SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *D.F v. K.G.*, 2018 NSSC 65

Date: 2018-03-28
Docket: SFHMCA-100135
Registry: Halifax

Between:

D.F.

Applicant

v.

K.G.

Respondent

Judge:	The Honourable Justice R. Lester Jesudason
Heard:	September 25, 2017, in Halifax, Nova Scotia
Final Written Submission:	December 11, 2017
Written Release:	March 28, 2018
Counsel:	Lindsay O'Reilly for the Applicant Judith Schoen for the Respondent

By the Court:

OVERVIEW:

[1] D.F. ("the Applicant"), has potentially missed out on many years of being a parent. He wants to make up for lost time. He believes that D, a 13-year-old boy, is his biological son and asks me to order paternity testing to confirm this. He says that if he's D's biological father, it's D's right to know him and his family.

[2] D's mother, K.G., ("the Mother") adamantly opposes the Applicant's request. She says that ordering paternity testing now would be very emotionally damaging to D because he's just starting to show signs of improvement after years of turmoil which included recovery from surgery to remove a brain tumor. She asks that I deny the Applicant's request.

FAMILY HISTORY:

The Child, D

[3] D is in Grade 8. He doesn't know that he's the focus of the parties' dispute. In fact, he doesn't know of the Applicant's existence at all. Rather, he believes that the Mother's husband ("the Husband") is his biological father.

[4] The Husband has been in D's life since D was approximately 2.5 months old. He's the only father figure D has ever known. The two have an extremely close relationship. The Mother says that D considers the Husband to be his best friend and the two of them do almost everything together. The Mother and Husband also have a daughter together who is 7.

[5] D's life has been difficult. He has struggled academically since primary and has been diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) as well as a language disability. He's assisted by a resource teacher in school and by the Mother and the Husband at home.

[6] D developed seizures as a young child. An MRI done in July 2013 revealed that he had a brain tumor. A further MRI done in December 2014 revealed that the tumor had grown. In May 2015, D underwent eight hours of surgery to have it removed. He subsequently spent time in the Intensive Care Unit of the IWK Hospital. According to the Mother, the Husband was the only person D wanted to see while he recovered in the ICU and the Husband spent almost every night in D's room while D recovered from his brain surgery.

[7] The Mother says that before his brain surgery, D was outgoing and social. Since then, however, he has withdrawn from his family and friends and has become depressed. She acknowledged that his symptoms had improved a bit in the months leading up to the hearing.

[8] D underwent a follow-up neuropsychological assessment over three days in May, June and July 2016, to obtain an update of his cognitive and learning profile in light of his surgery.

The results revealed that he had a highly variable profile of abilities and that his general cognitive abilities broadly fell within the low average range. The psychologist noted that D is susceptible to mental health challenges so it's important that he have ongoing monitoring of his mood/depressive symptoms. The psychologist provided the Mother and the Husband with options for further follow up including assessment and treatment through IWK Outpatient Community Mental Health. She also indicated that monitoring D was important because it could take some time for his functioning to stabilize after his surgery. She planned to see D again in approximately two years, around May 2018.

The Applicant's Involvement in D's Life

[9] The Applicant and the Mother had a brief intimate relationship over 13 years ago, from late December 2003 to early 2004. The Mother says she was also seeing someone else at that same time.

[10] After their relationship ended, the Applicant says he learned through mutual friends that the Mother was pregnant. When he asked her if he was the father, the Mother said he wasn't. The Applicant says he believed her.

[11] D was born in August 2004. In September 2005, the Mother started to work at the same hotel where the Applicant worked. The Mother says that the Applicant asked her again if D was his son and she again denied he was. The Applicant later met D when the Mother brought him to the hotel when he was a few months old. The Mother says that the Applicant never questioned her about whether D was his child after 2005 despite the fact she has had the same cell phone number since 2003.

[12] The Applicant says when he met D as an infant in 2005, he continued to assume that the Mother was telling him the truth that he wasn't D's father. However, in the Winter of 2015, a co-worker showed him photographs from the Mother's Facebook page. He was "shocked" to see images of a young boy who looked very much like he did as a child.

[13] The Applicant showed the photos to his mother who was also shocked by the resemblance. They saved and printed some of the images as they were convinced that D was the Applicant's son.

[14] The Applicant's mother was aware that the Mother's mother worked at a local hotel. In February 2015, she wrote a letter to the Mother's mother which she sent to the hotel. She wrote that she and the Applicant believed D was the Applicant's son and asked that they be contacted. There was no response.

[15] In August 2015, the Applicant's mother sent another letter to the Mother's mother at the hotel indicating that the Applicant's family "desperately wants to have a relationship with D" and that "after looking at his photos [they] knew he was part of [their] family". The Applicant's mother suggested that the Mother would want to know the medical issues and other traits in their family which could be passed on to D and that D "has a right to know the truth about his father". Again, there was no response.

[16] The Applicant's mother then managed to track down an address and phone number for the Mother and called the number. She initially spoke to the Husband. She claims he was not friendly and ultimately told her to leave them alone.

[17] The Mother subsequently called the Applicant's mother back. She again denied that the Applicant was D's father and advised that D has been fighting a brain tumor during the past year. The Applicant's mother indicated that she and the Applicant wanted a paternity test done to put their minds at ease as they were still convinced that D was related to them and they wanted to have a relationship with him. The Mother refused.

[18] On March 31, 2016, the Applicant commenced an application seeking an order for paternity testing and access. An amended application was filed on June 10, 2016, and a further amended application was filed on July 22, 2016.

[19] The hearing was conducted on September 25, 2017. This date was selected by the parties to accommodate the fact that the Husband was going to be a witness and would not be available for several months because he was deployed overseas.

[20] The last post-hearing submission was filed on December 11, 2017.

ISSUE:

[21] The sole issue I must decide is whether paternity testing should be ordered to determine if the Applicant is D's biological father.

[22] The parties agreed that should paternity testing be ordered and confirm that the Applicant is D's father, the issue of what parenting/contact time he should have with D would be dealt with at a future date.

[23] The parties also agreed that if I ordered paternity testing, a DNA cheek swab test would be done. Information about this form of testing was introduced by agreement as Exhibit 8.

THE PARTIES' POSITIONS:

[24] While the Applicant asks that I order paternity testing, he's open to when it should be done. Initially, his counsel suggested a timeline of six months. The Applicant also testified that he would be open to postponing the testing if I determined doing so would be better for D. In a subsequent written submission dated September 27, 2017, his counsel advised that the Applicant was willing to accept whatever timeline I believed in my discretion was appropriate even if it meant waiting longer to learn the truth about D's paternity.

[25] The Mother says that paternity testing shouldn't be ordered now. She's not seeking child support from the Applicant even if he's D's father. She acknowledges that, at some point, D should be told the truth about his parentage but says that this be done when he is an adult. Alternatively, she proposes that if I was inclined to order testing, it shouldn't be ordered now, but that the situation be reviewed in the future.

THE PARTIES' ARGUMENTS:

[26] I summarize the Applicant's key arguments as follows:

- The test itself isn't physically intrusive as it involves a simple cheek swab. D need not be advised of the purpose of the test and, if it turns out that the Applicant isn't D's father, that ends the matter. On the other hand, if testing confirms the Applicant is D's father, then the issue of what parenting/contact time he should have can be determined at a future date.

- D has a right to know his biological heritage. The Applicant is trying to bring some truth for himself and for D. He believes that the Mother has suspected all along that he was D's biological father and that I should draw an adverse inference against her on this point. He suggests that the Mother's position is more about protecting her and the Husband's interests than being about D's best interests.

- When he was told by the Mother many years ago that he was not the father of her child, he believed her and did not pursue it further for several years out of respect and trust. However, when he saw the pictures from the Mother's Facebook site many years later, this "changed everything". He and his mother now firmly believe that he's D's biological father.

- He agrees with the Mother that, given that D was dealing with the recovery from his brain tumor at the time when he brought his application in 2016, that would have been the "worst time" to order paternity testing. However, D's condition has improved. His medications have been reduced and he appears to have recovered from his brain surgery without significant complications. The Applicant says D is at the "highest point" he has been in life for some time.

- Ordering paternity testing is in D's best interests. The Applicant's family has a history of various ailments including ADHD, dyslexia and cancer. Thus, knowing his family medical history could be helpful to D as it would provide a more accurate picture of D's genetic makeup. This could be important for health, emotional and genealogical reasons and could also be significant for future generations.

- He has no other children and his mother has no other grandchildren. They could therefore provide D with their undivided time, affection and support. While he acknowledges that he's a complete stranger to D, this is because the Mother told him he wasn't D's father. He therefore wants to make up for lost time.

[27] I summarize the Mother's key arguments as follows:

- The Applicant's sudden curiosity cannot be considered *bona fide* given that he has waited over eleven years to commence an application despite knowing years ago she was

pregnant and meeting D as an infant in 2005. She says the Applicant "walked away" after 2005 and never attempted to contact her again until his mother initiated contact in 2015.

- The introduction of someone new who identifies himself as D's father would be traumatic to D given his age and the medical and emotional issues he has dealt with and continues to face. The Husband is the only father D has known and the two are extremely close. The Husband took on a role most men would shy away from and has been an outstanding role model to D. While she acknowledges that she has kept secret from D that the Husband isn't his biological father, the Husband has been a consistent father figure to D almost his entire life. D considers the Husband to be his best friend.

- While she and the Husband acknowledge that at some point they will disclose to D that the Husband isn't his father, this isn't the right time. He's in junior high and just getting through a difficult period in his life. He's going through puberty and they want him to have the chance to become the person he's going to develop into as a teenager before telling him about his paternity. They don't want to risk D going into a further shell and believe telling him when he gets older would be easier on him to absorb and process. They fear that bringing the subject up now will turn D inwards and stop him from confiding and trusting in them at a time when he's just coming out of his shell.

- While the cheek swab test would not be physically tough on D, it would be mentally tough on him. She's unwilling to lie to D about the purpose of the testing as D is a curious child when it comes to his health issues and she knows he would ask about why he's being tested. She believes lying to him would undermine his trust in her.

- Mental health issues linger in her family. She's unwilling to put D through paternity testing now given his cognitive functioning issues and struggles with low self-esteem and depression. D continually puts himself down and, when disciplined for any reason, will often have a meltdown like a two-year-old which can last an entire day.

- D has been in a precarious physical and mental state for years. He has recently shown signs of improvement and is finally on a bit of an upswing and is getting the chance to even out from all the major issues he has faced in his life. Ordering paternity testing now would disrupt the gains he has made.

- This whole ordeal has been overwhelming for their family. She suffers from anxiety and responding to the Applicant's application has caused her significant additional stress. She and the Husband had recently bought a home and were involved in starting renovations. She also started a new job. The stress of this court proceeding has been tough on her and her family as it feels like someone is trying to tear their close-knit family apart.

THE LAW:

[28] The Applicant seeks an order for paternity testing pursuant to subsection 27(1) of the *Parenting and Support Act,* subsection 11B of the *Vital Statistics Act* and *Civil Procedure Rule* 59.55. They read:

> ***Parenting and Support Act***
>
> **27(1)** In a proceeding regarding custody, parenting arrangements, parenting time, contact time, interaction or child support, the court may order that the mother, the child and a possible father undergo such blood test, genetic test or other test as is considered appropriate by the court to determine whether the possible father
>
> (a) is the father of the child; or
>
> (b) can be excluded as being a possible father of the child for the purpose of Section 11 [Emphasis added].
>
> ***Vital Statistics Act***
>
> **11B (1)** Where an application has been made for an order with respect to the paternity of a child, the court may order genetic testing by a duly qualified medical practitioner or other person designated in the order to determine the biological father of the child [Emphasis added].
>
> ***Civil Procedure Rules***
>
> ***59.55 Paternity test***
> A court officer may make an order for paternity testing in a proceeding in which the paternity of a child is in issue, including a blood test, genetic test or other test as is considered appropriate by the court under subsection 27(1) of the Parenting and Support Act, and a genetic test under section 11B of the Vital Statistics Act [Emphasis added].

[29] The only case I found from our Court of Appeal which dealt with paternity testing is *S. v. M.*, 1996 NSCA 175. Neither party referred to it during the hearing or in their original post-hearing submissions. I therefore sent it to counsel and gave them the opportunity to make further written submissions on its relevance.

[30] In *S. v. M.*, the mother appealed the trial judge's decision to order paternity testing for a putative father who had been paying child support for several years. The mother's appeal was dismissed. In doing so, Hallett J.A., stated:

> 10 There is no merit to the third ground of appeal that Justice MacDonald erred in law by ruling that it was in the interest of justice and not contrary to the best interests of the child to re-open the question of paternity…It is clear that s. 27 permits a possible father to seek an order for blood testing in any proceeding concerning maintenance for a child. The words of the legislature are quite clear and there is nothing in any other sections of the *Act* which would dictate that the

> section be interpreted in other than its plain meaning based on the words used by the legislature. At this stage, it is only speculation that the results of the blood tests will not be in the best interests of the child. That aside, the *Act* permits the possible father to make such an application. The concept that a Court be concerned about the best interests of the child must give way to the right of the possible father to invoke procedures clearly authorized by the Legislature.

[31] There are several more recent decisions from trial courts in Nova Scotia and other jurisdictions which, while not binding on me, provide helpful guidance on the approach to follow when faced with a request for paternity testing. I will briefly discuss some of them recognizing, of course, that decisions from other jurisdictions also involve different legislation.

[32] In *C.(S.) v. T.(C.)*, 2007 NSFC 32, Judge Levy denied a mother's application for paternity testing where the possible father believed for many years he was the child's biological father and had acted as such. In dismissing the mother's application Judge Levy provided the following summary of principles to consider when the court is faced with a request for paternity testing:

> **4** …I derive the following principles:
>
> 1. It will generally be in the best interests of children that any genuine doubt as to their paternity be resolved (**D.(J.S.) v. V.(W.L.)**).
>
> 2. As important as the best interest of the child may be, as Justice Charron wrote at para. 12, "…it is not the only factor to be considered".
>
> 3. DNA testing should not be ordered where to do so is unlikely to resolve the substantive claim (**D.(J.S.) v. V.(W.L.)**, para. 25).
>
> 4. "The strength of the applicant's case is one relevant factor to be considered" (**H.(D.) v. W.(D.)**, para. 10).
>
> 5. That generally any real issue of paternity should be resolved using the best possible evidence…DNA evidence (**D.(J.S.) v. V.(W.L.)**).
>
> **5** Justice Veale in **(B.(F.X.) v. B.(M.S.)** wrote, para. 23:
>
> > I conclude that the following principles apply to an application for blood tests to determine paternity:
> >
> > 1. The applicant does not have to prove on the balance of probabilities that someone other than the presumed father is the father of the child;
> >
> > 2. The order is discretionary;
> >
> > 3. The application must be bona fide;

4. It must be in the best interest of the child and in the interest of justice to have this issue resolved on the best evidence available.

[33] In *C.(H.R.). v. H. (S.M.)*, 2003 NSFC 18, Judge Levy ordered DNA testing to determine whether a possible father was the biological father of an eight-year-old child where the possible father had accumulated child support arrears. The father had earlier declined the mother's offer for a DNA paternity test but now wanted to determine paternity despite acknowledging that it would hurt the child if he was not the father. In doing so, Judge Levy stated:

> **60** It is hard for me as a Family Court judge not to be concerned about the issue of the best interests of the child. Call it Pavlovian at this point. I appreciate that in deciding whether to order blood tests there is disagreement as to whether this involves a consideration of the best interests of the child…It may or may not be a relevant consideration in some instances, but remain material if and to the extent the request for DNA testing becomes in part a matter of judicial discretion.
>
> **61** One can appreciate the potential impact on the child were this request handled clumsily, throwing all her certainties into doubt and turning her world upside down. If, however the testing was done sensitively without the child being told the reasons she is young enough to emerge unscathed. The most compelling factor, and for me the decisive factor, is the need for the child to know for medical reasons…in some medical circumstances having correct information about one's genetic heritage may literally be a matter of life and death, or, at the very least, highly relevant to the child's medical history and therefore knowledge of risk factors, prognoses and possible treatments. In my opinion the interest of the child in having access to this vital information trumps any interest the law might have or that society may have in upholding the sanctity of judicial orders.

[34] *P. (R.J.) v. W. (N.L.)*, 2011 BCSC 1649 (affirmed at 2013 BCCA 242), the parties were intimate while the respondent was separated from her husband. The respondent later reconciled with her husband and gave birth to a child three months later. The respondent and her husband opposed paternity testing being done on the basis that it would not be in the best interest of the child. In ordering that testing be done, Justice Truscott cited paragraph 72 of *H. (D.) v. W. (D.)*, 1992 Carswell Ont. 3891 (Ont. Gen. Div.), in which Justice Charron stated:

> Another factor is the best interest of the child. The respondent argues that, in a case such as this one, where two married persons both attest to the fact that the child of their marriage is their natural child, it would not be in the best interest of the child to allow a third party to contest this. Now that the law has abolished all distinctions between a legitimate and an illegitimate child, I do not believe that this proposition necessarily holds in every case. I would rather favour the proposition that it is in the best interest of the child that, where a real issue as to parentage is raised, the truth be ascertained on the best evidence possible…In any event, although the best interest of the child is an important factor, it is only one factor to be considered. In this respect, I agree with the analysis found in *McCartney v. Amell* (1982), 35 O.R. (2d) 651 (Ont. Prov. Ct.) where the court

> concludes at p. 658 that while the interest of the children is a significant and important factor, it is not the only factor and the general interests of justice must be paramount.

[35] In *Griggs v. Cummins*, 2014 ONSC 3956, the mother and her family strongly opposed the paternity testing application put forward by the possible father and wished for him to remain out of the three-year-old child's life. In ordering the testing Justice Howden stated in paragraphs 4 and 7:

> **4** The general principle from the case authorities under these provisions is best summed up in *F.R. v. A.K.A.*, [2010] O.J. No. 2873 (OCJ), citing Judge J.P. Nevins in *Fazekas v. Saranovich* (1991), 83 D.L.R. (4th) 717 (Ont. Prov. Div.):
>
> > ...I am of the opinion that the principle to be applied in exercising the discretion under section 10 should be that a request for leave to obtain blood (or DNA) tests should be granted unless:
> >
> > > it can be shown that the actual process of conducting the...tests might prejudicially affect the health of the child, or
> > >
> > > the actual request for leave to obtain the blood test is made in bad faith.
>
> **7** In sum, it is in the best interests of the child to have some certainty as to who her father is and it is also in society's interest to ascertain who are the primary persons responsible for this child's support. I find there to be no evidence of bad faith in bringing the application for paternity testing nor that testing would affect the child's health. In those circumstances, the applicant's motion for testing will be allowed but he will pay for the testing.

[36] Finally, in *T. (A.L.J.) v J. (K.J.)*, 2011 MBQB 91, the Court was faced with a request by the biological mother for paternity testing where, after several years of custody proceedings, she had treated the possible father as the child's biological father. The child was also living with the possible father pursuant to an order of the Court. In rejecting the mother's request for paternity testing, Justice MacPhail stated in paragraph 34:

> The mother's request for DNA testing on the basis of less than convincing evidence that anyone other than K.J.J. is the father of the child, if granted, would do nothing, in my view, but cause stress and potential heartache to the child and would definitely not be in his best interests. The order she seeks would only serve to satisfy her own curiosity, and put her own demons to rest, at the cost of potentially turning her little boy's world upside down.

ANALYSIS:

[37] In many of the above cases, the issue of paternity testing was raised in the context of determining a possible father's legal obligation to pay child support. For example, in *S. v. M.*, the father sought paternity testing to determine his legal obligation to continue to pay child maintenance after the mother successfully brought an application for child maintenance years earlier and it was determined he was a "possible father". The court appropriately focused on the father's right to invoke procedures authorized by the legislature to determine his ongoing legal obligation to pay child support. This is distinguishable from the present case where the Mother confirmed on the record that she is not seeking child support from the Applicant even if he's D's biological father.

[38] In my view, the reason why earlier cases from this province have dealt with paternity testing solely in the context of child support is because section 27 of the former *Maintenance and Custody Act* only allowed for paternity testing when child support was at issue. A child support obligation could be ordered on a "possible father" without actually determining paternity (s. 11 of the *Maintenance and Custody Act*). If the "possible father" wished to contest his financial obligation to pay child support, he could apply for a blood test to exclude himself from being the child's biological father thereby ending his obligation to pay child support. While potentially denying or terminating child support would obviously not benefit the child, as the Court of Appeal concluded on the facts of *S. v. M.*, the best interests of the child should give way to the right of the possible father to invoke a blood test to determine if he's the child's biological father. However, as a result of legislative amendments which came into effect last year, section 27 of the current *Parenting and Support Act* now allows for paternity testing in any proceeding regarding child support or parenting. The paramount consideration on parenting issues is the best interests of the child: s. 18(5).

[39] Notwithstanding that the context in which paternity testing was dealt with in prior cases such as *S. v. M.* is different than in the present case, I still believe many of the comments from those cases remain helpful. When I consider those comments, as well as the specific wording of the *Parenting and Support Act* and the *Vital Statistics Act*, I conclude the following principles arise when faced with a request to order paternity testing:

- Whether to order paternity testing is discretionary;

- It will generally be in the best interest of children that any genuine doubt as to their paternity be resolved using the best possible evidence;

- While the best interests of the child is an important consideration, it is not necessarily the only factor which can be considered. The cases seem to suggest that the court can consider the overall interests of justice particularly when child support is at issue given that possible fathers have a statutory right to apply for paternity testing to contest their legal obligation to pay child support; and

- While paternity testing should generally be ordered, examples of situations where it should not be ordered are where doing so is unlikely to resolve the substantive claim, the applicant's case is weak, an application is made in bad faith or it can be shown that ordering testing could be prejudicial or harmful to the child [Emphasis added].

[41] Having carefully considered the law and the unique facts of this case, I exercise my discretion to decline ordering paternity testing now at this delicate stage in D's life. I do so for the following reasons:

1. The Applicant has provided me with little information about his own circumstances which makes it in D's best interests to order paternity testing now. While I accept he wishes to make up for lost time, my primary focus is on D's best interests, not the Applicant's wishes. The Applicant has provided me with little information about whether he has a stable lifestyle, poses any potential child protection concerns, or suffers from any conditions or circumstances which could negatively impact on him being a positive influence on D's life. I accept that this information goes to the issue of what parenting/contact time, if any, he should have with D if paternity testing establishes he is D's father. However, I believe it's also relevant to the issue of whether I should exercise my discretion to order paternity testing now when weighing the potential benefits and prejudicial effects which would result to D from doing so. Indeed, if I am being asked to potentially turn D's life upside down now by ordering paternity testing, it would have been helpful to have a better understanding of what positive things the Applicant potentially brings to D's life to justify making such an order.

2. While the Applicant has left me with many uncertainties in terms of what positive things he would potentially bring to D's life should paternity testing be ordered now, I have much clearer evidence about the potential prejudice or harm that could result to D by ordering paternity testing now. D has unfortunately had to endure more than his fair share of hardship and struggles over the last several years. Thankfully, with the support of the Mother and the Husband, he appears to finally be on the way to stabilizing his life. In my view, to potentially cause great upheaval in his life now at this delicate stage when, at the age of 13, he's finally showing signs of being in a period of recovery, is not in D's best interests. To the contrary, I am concerned about causing potential instability for him now by forcing paternity testing. I am also concerned about causing instability in D's relationship with the Mother and the Husband when he clearly continues to require their consistent support as he hopefully turns the page and enters into a more stable and positive chapter in his life.

   Indeed, despite having challenging circumstances as a young child and adolescent, D appears to have just got back up on his feet as he now enters his delicate teenage years. To potentially knock him off his feet and back onto the ground by ordering paternity testing now because of the Applicant's belief he's D's biological father largely based on Facebook pictures he saw in 2015, is not warranted. Rather, I conclude that D deserves to

be given the opportunity for a period of stability in his life even if it means potentially delaying finding out who his biological father is.

3. While I accept why, in light of the Mother's clear initial denial that D was not his child, the Applicant waited over 11 years to advance any application for paternity testing, I am somewhat concerned that, when he came to believe D was his son in late 2015, it was his mother, not him, who largely took the initial steps to find contact information for the Mother, write letters to the Mother's mother, and speak to the Mother and the Husband.

   When asked about why he did not make those efforts himself, the Applicant partly justified this on the basis that his mother was retired while he worked. He also testified that he did not specifically know how his mother tracked down the Mother's contact information but understood that his mother got someone from Ontario to help her do this. He further testified that while he and his mother discussed the content of the letters his mother sent out, he did not review those letters before they were sent out.

   With respect, if the Applicant was too busy to take those steps himself after 11 years, it raises a question in my mind as to whether he's committed to do what is required to be a part of D's life should it turn out he's D's father. Furthermore, while I appreciate that his mother wishes to be a grandmother, this is his application, not hers. Thus, while I have no doubt that the Applicant wants to know if he's D's biological father, his curiosity alone cannot justify putting D through the paternity testing process now given the potential turmoil and disruption it could cause to D's life.

4. While best interests of children trumps parental rights or preferences, I believe I should give at least some deference to the evidence and wishes of the Mother and the Husband. They know him far better than I ever will and are the only parents D has ever known. In her neuropsychological assessment report, the psychologists describe them as "very supportive parents". Thus, if the Mother tells me that forcing D to undergo paternity testing now would be harmful to D's mental health and their family unit, I believe I should give at least some weight to her evidence. Thus, I am not prepared to potentially cause significant disruption in D's life now purely for the speculation that the Applicant may be D's father especially particularly when child support is not an issue in this proceeding and both parties agreed it was open to me on the evidence to postpone any paternity testing. I also do not believe the overall interests of justice warrant ordering paternity testing now.

[42] Notwithstanding the fact that I decline to order paternity testing today, the Mother acknowledges that the day will eventually come when D should be advised that the Husband is not his biological father. I agree. With respect, however, that day may have to come sooner than she wishes. Furthermore, while she says she does not want to "lie" to D about his parentage should paternity testing be ordered, she clearly has made a conscious decision to keep the truth from him about his parentage all these years. I'm not saying this to be critical of the Mother. She clearly loves D very much. She and the Husband have been devoted parents to D, helping him through some exceedingly tough circumstances he has encountered in his young life. I am simply

emphasizing to the Mother that if she doesn't want to keep the "truth" from D, and feels that lying to him about paternity testing could undermine his trust in her, D may have a right to know the truth about his parentage especially when he's older. Furthermore, when he finds out that truth, he could question why she has kept it from him all these years.

[43] Thus, while I want to be sensitive to D's current circumstances, I don't want to permanently close the door to ordering paternity testing. Thus, while I have concluded that the timing currently isn't right to order paternity testing, I will leave it open to the Applicant to have the issue of paternity testing reviewed no earlier than 18 months from today's date without having to establish a material change of circumstances. I find doing so is appropriate for the following reasons:

1. D's recovery from the effects of his brain tumor and treatment for his other cognitive and emotional issues appears to still be in a genuine state of uncertainty although there are signs of improvement. As noted earlier, his treating psychologist indicated that it's important to continue to monitor D's neuropsychological profile as it can take some time for his functioning to stabilize after his surgery. She planned to see him again in approximately two years from the date of her last neuropsychological assessment (i.e. approximately May 2018). Thus, I believe the passage of 18 months will allow D and his family to focus on D's journey towards recovery without being impeded by further litigation between the Applicant and the Mother especially should it turn out the Applicant is D's biological father and the parties find themselves embroiled in further litigation over what parenting time the Applicant should have with D. The passage of 18 months may also give the parties more certainty as to how D progresses with his recovery as well as his emotional and cognitive ability to process any issues surrounding his parentage.

2. D is a child who has had serious medical issues. Thus, knowing his full genetic makeup could be particularly important and beneficial for him. This is particularly so given that the Applicant's family has also had some serious medical issues.

3. Both parties agreed that it was open to delay paternity testing given D's circumstances. I commend them for being sensitive to D's circumstances. In my view, revisiting the issue of paternity testing in 18 months does appropriately balance the parties' competing interests while keeping in mind D's overall best interests and current circumstances.

4. The passage of 18 months will give the Mother and the Husband the time to broach the subject of D's parentage on their own terms in a more sensitive manner to D without being forced to do so now by a court order. It may also give them time to seek professional assistance as to how to best broach the subject with D in the most appropriate way taking into consideration his cognitive and mental health issues.

5. In 18 months, D will be 15 years old. He presumably will be more mature and may be able to more easily process the fact that the Husband is not his biological father. He will also have a couple of years of being a teenager under his belt. It may be that, as a 15-

year-old, D's views and preferences on testing should be considered rather than now, as the Applicant suggests, secretly subjecting him to a test which could have life-changing consequences for him. Indeed, one should not lose sight that it is D's life, not the parties' lives, which stands to be most impacted by paternity testing. Thus, it may be that at age 15, he should have a say in what happens on this crucial issue about his life.

6. The passage of 18 months will give the Applicant an opportunity to demonstrate that he's truly committed to being part of D's life and to provide more information about the potential positives he could bring to D's life to justify paternity testing being ordered.

[44] I further direct that should the Applicant wish to have the issue of paternity testing reviewed, he can file an application no earlier than six months before the 18 month date to make it likely that he will get a hearing date in approximately 18 months. A request should be made to schedule the application before me given my familiarity with this matter.

[45] I also strongly encourage the Mother to discuss with D's treating professionals sooner, as opposed to later, the potential benefits that could accrue to D from knowing his full biological heritage. If D's professionals confirm that getting this information would be an overall benefit to D, then I would hope she would consider voluntarily agreeing to paternity testing without requiring the parties to resort to further stressful litigation. Indeed, should a future hearing be required, I would consider whether it would be appropriate to order that the Mother provide me with such information given that she has partly resisted the Applicant's request for paternity testing on medical grounds. Again, to the extent the Mother acknowledges that the day is coming when D should be advised of his parentage, she should be aware that simply because I exercised my discretion not to order that testing now largely because I felt the timing wasn't right, I could very well order it in the future given the concerns I have raised.

[46] Finally, given that the Mother has indicated she may be moving, I also order that she must keep the Applicant informed about her contact information including her civic address, phone number and any email addresses she uses for the next two years so that the Applicant will know how to serve her with any future documents relating to any review he brings in the future.

[47] I direct the Mother's counsel to prepare an appropriate Order which reflects my decision which should be consented to as to form by both counsel. If either party seeks costs, the parties should attempt to resolve the issue on their own recognizing that I have not accepted either party's primary position and that this case raised a genuine issue of D's paternity. In the event no agreement is reached, counsel should send me written submission on costs no later than three weeks from today failing which I will assume that no costs are being sought by either party.

JESUDASON, J.