the reliability and identification of Mr. A. as the perpetrator when we closely examine your March 6th disclosure by the child? Knowing what you know now, do you have any concerns at all?

A. Yes, I do.

Q. This child was referred for a second opinion ... first of all, let's back up for a second. K. A. was examined in the presence of Trish Jacobs, a social worker III trained investigative individual, who observed you with K. with respect to soliciting a disclosure in an open-ended way. Fair to say?

A. Correct.

Q. K. did not at that point in time make any disclosures with respect to sexual abuse to Trish Jacobs from the Department of Community Services, is that fair to say?

A. That's right, yes.

Q. And it's also fair to say that there must be occasions when children do disclose to Department of Human Services social workers because there are a number of circumstances when they interview children and they do get a disclosure, is that fair to say?

A. That's fair to say, yes.

Q. It's also fair to say that the St. Luke's Group also did an examination of K. A. and that examination with respect to open-ended questions revealed no sexual abuse disclosure to those professionals, is that fair to say?

A. Yes, that's my understanding. I never saw the report.

Q. Now, you are aware of the possibility ... again, your opinion about the sexual abuse, you've already commented to concerns about that opinion now?

A. Yes.

Q. You have never been cross-examined on your report before today have you?

A. No, I have not.

Q. And Justice Goodfellow is the first Officer of the Court to ever hear any challenge to the veracity of your conclusions of sexual abuse, is that fair to say?

A. That's fair to say, yes.

Ward A. Rouse -

[17] Mr. Rouse was one of the attorneys Doctor S. engaged in Iowa. He was engaged in or about January, 1995. He confirmed that K. had been taken to the St. Luke's Child Protection Centre in Cedar Rapids, Iowa for investigation of the allegations of physical and sexual abuse and in his Affidavit and evidence he confirmed that around late June, 1995 he became aware of the report, a portion of which he quotes in his Affidavit as follows:

> K. S. gave no history of sexual abuse being perpetrated upon her. She did report that her dad, J., spanks her on the buttocks with his hand. She reported that she had received a red mark from this. K. was active and easily distracted throughout the interview.
>
> The Child Protection Team (Rosanne Matuszek, Dr. Kathleen Opdebeeck and Trish Jacobs) met and made the recommendation that K. continue to participate in counseling with Carol Meade. It was recommended that K. continue to be educated in regards to body

ownership. It was further recommended that K. be assigned a guardian ad litem to represent her best interest.

[18] He goes on to confirm that he advised Doctor S. that given the likelihood the report would come back founded with respect to physical abuse but unfounded with respect to sexual abuse, she could expect the Iowa Court to reinstate immediate visitation on a possible temporary basis supervised with unsupervised access in the not too distant future.

[19] As we now know, Doctor S. had taken steps to flee prior to receipt of this advice and, although she continued to seek the intervention and assistance of the Courts in the State of Iowa, she undoubtedly finalized her plan to flee immediately she received this advice from her own attorney at law. Doctor S.'s application for modification of the Divorce Judgment filed by her March the 10th, 1995 was followed by a contempt application August the 18th, 1995 by Mr. A. and on September the 7th, 1995 a bench warrant for C. A., a.k.a. S., for failure to appear. There were subsequent Orders, including a pickup Order February the 6th, 1996. This Order provides that when Doctor S. is located and/or arrested, the minor child, K. A., was to be returned to the care, custody and control of her father and not to be released to Doctor S., her parents, relatives or designees. Doctor S. had timely

knowledge from numerous sources of all the Orders. She had some early communication from her own solicitors and her parents who were able to access public records. When Doctor S. issued a Divorce Petition in Nova Scotia, *M. v. M.*, S. K. No. 1204-002985, the 25th of April, 2001, she wilfully and deliberately misled this Court. She was continuing her policy of deception and referred to K. as K. M. M., born January the *, 1992 and specifically signed a Petition containing the following provision:

> [10] The particulars of all Court proceedings between the parties or affecting the children of the marriage are: No Court proceedings.

[20] Not only was Doctor S. fully aware of what was transpiring at all times, it is clear from the assessment she had conducted by Doctor J. Swaine & Associates Limited, Halifax, in January, 1998 in that Doctor Swaine's report of January the 21st, 1998 specifically recites the series of Iowa Orders, including:

- ➜ Bench Warrant to Arrest C. A./S. for Failure to Appear, 7 September, 1995
- ➜ Order awarding full care, custody and control to father, dated 15 December, 1995

- ➜ Petition from J. A. to use the Federal Parent Locator Service, dated 31 January, 1996

- ➜ Order to pick up K. and return her to her father, dated 6 February, 1997

- ➜ Order to authorize the use of the Federal Parent Locator Service, dated February 23, 1996

Sarah M. -

[21] Mrs. M. is an Art Therapist who worked for a number of years with the Child and Family Unit of the Ottawa General Hospital and now does some private practice. She was consulted in her professional capacity by Doctor S. December the 27th, 1995. In due course, she ended up being Doctor S.'s mother-in-law. Doctor S. saw Ms. M. in Ottawa and used the fictitious name "Higgins". During the course of Doctor S.'s evidence, she said that she was certain she told Ms. M. of her own personal history of sexual abuse. She said this in response to a very clear comment from counsel indicating records to the contrary. In the face of Doctor S.'s denial, counsel presented Ms. M. for rebuttal evidence and I ruled she was not to be qualified as an expert, as no report had been filed but that she was quite properly a rebuttal witness.

[22] Ms. M. brought with her a copy of her records and confirmed that Doctor S. was present at the first interview when an intake form is completed and at

the end of the session the entire matter was reviewed by Ms. M. with Doctor S.. Ms. M. confirmed that she in fact asked Doctor S. if there was any history of sexual abuse in her family and she received a denial from Doctor S.. Ms. M. outlined her procedure and if Doctor S. had been truthful, Doctor S. would have been requested to fill in a separate intake form. Ms. M. saw K. A. (Higgins) six times and her practice was to dictate a report to the file at the end of each session. Throughout, Doctor S. made it clear that what was being done was in absolute secrecy and Doctor S. reiterated her denial of family sex abuse when Ms. M. asked her if there is anything she needed to know, which was prompted by a series of unanswered questions in the first intake form.

[23] Ms. M.'s intake assessment note was made contemporaneously December the 27th, 1995 and it included the following:

> C. explained that she had her daughter physically examined at the time of the abuse and that K. had redness around the vulva but that this evidence was not accepted in Court and that J. retained his visiting rights. She also stated that J. had a history of physical abuse. When questioned she denied any history of sexual abuse herself. I then explained to her that it is my experience that adults who have undisclosed abuse issues themselves often project this on their children at the same age at which they were themselves abused. She said that her parents do child care for her and that K. misses them as they were a nurturing couple.

[24] Wherever there is a conflict between the evidence of Ms. M. and Doctor S., I accept without reservations the evidence of Ms. M. Indeed, I accept the evidence of Carol Meade that she too was not made aware of Doctor S.'s family history of sexual abuse.

Dan Waldman -

[25] Mr. Waldman and his spouse are friends of Doctor S. and he operates a farm teaching all aspects of riding and horsemanship and there has been a common interest in horses with Doctor S. and K. since the summer of 1999. Before commenting on Mr. Waldman's evidence, I refer to a passage in Doctor Swaine's report of January 21st, 1998 with respect to K.:

> Over the past two and a half years K. has spent a great deal of time around her mother and other adults, all of whom were protective and intensely concerned about K.'s emotional reactions to being abused by her father. This has, no doubt created a child who tends to function well with adults, but may tend to be dependent on them.

[26] Doctor Swaine does go on to say that K. has made considerable progress and plays independently.

[27] Mr. Waldman comes across as a very caring and loyal person who readily provided assistance. Mr. Waldman took an initiative of distributing photos of Mr. A. throughout the neighborhood asking people to contact the R.C.M.P. if they sighted Mr. A.. As well meaning as Mr. Waldman is, I do have some concern that in a relatively small rural community, it is highly likely that photographs of her father would likely come to the attention of K. and add to the environment of deception and fear that formed a constant part of creating such a strong dependency by K. on her mother.

Doctor C. S. -

[28] The first evidence I want to refer to is a set of notes with the date mark of the 12th of November, 1992. These notes were made relatively close to the time of separation which took place in September, 1992.

[29] Doctor S. wrote several pages of notes which were typed and had been stamped received April 26, 1996, Central Abuse Registry. Doctor S. acknowledged the authorship of these notes although she did not apparently

do the typing herself. These notes are rather revealing. They indicate that she met J. A. three years ago which would be 1989 and Mr. A. had very limited resources and less than steady employment. His financial and employment prospects were a measure of concern understandably for Doctor S.. Her notes made it clear that she advised J. A. before they got married that if he wanted to go to school, she had no intention of paying for that and she refers to a lot of broken promises, including financial assistance in relation to bills. The couple moved to Minnesota primarily for Mr. A. to explore employment and Doctor S.'s notes that after K. was born, "I got depressed because we had decided to move back to Iowa and I was worried about my father being sexually inappropriate with her at some point in her life. I spoke to my Mom and told her that I never want K. to be alone with my Dad". It was at this time that it came out the father had over a prolonged period exposed himself to Doctor S. when she was a child and to her sisters and, during exposure, would talk about sex. After commenting that she gave Mr. A. lots of opportunity to change, she notes state, "I will not put up with him anymore and I will go to any length to keep my daughter in my custody. He is not a fit parent and no one will ever be able to convince me otherwise. I am suspicious about his motives, I think he would like to have the kids and have me paying a lot of child support so he wouldn't have to work". She goes on in her notes to say he lacks parenting skill, doesn't meet his financial responsibilities, can't keep a job, etc. and she adds, "there is no way that I will let my daughter go to him".

[30] In fairness to Doctor S., these notes do make some reference to allegations of inappropriate physical treatment by Mr. A. of his son, J., which allegations are denied, however, there is no suggestion whatsoever of any physical or sexual abuse by the father towards K..

[31] I will not refer at length to the evidence of Doctor S.. I had the opportunity to observe her in lengthy cross-examination and it is very clear that she is a strong-willed, intelligent, highly qualified and apparently highly respected pediatrician with an understanding and ability to influence and manipulate people. I find that from the very outset, Doctor S. made innumerable complaints to varying authorities in Iowa, consistent with her determination expressed in her own notes that "there is no way that I will let my daughter go to him". As counsel have so correctly pointed out, this is not a trial on a

criminal or civil basis with respect to the allegations of sexual and physical abuse, but what is clear is that whatever happened in Iowa was referred to the authorities and no criminal charges were laid on the basis that no probable cause could be shown and similarly, no C.I.N.A. proceedings were authorized and what did come forth, particularly in relation to the allegation of sexual abuse, was advanced and enhanced by Doctor S.. She sought the assistance of the Court in Iowa intending only to pursue that lawful avenue, if it suited and supported her determination.

[32] Doctor S. I find is seriously lacking in credibility and I will touch upon but a few examples. I have already indicated that I accept the evidence of Carol Meade and Doctor M. that, contrary to what Doctor S. indicates under oath, Doctor S. did not disclose to either of these professionals the significant fact that she was subject to a degree of sexual abuse within her own family. As a pediatrician, she would have known better than most the importance and significance of disclosing one's personal history. In addition to several years of hiding and deception, including in relation to filing a Petition for Divorce in the Supreme Court of Nova Scotia, Doctor S. enhanced what might have happened to K. to a level for which there is not the slightest shred of evidence or comment by anyone else; namely, her representation to Ms. M. that K. suffered bruising about the vulva. I have already mentioned that Doctor Elliott described in his notes a pink mark on K.'s buttock and Doctor S. reported this as a red welt(s). There was another occasion where Doctor S. raised the suggestion of physical abuse and on that occasion, she advanced that she could see at quite a distance, I believe from across the room, a mark on K.'s behind and identified it as a hand print. The fear that K. has is not likely to be that she remembers when she was just under three years of age but a fear that has been developed by years of hiding, using fictitious names and what I am satisfied is an unconscious and probably conscious constant conduct by Doctor S. that increased K.'s degree of dependency upon her and correspondingly kept her father at a distance.

[33] Doctor S.'s willingness to mislead knows no boundaries. In proceedings before a Nova Scotia Justice on one of the interim applications, she clearly advised this Court that K. had been raped and sodomized by her father. When this was put to her in cross-examination in this proceeding, she back peddled and took refuge in comments that she was applying a wider medical

understanding or definition. I have no reservations in concluding that she deliberately misled the Court and deliberately conveyed that K. had been subject to penile penetration vaginally and anally where there has been absolutely no suggestion, record or notation of such ever happening. Doctor S. attempts to justify misleading this Court by saying that on an occasion when she was bathing K., K. made a comment about her father inserting a finger in her rectum. I further note that nowhere in any of her previous complaints, documentation or records is there ever any mention of such an incident. Sexual abuse of any kind is a dreadful invasion of privacy and conduct that is to be deplored. Similarly, exaggerated and probably false allegations of a father raping and sodomizing his three year daughter is also deplorable.

[34] The lack of credibility and conduct by Doctor S. does not create the conclusion that I reach in this matter except so far as it is relevant in coming to a determination as to whether or not there is a genuine grave risk, measure of intolerability, etc. that establishes the threshold necessary to defeat the operation of the *Hague* Convention.

J. A. -

[35] Mr. A.' evidence was presented by Affidavit, cross-examination was declined. He indicates that he is now 47 years of age, in good health and has been living these past years in Dallas County, Iowa where he is completing the building of a home. He is employed with the City of Des Moines in the Forestry Department and his son, J., is now a student at [...] College in Iowa which he is attending on a scholarship. His Affidavit sets out the history of the Court Orders and he describes what has transpired as "scurrilous accusations" by his ex-wife to the Department of Social Services and denies any wrongdoing. He refers to the examination of K. by the St. Luke's Protection Centre in Cedar Rapids and attaches the report from that Institution. The St. Luke's report was received by the Madison County Social Services on June the 26th, 1995. The report is by a Child Protection Team; by name, Rosanne Matuszek, Doctor Kathleen Opdebeeck and Trish Jacobs. K. was taken to the Centre by her mother, Doctor S., who reported upon the history of K. seeing the therapist, Carole Meade. Doctor S. appears to have provided thorough specifics to the Team. During the clinical observation, other than a reference to telling Daddy J. to stop hitting

her, there is nothing advanced of any inappropriate conduct. K. in fact denied that anyone had ever wanted her to touch parts of their body or to give them secret touches and the conclusion of the Child Protection Team was that the child gave no history of sexual abuse being perpetrated upon her. It is really this report that triggered the final stage of Doctor S. leaving the jurisdiction of Iowa. Mr. A. goes on to indicate that he contacted several Child Locator Services working with missing and exploited children and contacted private investigators, all with no success until he finally learned K. was in Nova Scotia.

Mike Bandstra -

[36] Mr. Bandstra is an experienced attorney at law in Iowa who was qualified as an expert in Iowa law. The evidence before me provides material in relation to the Iowa Department of Human Services in response to the complaints against J. A.. The initial investigations conducted by an experienced child abuse investigator, Trisha Jacobs, are commented upon as being thorough and in depth. Indeed, Trisha Jacobs at one time made a recommendation that K. be the subject of a proceeding called C.I.N.A. which is an acronym for "Children in Need of Assistance". The recommendation was not accepted and as I mentioned earlier, the Sheriff's Department also concluded, as did Ms. Jacobs, that there was insufficient evidence for any criminal proceedings based on the allegations of sexual abuse.

[37] Mr. Bandstra points out that the investigations in Iowa are subject to multiple levels of administrative and judicial review and in fact Mr. A. availed himself of the levels of administrative review available. In effect, he made a request for correction or expungement of the child abuse information filed against him. Mr. A. in his Affidavit described this process as totally administrative and based on hearsay. Mr. Bandstra acknowledges that the judicial decisions were administrative reviews and says that "a more accurate description of the entire process would be that it is an administrative action subject to multiple levels of judicial review". Mr. Bandstra references that there was a report in the Department of Human Services concluding or supporting the conclusion that indecent conduct had occurred and that Mr. A. was responsible for this abuse. Similarly, the investigations reached conclusions that in effect there was evidence to support a possible finding that Mr. A. had physically abused K., i.e.

spanking. It is important to realize that these administrative reviews were conclusions reached without any cross-examination or testing of the departmental reports.

[38] What Mr. Bandstra's evidence does confirm is that there is in place in the State of Iowa processes for filing complaints, registering the complaints and various mechanisms for dealing with complaints of child abuse, neglect, delinquency, etc. In other words, legal and administrative processes are available in the State of Iowa for the protection of all children, including K., that appear to be at least the equal of what is available in Nova Scotia.

[39] Where precisely the administrative/judicial review fits into the family determination when it comes to addressing custody/access is best left to the Courts in Iowa.

Additional Affidavits -

[40] There were a number of additional Affidavits filed which I have reviewed carefully and generally speaking, they speak very highly of Doctor S., of the relationship of the various deponents to Doctor S. and K., as well as E.. There is what one would expect to be a close relationship between the sisters and K. is viewed as a determined, capable, creative child who is not afraid to speak her mind. K. is often described as a child very mature for her age, smart, sensitive to her mother and to her sister, keenly interested in animals. There are references to K. telling persons of a concern for her father appearing and taking her away and that he had hurt her. She also has apparently expressed a concern for someone taking her mother away from her. All in all, Doctor S., K. and E. have been well received in the community, are active within the community and the community is highly supportive of them.

[41] What the community is unaware is the extent to which, from the very outset, this highly intelligent, trained, successful pediatrician has followed a course determined to deny K. any relationship or even contact with her father. Whether or not anything inappropriate occurred between K. and her father is beyond my determination in this proceeding

[42] Doctor S. has deliberately and falsely misled innumerable people and there is nothing in any of these Affidavits to indicate the slightest awareness of this side of Doctor S.'s character. Doctor S. herself suffered sexual abuse by way of exposure by her father of his genitals and sex talk and this has produced a measure of guilt because she failed to protect her younger sisters from similar conduct plus for the longest while she felt betrayal by her mother for not being aware of and addressing what was taking place in their

home. Doctor S. has been married and gone through four unsuccessful attempts to have a meaningful relationship with a male of any duration and acknowledges in her evidence that she is a highly intelligent person but has been so far a failure in the area of a meaningful relationship with a member of the male gender. One of the concerns the Court has is that there are signs of such being consciously or unconsciously imposed upon K.. Separate and apart from being denied a relationship with her father to date, she had a very good relationship with her step-father, Dr. M., and, while the stated desire of K. not to have anything to do with Dr. M. relates to comments such as favoritism perceived by Dr. M. to E., etc., one cannot help but believe that it is really, in no small measure, a product of the conduct of Doctor S. developing and promoting dependency by the children on her to the exclusion of their fathers.

[43] I have very carefully reviewed the evidence and report of Martin P. Whitzman whose Affidavit introduces his therapy summary of April the 4th, 2002. Mr. Whitzman has been seeing K., as I indicated previously, for a period now of one year to the date May 7th Mr. Whitzman gave his evidence and he saw her in relation to the breakdown of the marriage between Doctor S. and Dr. M.. Mr. Whitzman is a qualified marriage and family therapist who quickly acknowledged that he is not a child abuse investigator or expert. He does state a strong opinion that K. is capable of expressing herself better than the average ten year old and, in his opinion, has well adjusted to her new home and settled in at school, her home in the community. What Mr. Whitzman does not have is the benefit of the total picture. In his cross-examination, he acknowledged that children were very perceptive of the anxiety of a parent, particularly a caregiver. His response was that that was a fair comment and also that it was very common that a child seeks approval of the primary caregiver. He commented that, with respect to a child and parent in flight, he expected it to be true that this would result in intense co-dependency and that fear of detection was harmful to a child and added a stressor to the child's plate.

[44] The Affidavits have been carefully considered and in particular, with respect to my assessment as to K.'s wishes and the question of "settled in".

ISSUES

1. **Was K. A. wrongfully removed from her "habitual residence"?**
2. **Should the Court exercise its discretion and refuse to order K. to be returned to Iowa?**
3. **Has it been demonstrated K. is now "settled in" her new environment? (Article 12 of the Convention)**
4. **Has it been established that there is a grave risk that K.'s return to Iowa would expose her to physical or psychological harm or otherwise place her in an intolerable situation? (Article 13(b) of the Convention)**

ISSUE NUMBER ONE

1. Was K. A. wrongfully removed from her "habitual residence"?

[45] Counsel for Doctor S. and for K. acknowledged that K. was wrongfully removed, however, the history relating to this aspect has relevance in the other determinations and I want to show an appreciation of what was advanced by counsel has been considered by the Court.

[46] The Convention does not define "habitual residence" but generally it is the place where the child lived with his or her parents as a family unit at and before the breakdown of the marriage.

[47] As indicated, the parties separated in September, 1992 and a Divorce was granted the 24th of April, 1993 in the Iowa District Court for Madison County. The decree provides the following directions with respect to their daughter, K. M. A.:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petitioner and the Respondent be and they are hereby awarded joint legal custody of their minor child, namely: K. M. A., born January *, 1992. The Petitioner is awarded the physical care of the said child.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondent be and he is hereby awarded the following rights of visitation with the minor child commencing May 1, 1993:
>
> (a) Every Wednesday evening from 5:00 p. m. to 8:00 p. m.
>
> (b) Each Saturday or Sunday from 9:00 a. m. to 4:00 p. m.
>
> Respondent shall give Petitioner at least seven (7) days notice of whether he intends to exercise visitation on Saturday or Sunday.
>
> Commencing May 1, 1994, the Respondent is awarded the following visitation:
>
> (a) Every other weekend from Saturday morning at 9:00 a. m. to 4:00 p. m. the following Sunday.
>
> (b) Every other Wednesday evening during the week Respondent does not have weekend visitation from 5:00 p. m. to 8:00 p. m.
>
> (c) Alternate holidays to include the following holidays: Easter, Independence Day, Labor Day, Thanksgiving, Christmas Eve and Christmas Day. Holiday visitation shall be from 9:00 a. m. to 4:00 p. m.
>
> (d) Three (3) hours on the child's birthday.

(e) Father's Day to Respondent regardless of whose weekend it may be, and Mother's Day to Petitioner, regardless of whose weekend it may be.

(f) Commencing in the summer of 1994, three (3) weeks visitation during the months of June, July or August. The three (3) week period shall not be consecutive.

The Respondent shall have no overnight visitation until he can establish the habitability of his residence.

[48] I find as a fact that Doctor S. was determined from the very outset to diminish and preferably deny the father any contact or communication with their daughter, K..

[49] The evidence before me shows that J. A. filed proof of habitability which included a detailed letter from the Public Health Nurse of June the 17th, 1993 confirming that she made an assessment visit to J. A.'s home and found it met all requirements. Mr. A. secured a letter the 1st of June, 1993 from the Dallas County Environmental Health Department which set out in some detail criteria and results of their inspection and concluded, "overall, the dwelling and its area meet the basic habitability standards". Doctor S. filed opposition, not in my opinion because she found anything lacking in the accommodation available to Mr. A., but simply as a continuation of her determined course to deny him access and in particular, overnight visitation with his daughter, K.. Mr. A.'s response to Doctor S.'s attempt to use the argument of lack of habitability as a block to overnight access was by filing his response the 15th of July, 1994 which included a further letter from the Dallas County Environmental Health Department June the 24th, 1994 which noted, "as you may recall, your property and dwelling were found to meet basic habitability standards after inspection on May the 3rd, 1993" and concluded, "the dwelling and its area exceed minimum habitability standards commonly enforced in the State of Iowa". There were allegations and complaints by Doctor S., one in relation to an incident with respect to his dog where apparently Doctor S.'s mother mentioned the dog was not muzzled and Mr. A.'s jokingly said, 'the dog has only eaten three children that day', resulting in a complaint from Doctor S.. There were several complaints by Doctor S. about the quality of care of K. while with her father but bear in mind that when the parties lived together Doctor S. was working as a professional, often doing twelve hour shifts when the child care was being attended to and cared for by the father.

[50] There were a number of events that occurred which I will touch upon further in this decision but essentially what transpired is a number of additional hearings, attempts by Doctor S. to preclude access, particularly overnight access. In March, 1995 Doctor S. applied for a variation in the access provisions and based on her representations, access was suspended pending reports by investigators of the Iowa Department of Human Services and supervised access was subsequently reinstated. Doctor S., although seeking court approval for her position to deny access and in particular unsupervised access, proceeded to secure a birth certificate from a nurse for herself and also from the nurse relating to the nurse's daughter and then fraudulently made application and secured passports when it appeared that she would not be able to secure her determination to deny access through the Court, as advised by her own solicitor, she completed what she had set

in motion, contacted the "underground" and wrongfully removed their daughter, K., to Canada and specifically Saltspring Island in British Columbia.

[51] There is not a shred of doubt that Doctor S. wrongfully removed their daughter, K., from her "habitual residence", the State of Iowa.

ISSUE NUMBER TWO

2. Should the Court exercise its discretion and refuse to order K. to be returned to Iowa?

[52] Article 13 contains the provision:

> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

[53] There is no doubt from the evidence of the Affidavits and from Martin P. Whitzman, etc. that K. is a bright, articulate and mature young child, advanced somewhat for her age eleven. The solicitor for K. quite properly made an inquiry and related to the Court that K. wishes to remain in Nova Scotia.

[54] The problem, as I see it, is that one must take a careful look at the background leading up to the expression by the child of her wishes. K. has been on the run for almost seven years and has, of necessity, lived a life of deception and falsehood as to her identity, the necessity of which I conclude was constantly reinforced by her mother. There is a strong dependency by K. upon her mother from the totality of the circumstances and it raises serious doubts in my mind as to the expression of her desire to remain in Nova Scotia being a free expression beyond that which a child would normally express about being uprooted and in this case being an expression more of what was expected of her and indeed, consciously or unconsciously, demanded of her by her mother. I am not at all satisfied that the expression by K. is of her own free will and, in any event, this is not a case for the exercise of discretion where there is, as I have found, no grave risk to K.'s return to Iowa and that Doctor S. has not, for example, established the threshold required of K. being "settled in" in her Nova Scotia environment. If I were to give in to the expression by K., it would virtually mean that in every case the child could simply state, 'he/she did not wish to be uprooted and wanted to stay where they were' and that such an expression would prevail.

ISSUE NUMBER THREE

3. Has it been demonstrated K. is now "settled in" her new environment? Article 12 of the Convention.

[55] Counsel for Doctor S. set out the following as evidence that in their representation proves that K. is "settled in" her new environment.

1. K. left Iowa with her mother July, 1995 when she was three and a half years old and has lived in this new environment for seven years and in particular, in her present community since July, 1997.
2. K. has attended [...] School since primary and is thriving.
3. K. is now in grade 4 and doing extremely well. She is described as a model pupil, gets along exceptionally well with her peers, etc.
4. K. is involved in 4-H Club.
5. K. is involved with and enjoys piano and violin lessons.
6. K. is very involved in horseback riding and raises [...] on her small farm.
7. K. and her younger sister, E., are said to be very close.
8. K. has many friends in her community and school.

[56] Mr. Stern, acting for K., adds to that list and in his view there is a foundation by way of a therapeutic relationship between K. and Martin Whitzman and Mr. Whitzman has been counselling K. for one year as of the date he gave evidence, May the 7th, 2002.

[57] In assessing the threshold required of Doctor S. to establish a "settled in", the starting point has to be the direction given by the Supreme Court of Canada in *Thomson v. Thomson*, [1994] 3 S.C.R. 551; [1994] S.C.J. No. 6, October 20th, 1994), La Forest, J. at p. 27:

> **[80]** ... By stating that before one year has elapsed the rule is that the child must be returned forthwith, Article 12 makes it clear that the ordinary effects of settling in, therefore, do not warrant refusal to surrender. Even after the expiration of one year, return must be ordered unless, the words of the Convention, "it is demonstrated that the child is now settled in its new environment".

[58] In the *Thomson* case, the child had been removed from Scotland to Manitoba. The mother had interim custody but the child was subject to a non-removal Order. The child and her mother were residing with the child's grandparents, the child was of pre-school age.

[59] The standard Black's Law Dictionary, Fifth Edition defines the word "settle":

> A word of equivocal meaning: meaning different things in different connections, and the particular sense in which it is used may be explained by the context or the surrounding circumstances. Accordingly, the term may be employed as meaning to agree, to approve, to arrange, to ascertain, to liquidate, to come to or reach an agreement, to determine, to establish, to fix, to free from uncertainty, to place, or to regulate.

[60] Counsel for the fathers, Dr. M. and J. A., take the position that the factors recited by Doctor S.'s counsel are <u>essentially the ordinary effects of</u> <u>taking up residence</u> and further, that the following features should be considered:

1. The child has been on the run since 1995.
2. That the child has resided in some eleven accommodations since 1995, albeit some of them for a very short period of time.
3. The child's future must be considered uncertain and cannot be divorced from the position of her mother, namely, that Doctor S. has not been

> employed since 1995 and her prospects of stable employment are uncertain and some considerable time, perhaps in excess of one year, will be required before any certainty of employment and the stability that follows will occur unless Doctor S. returns to the State of Iowa where employment is probably available in relatively short order. In addition, the child and her mother are in Canada illegally and have to await the processing of an application for residence based upon humanitarian conditions and the results of this application are far from certain and again, will not be known for some considerable period of time rendering the present capacity to remain in Canada very much unsettled.

[61] It seems to me that even where a child is doing as well as K. is here in her present "home" environment, much more is required to reach a conclusion that the child has "settled in". If the normal attributes of doing well, such as being involved with friends, school activities, music, pets, good marks, constituted the requirement of "settled in", then in almost every case, the Convention would not be applicable and the "home", present residence of the child, would preclude application of the law of her "habitual residence".

[62] As a general proposition, the longer a child is in a set stable environment in which the child is thriving and the older the child gets so as to have the child possibly with commitments to religious, cultural, athletic, scholastic endeavours, community activities, etc. all of some duration, increases the assessment perhaps in its totality to the threshold level of having established that the child is now "settled in" its new environment. Rarely will any specific *Act* prevail as normally the Court has to make a determination of weight to the totality of the circumstances in reaching its conclusion. I find in the totality of the factual situation in this case, the onus on the absconding parent to demonstrate that the child is now settled in its new environment within what I conclude is required for a finding of "settled in" falls markedly short. The stability, duration (i.e. Article 16) and degree of certainty required of "settled in" that it is generally necessary, is not present in the totality of circumstances in this case.

ISSUE NUMBER FOUR

4. Has it been established that there is a grave risk that K.'s return to Iowa would expose her to physical or psychological harm or otherwise place her in an intolerable situation? Article 13(b) of the Convention.

[63] The Supreme Court of Canada dealt extensively with this issue in *Thomson v. Thomson*, [1994] S.C.J. No. 6, [1994] 3 S.C.R. 551. With respect to the phrase "gave risk of physical or psychological harm", Justice La Forest states at p. 31, para 80:

> ... In brief, although the word 'grave' modifies 'risk' and not 'harm', this must be read in conjunction with the clause 'or otherwise place the child in an intolerable situation'. The use of the word 'otherwise'

> points inescapably to the conclusion that the physical or psychological harm contemplated by the first clause of Article 13(b) is harm to a degree that also amounts to an intolerable situation.

[64] With respect to the degree of harm required, the Supreme Court of Canada in *Thomson*, also at p. 31, para 80, endorsed the correctness of the approach of Nourse L. J. in *Re: A. (A Minor) (Abduction)*, [1988] 1 F.L.R. 365 (Eng. C.A.) At p. 372:

> ... the risk has to be more than an ordinary risk, or something greater than would normally be expected on taking a child away from one parent and passing him to another. I agree ... that not only must the risk be a weighty one, but that it must be one of substantial, and not trivial, psychological harm. That, as it seems to me, is the effect of the words 'or otherwise place the child in an intolerable situation'.

[65] As concerns the source of the risk, *Thomson* makes it clear that the risk contemplated by the Convention may come from a cause related to the return of the child to the other parent or from the removal of the child from its present caregiver. Justice La Forest referred to the decision of the Supreme Court of Canada in *Young v. Young*, [1993] 4 S.C.R. 3 to emphasize the principle that, from a child centred perspective, harm is harm. He went on to state at p. 31, para 81:

> ...If the harm were severe enough to meet the stringent test of the Convention, it would be irrelevant from whence it came.

[66] It was further held in *Thomson* that in an application pursuant to the Convention, the court is required to address the best interests of children generally as opposed to the best interests of the particular child or children before the court. The hearing is not a custody hearing to determine the best interests of the child.

[67] It is clear that K. will encounter anxiety and concern for the future upon her return to Iowa and it is incumbent upon her parents to mitigate such. I have made a number of findings of fact and credibility in dealing with the various issues and my assessment of the evidence in its totality is that very clearly Doctor S. has failed to establish the level of "grave risk of physical or psychological harm" or otherwise intolerability necessary to invoke Article 13 of the Convention and deny its application.

CONCLUSION

[68] In *Thomson v. Thomson*, above, La Forest, J. of the Supreme Court of Canada said:

> The underlying purpose of the Convention, as set forth in its preamble, is to protect children from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the state of their habitual residence.

[69] La Forest, J. went on examine the purpose of the *Hague* Convention and stated:

> I now turn to a closer examination of the purpose of the Convention. The preamble of the Convention thus states the underlying goal that document is intended to serve: "[T]he interests of children are of paramount importance in matters relating to their custody." In view of Helper J. A.'s remarks on this matter, however, I should immediately point out that this should not be interpreted as giving a court seized with the issue of whether a child should be returned to the jurisdiction to consider the best interests of the child in the manner the court would do at a custody hearing. This part of the preamble speaks of the "interests of children" generally, not the interest of the particular child before the court. This view gains support from Article 16, which states that the courts of the requested state shall not decide on the merits of custody until they have determined that a child is not to be sent back under the Convention. I would also draw attention to the fact that the preamble goes on to indicate the manner in which its goal is to be advanced under the Convention by saying:
>
> > Desiring to protect children internationally from the harmful effect of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access ....
>
> The foregoing is entirely consistent with the objects of the Convention as set out in its first Article. Article 1 sets out two objects: (a) securing the return of children wrongfully removed to or retained in any contracting state; and (b) ensuring that the rights of custody and access under the law of one contracting state are effectively respected in other contracting states. Anton, supra, at pp. 542-43, indicates that prompt return was intended to be predominant.

[70] The latest comment by the Supreme Court of Canada is in the case of *V. W. v. D. S.*,[1996] 2 S.C.R. 108 and [1996] S. C. J. No. 53 where L'Heureux-Dubé stated at p. 17, para 36:

> The automatic return procedure implemented by the Act is ultimately intended to deter the abduction of children by depriving fugitive parents of any possibility of having their custody of the children recognized in the country of refuge and thereby legitimizing the situation for which they are responsible. To that end, the Act favours the restoration of the status quo as soon as possible after the removal of the child by enabling one part to force the other to submit to the jurisdiction of the court of the child's habitual place of residence for the purpose of arguing the merits of any custody issue. The Act, like the Convention, presumes that the interests of children who have been wrongfully removed are ordinarily better served by immediately repatriating them to their original jurisdiction, where the merits of custody should have been determined before their removal. Once that determination has been made, the Convention and the Act give full effect thereto by protecting custody rights through the mandatory return process.

[71] In my view, the starting point is it should be taken as a given that the Courts of the other contracting State, here the State of Iowa, are quite capable of making and will make adequate and suitable arrangements for the child's welfare on return. Certainly the evidence before me establishes, as I have said, a regime in that regard at least equal to what is available in Nova Scotia.

[72] Counsel, in argument, pointed out it is important to recognize what this application is <u>not</u> about. It is not a custody hearing (Article 16); it is not a determination of what is in the best interest and welfare of K. or E.. It was necessary to examine the background in some detail for determinations within the Convention dealing with the abduction of children, however, I agree also with counsel that it is not an application that deals with rewarding or punishing the parent who fled or absconded with the child.

[73] That my decision carries the consequence that Doctor S. is not rewarded for her deliberate deceit and lack of respect for the rule of law, is, however, comforting. Had I found any of the thresholds met necessary for K. to remain in Nova Scotia, I would have had no hesitation in making such a finding. What I have done is followed as best I can the law in Nova Scotia

which incorporated in the *Child Abduction Act*, the full name of which is *An Act to Implement the Hague Convention on the Civil Aspects of International Child Abduction*. The Convention deals with children wrongfully removed or retained where such wrongful removal or retention is not established to be justified within the provisions of the Convention. Secondly, the necessity of honouring the reciprocating States Law, in this case, the law of the State of Iowa.

[74] Doctor S., having failed to meet the onus upon her of establishing any of the exceptions to the Convention, the application to apply to the Convention on the Civil Aspects of International Child Abduction is granted requiring K. to be returned to the State of Iowa.

COSTS

[75] Counsel, if they are unable to resolve the issue of costs, may advance their representations to the Court in writing, preferably within 10 days.

[76] I would add the gratuitous remarks that it is time for the parents to address realistically the reintroduction of the father to K. and K. to the father. He stands primarily a stranger to his daughter and Mr. Whitzman's advice about the reintroduction of a parent and visa versa is something that he said should be done "slowly - very slowly". It seems to me that the parties should be able, through their solicitors, to arrange an orderly return of K. to Iowa and an arrangement for her welfare and day to day care probably with her mother, as I suspect Doctor S., will accompany her. The next obvious step is to agree upon a qualified counsellor to structure a program for the inevitable reintroduction of K. and her father. It seems to me that if the parties are unable to achieve this themselves, that such is likely to be imposed by the Court with the likely result of taking a great deal more time and being much more stressful on all parties and in particularly, K.. It should be obvious that you simply cannot turn over K. to her father and also Doctor S. has to recognize and learn to support K.'s right to know and to have access to her father. Quite possibly if this kind of progress could be made, then perhaps arrangements could be agreed upon to have my Order effective at the end of K.'s present school year which might be of some benefit to her. If I can be of any assistance in drafting something with the objective of easing the transition, I will certainly make myself available. If nothing is advanced, the Order will simply go forward applying the Convention and returning K. to the State of Iowa.

[77] Counsel should also address the implementation of paragraph 2 of the last Interim Order whereby the day to day care of E. should change to her father, A. D. M., until such time as Doctor S. returns to the Province of Nova Scotia. This, on the assumption that Doctor S. will accompany K. back to Iowa.

J.