SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation : *D.L. v. H.M.*, 2019 NSSC 244

Date: 2019-08-22
Docket: SFHMCA-083379
Registry: Halifax

Between:

D.L.

Applicant

v.

H.M.

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice R. Lester Jesudason
Heard:	December 10, 11 2018; January 23, April 15 and July 8, 2019
Written Decision:	August 22, 2019
Summary:	Father and mother sought to vary parenting arrangements under a 2014 Order in relation to their seven-year-old daughter. Father also sought to vary his child support obligation and have his arrears forgiven. Father's volatile actions and behaviour made it in the daughter's best interests that his parenting time currently be supervised. However, should he establish positive and consistent parenting time with the child, he could request a review of parenting arrangements no earlier than six months from today's date. The Father's variation application on child support was dismissed. The Father has shown that he is able to work and financially support the daughter. His refusal to pay child support on the basis he was not having parenting time with the daughter was unjustified and does not constitute a material change of circumstances.

Key Words: Family Law; Best Interests; Supervised Parenting Time; Material Change of Circumstances.

Legislation: *Parenting and Support Act,* R.S.N.S., 1998, c. 160.

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The Father's variation application on child support was dismissed. The Father has shown that he is able to work and financially support the daughter. His refusal to pay child support on the basis he was not having parenting time with the daughter was unjustified and does not constitute a material change of circumstances.

Counsel: D.L., self-represented
Philip Whitehead for H.M.

By the Court:

1.0 Overview

[1] The child at the heart of this proceeding is seven-year-old, E. Her parents are D.L. (the "Father") and H.M. (the "Mother").

[2] The Father hasn't had any parenting time with E. since November 2017. Before then, he only had sporadic time with her from 2014 to 2016. He also has paid little to no child support since 2014 despite a court order requiring him to pay monthly child support of $579.39 based on an annual income of $68,457. He now asks that:

- I give him final decision-making authority for E.;
- I place E. in his primary care; and
- I vary his child support obligation going back to 2015 and forgive his existing child support arrears.

[3] The Mother strenuously opposes the Father's requests. While she says she wants E. to have a good relationship with the Father, she fears for her and E.'s safety on the basis that the Father has ongoing issues of anger and aggression for which he lacks insight. She therefore requests that any parenting time he have be supervised and that she be given sole decision-making authority. She also requests that his child support variation be dismissed.

[4] I conducted a variation hearing which concluded on July 8, 2019. I have determined that:

- the existing parenting arrangements should be varied. The Father's volatile behaviour and actions make it in E.'s best interests that the Mother be given sole decision-making authority and that the Father's parenting time be supervised.
- the Father's request to vary child support and forgive his arrears is dismissed.

[5] However, I will also give the Father a path to follow which would allow the parenting arrangements to be reviewed in the future should he establish himself as a consistent and positive presence in E.'s life. For E.'s benefit, I encourage the Father to take this path even though he may disagree with my decision.

[6] My reasons follow.

2.0 Issues

1. Should the parenting arrangements under an existing order issued on October 29, 2014, be varied?

2. If so, what parenting arrangement is currently in E.'s best interests?

3. Should the Father's child support obligation under an October 29, 2014, order be varied from 2015 forward?

4. If so, how should it be varied?

5. Should the Father's arrears of child support be reduced or forgiven?

3.0 Family and Litigation History

[7] To provide the context for these issues, I will begin by outlining the relevant family and litigation history.

a) Family History

[8] The parties knew each other as friends for several years beginning in 2002. They were in an on again/off again relationship for about two years which ended in late 2011/early 2012. E. was only a few months old when they separated.

[9] The parties were living in British Columbia when E. was born. The Mother subsequently returned to Nova Scotia while the Father remained in British Columbia.

[10] The Father became involved in a new relationship with Ms. V. They started living together around August 2012 and then had their own child, A., born in October 2013.

[11] In June 2014, the parties had a contested hearing in Halifax over parenting arrangements and child support for E. The Mother was living in Halifax while the Father was living in Alberta. Both parents sought primary care. Associate Chief Justice O'Neil was the presiding judge.

[12] In a written decision released on June 13, 2019, (2014 NSSC 233), Associate Chief Justice O'Neil ordered, amongst other things:

- The Mother and the Father would have joint custody of E. They would consult on all major decisions affecting her health, education and recreational needs. In the event of a disagreement, they would follow the advice of any relevant

professional. Should that opportunity not exist, the Mother would have final decision making authority.

- E. was to live in the Mother's primary care.

- The parties would target holiday and vacation periods for the Father and his family to spend time with E which may be in the Maritimes or Alberta as arranged between them. The Father was also to have the opportunity to spend block parenting time of up to seven days per month, inclusive of travel time, with E. This time could be enjoyed in whole or in part by the Father's extended family in the Maritimes even if the Father wasn't present. The Father was to give the Mother one week's notice of his intention to exercise this opportunity.

- The Father was to pay monthly child support of $579.39 beginning on July 15, 2014, based on an income of $68,457.

[13] Ms. V. testified at the hearing in support of the Father's request for primary care of E. ACJ O'Neil was clearly impressed by her. He stated:

> …To [Ms. V's] credit, she is prepared to treat her step-daughter as her own and to make sacrifices reflecting that priority (Decision, Para. 20).
>
> The Court was most impressed with [Ms. V]. She is unquestionably highly intelligent, articulate, fair minded and child centered. She impressed the Court as the most competent of the three young parents (Decision, Para. 26).

[14] ACJ O'Neil subsequently rendered a written decision on costs on September 25, 2014 (2014 NSSC 355). Based on the Mother being the more successful party, he ordered that the Father pay the Mother costs in the amount of $2500 beginning on November 1, 2014, at $50 per month until the amount was paid in full.

[15] ACJ O'Neil's two written decisions were incorporated into an order issued on October 29, 2014. This is the order which the Father now seeks to vary.

[16] The Father and Ms. V. subsequently moved with A. from Alberta to British Columbia. Their relationship deteriorated. They initially separated in April 2015 and, after a period of attempted reconciliation, separated for good in December 2015.

[17] Litigation ensued between the Father and Ms. V. in British Columbia over parenting and child support arrangements involving A. Various orders were granted. A final hearing was held on May 31, 2017. The Father didn't attend. Justice Burke rendered a decision that day (*J.V.V.* v. *D.H.L.*, 2017 BCSC 1278: Exhibit 17, Exhibit "C").

[18] Justice Burke was satisfied that the Father had notice of the trial and its significance because:

- the Father had previously attended the trial management conference;
- his former counsel reminded the Father of the trial in the week before it started; and
- an affidavit of service of the notice of trial was filed as an exhibit. [para. 8-9 of Decision].

[19] Justice Burke ordered, amongst other things, the following in relation to parenting:

1. Ms. V. was the sole guardian of A.;
2. The Father was not a guardian of A.;
3. Ms. V. would have sole parental responsibilities and would be entitled to exercise them without the Father's consent;
4. Ms. V. would have primary care of A. The Father shall have no contact with A. until he provided:
    - Proof of having taken and completed an anger management course;
    - Proof of having completed the Parenting After Separation course;
    - Proof of having attended classes or counselling catered to teaching him how to co-parent or parent and improve his behaviour in the presence of A. He shall provide a letter or report indicating that he has attended counselling for at least three months; and
    - A possible psychiatric evaluation if the Father's counsellor was of the view it would be of assistance or a letter from the counsellor indicating the Father didn't need a psychiatric evaluation.
5. Subject to fulfilling the above conditions, the Father could have supervised contact with A. through a professional agency once a week for a duration of three to four hours. After six months of consistent supervised contact, the parenting arrangement may be reviewed and adjusted in the best interests of A. The Father shall also pay for any expenses related to supervised contact. [Decision, Paras. 23-24].

[20] Justice Burke also granted an order which restrained the Father from having any direct or indirect contact with Ms. V. except for written communication confirming pick-ups and drop-offs for A. The order was for two years and could be renewed. She also granted a protection order which prevented the Father from attending the Mother's workplace (Decision, Para. 42 and Exhibit 17, Exhibit "E").

[21] In coming to her conclusions, Justice Burke outlined the following concerns in relation to the Father:

- The child protection authority in British Columbia got involved with the Father and Ms. V. "This situation arose in part due to [the Father's] conduct in abducting A., after the separation on April 15, 2015, and the continuation of his anger issues. This has raised concern about the safety of the child. In addition, [the Father] has subjected Ms. V. to verbal and physical abuse, some of which has occurred in the presence of the child." [Decision, Paras. 6 and 7].

- "I accept the evidence of Ms. V. concerning the escalating family violence issues. Amongst others, there are especially troubling incidents including January 7, 2016 where [the Father] jumped on the hood of the car of Ms. V.'s mother who was transporting A. from daycare to prevent her from doing so. The police intervened in this situation. There was also a troubling incident in August 2016 when [the Father] arrived without supervision for the exchange of A. He simply took A. from Ms. V. and pushed her to the ground." [Decision, Para. 15].

- "At the end of that difficult day when [the Father] finally returned A. to the Ministry office, Ms. Lacharite, a team leader in the Ministry, described A. as sobbing in a corner for 30 minutes before she recovered. The police were also involved in the recovery situation. As noted, [the Father] had earlier abducted the child from Delta, British Columbia, when Ms. V. initially separated from him in April 2015. [The Father] and A. were found later that day in Merritt, British Columbia. [The Father] was given a suspended sentence for these actions." [Para. 16].

- "[The Father's] behaviour shows poor or no insight into parental responsibilities such that the child's interests are seriously adversely affected. While there is evidence the child is attached to her father, I accept the evidence of [the Father's] violent or abusive behaviour against Ms. V., Ms. V's mother, and Ministry staff. A. was present when [the Father] pushed her mother to the ground. She was in the car with her grandmother when he launched himself onto the hood of the car to stop it from proceeding, and has been present when [the Father] is verbally abusive to Ministry staff."

- "Ms. Lacharite also relayed instances in her office where she heard [the Father] say to A., words to the effect, that the Ministry staff and/or police were "child abusers" or "abductors" and "not to trust them."

- These actions in the presence of such a young child are particularly troubling. They demonstrate an individual who does not consider the interests of his young daughter, the effect of which on A. has been aptly described by Ms. Lacharite.

[22] On child support, Justice Burke noted that the Father's income was imputed at $48,000 under a prior order of November 23, 2016. She determined that he was several thousand dollars in arrears and ordered him to pay same. She set ongoing table amount of child support at $439 per month and also ordered the Father to contribute $100 per month to section 7 expenses (Decision, Paras. 28-33).

[23] Finally, Justice Burke ordered that the Father pay spousal support to Ms. V. in the amount of $659 per month for the period from May 1 to September 1, 2015, and January 1, 2016, to May 1, 2016 (Decision, Para.37-39).

[24] The Father subsequently applied to stay Justice Burke's order asserting that he didn't attend the trial because he had a university exam that day. The Father suggested that Justice Burke had made an "extremely harsh ruling against a good person" and that he has been abused by Ms. V. (*J.V.V. v. D.H.L.*, [2018] B.C.J. No. 295, Exhibit 18, Exhibit "B", Para. 5).

[25] Justice Burke concluded there was no reason to set aside the order and that she was *functus* given that a final order had been rendered. In dismissing the Father's request that she stay or set aside her order, Justice Burke stated:

> "…The case involved allegations of verbal and physical abuse by [the Father], and included [the Father's] conduct of abducting his 18-month old child in April 2015. The Ministry of Family and Children Services has been involved in three separate court proceedings in both the Provincial and Supreme Court as a result of the situation and disputes between the parties. [The Father] participated in many of these court proceedings." (Decision, Para. 3).
>
> "While the respondent in this case has claimed he was unable to attend the trial date due to his attendance at school and a pending exam, the absence of [the Father] was canvassed at the commencement of trial. [The Father's] previous lawyer clearly indicated she had advised [the Father] of the court date not only through the trial management conference but immediately prior to the court date. There was no

reference to summer school or any reason for the respondent's absence." (Decision, Para. 18).

"Even if [the Father] was unable to attend the May 29, 2017 court date due to a pending exam, there is nothing in the rationale [the Father] provided that would indicate that he did not understand the nature and importance of the process." (Decision, para. 19).

"[The Father] in this case made a choice as to whether to attend this important proceeding and chose not to do so. He references an exam on Wednesday, June 1, 2017. The trial, however, commenced Monday morning, on May 29, 2017. [The Father] could have made a brief attendance at that time to advise of the situation or sought an adjournment at that time." (Decision, Para. 20; Emphasis added).

b) Current Proceeding

i) Pre-hearing steps

[26] The current proceeding involves a variation application filed by the Father on November 10, 2017, seeking to vary the existing parenting arrangements as of December 1, 2017. He also asks that his child support obligations be reduced going back to 2015 and that any arrears be forgiven.

[27] The Mother filed a Response on November 14, 2017, and an Amended Response on December 8, 2017. She sought to vary the parenting arrangements and also initially sought to vary child support going back to 2015. She has since advised that she is content to leave the existing child support obligations under the October 29, 2014, order unchanged.

[28] The parties agree that the parenting and child support arrangements under the October 29, 2014, order haven't been followed. The Father has only had sporadic parenting time since then and only saw E. once in November 2017. Since then, he has had no parenting time. He also hasn't been paying child support and advises that he refuses to do so unless the parenting arrangements are changed.

[29] A pre-hearing conference was set before me on January 31, 2018. The Mother and her counsel, Mr. Whitehead appeared. The Father didn't. Mr. Whitehead provided an email exchange he had with the Father the previous day which included the following:

The Father

"I have decided to drop my case against your client as I no longer am interested in working it out with her since I believe she and her family cannot change. I'm

> moving on. You are welcome to come after me but I suggest against it as it would be inefficient costwise (as she found out the first time). I will leave it to her to become a bigger person and work it out with me in a manner I deem appropriate as [E's] father…Once she can grow up and take [E.'s] best interests to heart instead of her own I will speak to her about visits. Otherwise, [E.] is welcome when she becomes old enough to find me and we can have our relationship then :)
>
> I will let the court know as soon as I can regarding the withdrawal. I'm not sure the process but I will not be attending tomorrow due to work and intent to withdraw."
>
> Mr. Whitehead
>
> "You are welcome to agree to what [the Mother] is seeking, or to contest it as you see fit. I strongly advise you to seek legal counsel before you make any decisions and also advise you to attend tomorrow's appearance." (Emphasis added).

[30] Mr. Whitehead's encouragement that the Father seek legal advice should be viewed in the context that the Father initially did have legal counsel, Noelle Yhard, representing him in this proceeding. She assisted him with the preparation of his detailed affidavit filed on December 12, 2017: Exhibit 3.

[31] On December 22, 2017, Ms. Yhard filed a motion to be removed as his solicitor, on the basis that there had been "an irreconcilable breakdown of the solicitor-client relationship". While I granted the order removing her as his counsel on January 11, 2018, I directed that she send a letter to the Father, to be filed with the court, reminding him of the upcoming court appearance on January 31, 2018, and outlining what he was supposed to file in advance of same. Ms. Yhard did this later that day.

[32] When the Father didn't file anything in advance for the January 31, 2018, conference, and failed to show up for same, Mr. Whitehead indicated that the Mother still sought to proceed with her Response to Variation Application. I therefore scheduled a hearing for April 16, 2018, to deal with parenting arrangements and child support.

[33] On April 16, 2018, the Father appeared with a new lawyer, Tanya Jones. She indicated that the Father would be filing his outstanding financial disclosure relating to the issue of child support and suggested the parties come back to deal with that issue. The parties also agreed to a new parenting arrangement which was reduced into an "interim consent order". It provided, amongst other things:

- The Mother would have sole custody and decision-making regarding E.;
- The Father was able to obtain information from third parties regarding E.;
- The Father would have parenting time on a supervised basis through the Supervised Access and Exchange Program at Veith House. He would be entitled to visits for up to two hours once a week for up to 12 visits;
- The Father would be able to Skype with E. once per week with the Mother present;
- Neither parent would speak negatively of the other parent to E. or in her presence;
- The Father would provide a letter to the Mother within one month confirming completion of the anger management program he had attended in the past;
- The Father would provide the Mother with information regarding his enrollment in a current anger management program within one month; and
- The parties would return for a further conference on July 5, 2018, to discuss the issue of ongoing parenting and child support arrangements.

[34] Ms. Jones subsequently prepared the order which was signed by her and Mr. Whitehead as being "consented as to form and content" on behalf of the parties. The order was issued on April 18, 2018.

[35] On May 22, 2018, the Father filed a Notice of Intention to Act on One's Own.

[36] When the parties appeared for the July 5, 2018, conference, the Father appeared with his father, G.L., who is a retired lawyer who I understand had practised law for over thirty years in Prince Edward Island.

[37] The Father hadn't filed the documents he was required to file for the appearance and advised that he didn't intend to retain a new lawyer. He also hadn't gone through with the ordered supervised access through Veith House. He stated:

- He had concerns about having supervised parenting time at Veith House so was unwilling to participate in same.
- He didn't agree with the terms of the interim consent order of April 18, 2018, consented to by his former counsel.

- He would continue to refuse to pay child support based on the Mother denying him parenting time.

[38] Further discussions ensued. The Father eventually stormed out of the courtroom before the conference was over. G.L. remained and helpfully offered to advise the Father about what happened after he left. G.L. also said that he was willing to supervise the Father's parenting time and would attempt to have the Father file his outstanding financial disclosure within a month. He advised that the Father was now living with him in Prince Edward Island and provided the court with the mailing address and telephone number where the Father could be reached.

[39] I adjourned the conference until August 10, 2018. I did so on the understanding that I would be scheduling a hearing on the issues of parenting and child support on that date. Since G.L. advised that the Father was now living with him in Prince Edward Island, I indicated to G.L. that the Father could participate by phone if that was more convenient for him but he must file what was required in advance of that appearance. I gave filing deadlines and also directed that Mr. Whitehead send a letter to the Father advising what happened after he left court and confirming the August 10, 2018, date as well as my filing directions.

[40] Both parties appeared on August 10, 2018. The Father was accompanied again by his father, G. L. The Father advised that he would be calling up to nine witnesses including himself for the hearing. Mr. Whitehead indicated that the Mother would only be calling herself and possibly one of her parents. Based on the time estimates given by the parties, I scheduled a hearing for December 10 and 11, 2018, and gave the parties filing directions for same.

[41] I confirmed the issues, the hearing dates, and my filing directions in a Conference Memorandum dated August 13, 2018, which was sent to the parties. Given that the Father was a self-represented litigant, I provided the names of some cases in my Conference Memorandum which dealt with the requirement for supervised parenting time which I suggested the parties may wish to consider. I also provided a link to the CanLII website where those cases could be obtained for free.

ii) Hearing

[42] The hearing started on December 10 and 11, 2018. Several witnesses were scheduled to testify. The hearing wasn't completed so I brought the parties back on January 23, 2019. All the evidence was completed that day except for the Mother's own evidence. The Father hadn't completed his cross-examination of her and said that he would require another approximately two more hours to complete it. Since it was the end of the day, the parties agreed to come back the next day before I started my other matters

to give me the chance to review my docket and try to find a date when I could bring them back to complete the hearing.

[43] On January 24, 2019, we discussed how much more time would be required to complete the evidence and how we would potentially deal with closing argument. Based on the parties' indications, I booked April 15, 2019, from 2:00 p.m. to 4:30 p.m. to complete the hearing. I booked that date directly from the courtroom and the Father signed the Adjournment Slip confirming the date and time.

[44] Mr. Whitehead and the Mother appeared on April 15th ready to complete the hearing. The Father didn't show up. At my request, the court reporter called G.L.'s number (the number which the Father previously advised he could be reached at) and I spoke to G.L. He stated that the Father was at work and thought the hearing was scheduled for another day. He also advised that he didn't have another number where the Father could be reached.

[45] I let G.L. remain on the phone so he could hear what was discussed. Mr. Whitehead indicated that he and the Mother had come prepared to complete the hearing and would be seeking costs if the hearing was adjourned. I briefly adjourned to review my docket. I then came back and advised Mr. Whitehead, the Mother and G.L. that I would give the Father the chance to complete his cross-examination of the Mother and booked a half-day on July 8th to complete the hearing.

[46] G. L. helpfully said he would advise the Father of the new date. I directed that the Father must advise in a week if there was any difficulty with this date although I made it clear that, absent very compelling reasons, I wouldn't be inclined to adjourn the hearing again. I also advised Mr. Whitehead that he could make a written submission on costs due to the adjournment and directed that the Father would have a week to reply to Mr. Whitehead's costs submission.

[47] Mr. Whitehead faxed a submission on costs later that day. He advised that the Mother was seeking $500 in costs payable to her forthwith because of the adjournment.

[48] Nothing was received from the Father explaining why he missed the April 15th court appearance, or responding to the Mother's request for costs. Thus, on June 7, 2019, my judicial assistant sent an email to the Father and Mr. Whitehead which was copied to G.L. It stated:

> Good Morning;
>
> As you know, this matter was rescheduled to July 8th from 2:00 p.m. until 4:30 p.m. after [the Father] didn't appear on April 15th. On that day, Justice Jesudason

> attempted to reach [the Father] at his father's phone number at which time [G.L.] advised that [the Father] was working. I believe [the Father] was going to confirm to Mr. Whitehead by the following Wednesday that he was aware of the new date and would be present. Justice Jesudason doesn't know if that has been done yet and would like confirmation by response to this email that [the Father] is aware of the new date and will be present. Needless to say, he doesn't want to see this matter delayed again.
>
> Justice Jesudason subsequently received Mr. Whitehead's brief submission on costs faxed to the court late on April 15th. The submission appears to wrongly be dated March 7, 2018. [The Father] was given the opportunity to file a response on the submission of costs of no more than 5 pages. It does not appear that any response has been filed. Again, [the Father] should confirm that he has received Mr. Whitehead's submission on costs and hasn't filed any response. Assuming that [the Father] hasn't filed any response on Mr. Whitehead's submission on costs, Justice Jesudason intends to render his decision on costs on account of the adjournment orally on July 8th.
>
> Justice Jesudason gives permission for [the Father] to respond to this email by emailing me and copying Mr. Whitehead. He should send his response by no later than the close of business on June 13th.
>
> Thank you for your cooperation.

[49] G.L. responded to my judicial assistant's email as follows: "Thanks for the email. All documents and emails have been received. It is [the Father's] intention to appear on the 8th."

[50] The Father sent two emails in response to my judicial assistant's email of June 7th. The first email was sent on June 7th and stated:

> "The court owes me and [E.] 3 million dollars for this crazy process. Take any costs out of that. Other than that I will never pay a dime to [the Mother] for abducting a child against a court order."

[51] The second was sent on Sunday, June 9, 2019, and stated:

> "I did not agree to appear in April. I told the court in January that I would be finished with [the Mother] so that the court would not be delayed any longer and not need the April court date. The court gave a date 3 months down the road and I said that was unacceptable so you picked another date only a few days prior. I was confused about the date since there were many changes. I even contacted Mr. Whitehead because if I was going to wait 3 months I might as well take the full day

> and not the half day. Mr. Whitehead did not relay this to the court and therefore he is not entitled to make an argument for costs.
>
> Furthermore, I would like to remind the court that [E.] has been abducted on multiple occasions including under order by the court so it is unreasonable to hear costs when the child's life has been at stake for so long. I have repeatedly asked the court to help in this situation and you seem more concerned with money than helping [E.] - shame on you.
>
> Now seeking 3 million dollars from [the Mother], Mr. Whitehead and the court for their responsibility in the demise of my career and [E.]'s family. I would have made 2.5 million dollars and 500k for pain and suffering and dereliction of your own process. If [E.] could have a superpower it would be to have a family. It seems I am the hero fighting your corruption and abuses. If you are moral people you will right your wrong.
>
> If you fail to act then you are guilty of human rights abuses. You and the police have favored the woman to the point of abuse. I cannot even protect my daughter from being used as a drug mule. If you do not fix this and rule in my favour for [E.] then I will start a protest on the day after court. This #MeTooScoop will stop. Your abuse and destruction should stop."

[52] The parties appeared on July 8th. The Father again appeared with G.L. I read the Father's email of June 9th into the record and advised that I wasn't going to get into a debate about its contents. I pointed out to the Father that, while he claimed he wasn't aware of the April 15th, court date, it was booked from the courtroom when he was present and that he had signed the Adjournment Slip confirming the date (Exhibit 30). The Father replied by advising that he was not prepared to answer any questions.

[53] I rendered a brief oral decision on the Mother's request for $500 in costs on account of the April 15th adjournment. I awarded costs in her favour of $250 payable within 60 days.

[54] We then completed the evidence and the parties made oral argument. The Father largely read from a written document he had prepared. Where he was a self-represented litigant, I let him submit this to me as written argument in addition to his oral argument.

4.0 Parenting

Issue 1: Should the parenting arrangements as provided for in the existing order issued on October 29, 2014, be varied?

[55] The party seeking to vary the parenting arrangements under October 29, 2014, order must demonstrate that there has been a "change of circumstances" since the date of that order: s. 37(1) of the *Parenting and Support Act.*

[56] A material change is:

- a change such that, if known at the time of the prior order, would have resulted in different terms.

- significant and long-lasting and is a real change as opposed to one of choice.

- not based on what one party knew or reasonably foresaw, but rather on what the judge actually contemplated at the time of the prior order.

  [*Willick v. Willick*, [1994] 3 SCR 670 at para. 21; *L.G. v. G.B.*, [1995] 3 SCR 370 at para. 73; *L.M.P. v. L.S.*, [2011] 3 SCR 775 at para. 22; *Smith v. Helppi*, 2011 NSCA 65 at para. 21; *Dedes*, 2015 BCCA 194 at paragraph 25].

[57] Parenting orders are based on a child's best interests. A change means the existing order is no longer in the child's best interests and a new order must be crafted to recognize the child's current circumstances: *Gordon v. Goertz*, [1996] 2 S.C.R. 27.

[58] Here, both parties agree that there has been a material change of circumstances since the October 29, 2014, order which warrants me determining what new parenting arrangement is in E.'s best interests. I agree and note the following:

- The parties haven't been following the October 2014 order. The Father has only had very limited involvement with E. since that order and has had no parenting time with her since November 2017.

- At the time of the October 2014 order, the Father was in a stable relationship with Ms. V. They had a young child together, A. It was contemplated that Ms. V. would play a significant and active role in E.'s life as her step-mother. As noted earlier, ACJ O'Neil was clearly impressed with Ms. V. and saw her as a very positive presence in the Father's and E.'s life.

  By 2015, however, the Father's relationship with Ms. V ended. The Father was found to have engaged in verbal and physical abusive behaviour towards Ms. V. There is a court order which prevents him from having any contact with A.

- The parties agreed to an interim consent order issued on April 18, 2018, which varied the October 29, 2014, order. As noted earlier, that order provided,

amongst other things, that the Father was to only have supervised parenting time through Veith House and the Mother would have sole decision-making authority for E. The Father was to also provide the Mother with information regarding his enrollment in a current anger management program within one month. He subsequently refused to participate in supervised parenting time through Veith House and didn't enrol in a current anger management program.

5.0 Issue 2: What parenting arrangement is currently in E.'s best interests?

[59] Any parenting decision I make must be governed by section 18 of the *PSA.* Under subsection 18(5), the paramount consideration is E's best interests and I am required to consider all relevant circumstances, particularly those ten circumstances outlined in subsection 18(6).

[60] While I defer to the specific language of subsection 18(6), I summarize the relevant circumstances generally as follows:

- E's physical, emotional, social and education needs, including her need for stability and safety;
- Each parent's willingness to support E's relationship with the other parent;
- The history of E's care;
- The proposed plan for E's care and upbringing;
- E's cultural, linguistic, religious and spiritual upbringing and heritage;
- The nature, strength and stability of E's relationship with each parent;
- The nature, strength and stability of E's relationship with grandparents and other significant people in her life;
- The ability of each parent to communicate and cooperate on issues affecting E; and
- The impact of any family violence, abuse or intimidation regardless of whether E has been directly exposed to same.

[61] As well, subsection 18(8) of the *Act* directs me to ensure there's as much contact between E. and each parent as is in her best interests. That subsection does not mean that

maximum contact is the ultimate end goal. Rather the goal is as much contact with each parent as is in E.'s best interests: *Young v. Young*, [1993] 4 S.C.R. 3.

[62] In *Burgoyne v. Kenny,* 2009 NSCA 34, the Court of Appeal aptly pointed out that determining a child's best interests isn't simply a matter of scoring each parent on a generic list of factors (para. 25). Thus, while I have considered all of the relevant factors, I don't intend to do an exhaustive review or scoring of each parent in relation to every factor given that the overall big picture here is E.'s best interests which isn't determined by any single factor.

6.0 Agreements

[63] The parties agreed the following terms will form part of an order:

- Neither parent shall speak negatively to, or about, the other parent in the presence of E.;

- The parties will communicate in a civil, respectful, and child-focussed manner with each other about E.;

- Except in an emergency, the parties will communicate by email with each other;

- Neither parent will discuss adults matters with E.;

- The parties will make best efforts to ensure that third parties follow the above-noted communication guidelines;

- Each party shall be entitled to make inquiries and receive information from third party care providers for E. Such third-party care providers shall include, but not be limited to, E.'s school, health and religious professionals;

- Each party shall be entitled to receive information relating to E., such as school report cards, medical reports, information regarding her recreational activities, and the like;

- Each parent will make reasonable efforts to keep the other parent informed by email about major events or issues in E.'s life;

- Neither parent will consume or be impaired by illegal drugs while in a parenting role for E.; and

- Neither parent will allow any third party who is in a child caring role for E. to consume or be impaired by illegal drugs.

7.0 Parties' Positions on Parenting:

a) The Father's Position:

[64] The Father seeks the following in relation to parenting:

1. Final-decision making authority for E. although he would consult with the Mother on major decisions;

2. Primary care for E. with the Mother having liberal parenting time;

3. The Mother be required to pay a fine of $5000 to be used for counselling and medical treatment for E. to help re-establish her relationship with the Father. This fine would also allow him to obtain an apartment in Nova Scotia close to the Mother;

4. The Mother be required to post security for costs in the event he is not successful in being given primary care of E. and the Mother then denies him parenting time in the future; and

5. The court pay him a substantial amount of money due to what he describes as the court's "incompetence" back in 2014 in not providing specified parenting time for him. He feels the court now should correct its "mistake" by paying him this money which would allow him to get a home for E. and A., cover flight costs for them since they live in opposite sides of the country, and to pay for medical and counselling programs for him and his daughters to quickly "right the wrongs" that have been done to them.

   As noted in email responses on costs sent on June 9, 2019, he suggests that the court owes him and E. three million dollars "for this crazy process" and suggests that, due to "dereliction" of the process, he has lost 2.5 million dollars in income and deserves $500,000 for pain and suffering.

[65] The Father also emphatically stated that he is not willing to have supervised parenting time and that, if he didn't get what he wanted on parenting, he didn't want anything.

b) The Mother's Position:

[66] The Mother requests the following:

1. Sole decision-making authority regarding E. with no consultation with the Father. She agrees to keep the Father reasonably informed about major issues involving E. Given the level of hostility shown by the Father towards her, she suggests that she send information to the Father's sister, C.L., who she is friends with on FaceBook.

2. The Father only have supervised parenting time with E. with the supervisor being the Father's sister or a mutually acceptable third party such as Veith House;

3. After the Father had engaged in consistent and positive parenting time with E., the requirement for supervision could be reviewed; and

4. The Father should complete counselling with a focus on positive parenting and anger management.

8.0 Law on Supervision:

[67] Placing a restriction that the Father's time be supervised is not something which should be done lightly. Again, the paramount consideration is E.'s best interests. The burden rests with the Mother to establish that it's in E.'s best interests that the Father's parenting time be supervised. Supervision should generally not be viewed as a long-term measure.

[68] In *D.S. v. R.T.S.*, 2017 NSSC 155, Justice Forgeron summarized the legal principles which relate to a request for supervised parenting time as follows:

> "[29] …I also have considered the following legal principles which have emerged from case law, including the decisions of **Young v. Young**, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 (S.C.C.); **Abdo v. Abdo** (1993), 1993 CanLII 3124 (NS CA), 126 N.S.R. (2d) 1 (N.S. C.A.); **Bellefontaine v. Slawter**, 2012 NSCA 48 (CanLII), 2012 NSCA 48 (N.S. C.A.); and **Doncaster v. Field**, 2014 NSCA 39 (CanLII), 2014 NSCA 39 (N.S.C.A.):
>
> • The burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown.
>
> • Proof of harm is but one factor to consider in the best interests test.

• The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the child's best interests.

• The best interests test is a positive and flexible legal test which encompasses a wide variety of factors, including the desirability of maximizing contact between the child and each parent, provided such contact is in the child's best interests.

• The court must be slow to extinguish or restrict access. Examples where courts have extinguished access include cases where access would place the child at risk of physical or emotional harm, or where access was found to be contrary to the child's best interests.

• An order for supervised access is seldom seen as an indefinite or long term solution.

• Access is the right of the child; it is not the right of a parent.

• There are no cookie-cutter solutions. Courts must examine the unique needs of each child and craft an order that protects and enhances that child's best interests.

[30] In **Lewis v. Lewis**, 2005 NSSC 256 (CanLII), as approved in **Bellefontaine v. Slawter**, supra, this court reviewed circumstances which may lead to the imposition of supervised access at para 24, which include the following:

• Where the child requires protection from physical, sexual or emotional abuse.

• Where the child is being introduced or reintroduced into the life of a parent after a significant absence.

• Where there are substance abuse issues.

• Where there are clinical issues involving the access parent.

• Supervised access is not appropriate if its sole purpose is to provide comfort to the custodial parent."

9.0 Decision on Supervision

[69] I find that the Mother has proven that it is in E.'s best interests that the Father's parenting time with E be supervised. I come to this conclusion for the following reasons:

a) The Father's lack of consistent contact with E. over the past several years requires a period of supervised reintroduction

[70] Since the October 29, 2014, order, the Father has had only sporadic contact with E and no contact since November 2017. This lengthy absence requires him to be reintroduced into E's life in an appropriate way. Supervised parenting time will help this happen.

b) The Father's troubling actions and behaviour warrant supervision

[71] The Father's troubling actions and behaviours require his parenting time with E. to be supervised.

[72] As noted earlier, Justice Burke outlined concerning actions involving the Father which led to her decision to deny him any parenting time with A. on the basis that "these actions in the presence of such a young child are particularly troubling" and "demonstrate an individual who does not consider the interests of his young daughter" (Decision, Para. 21).

[73] The Father's own evidence about these incidents is concerning. He acknowledged that he was criminally convicted of unlawfully being in Ms. V.'s dwelling arising from the April 2015 incident when he took A. and drove her 200-300 km away resulting in an amber alert being issued and the police getting involved. He admits that he was "very emotional" and "upset" that day (Exhibit 3, Para. 61).

[74] While the Father asserts he has never assaulted Ms. V. he acknowledges that during an access transition involving A, he pushed Ms. V. to the ground (Exhibit 3, Para. 74).

[75] When questioned about this incident, the Father justified his actions by stating that Ms. V. was aggressive with him that day so that when he pushed her to the ground, it was not abuse.

[76] The Father also acknowledged there were concerns raised about domestic violence between him and Ms. V. He states:

> "I acknowledge that concerns regarding domestic violence were raised. [Ms. V.] accused me of pushing her to the ground and kicking her.

> This occurred after the police had been called to our apartment after [Ms. V.] came home intoxicated. At that time, our relationship was deteriorating. I locked [Ms. V.] out of the apartment because I did not want her intoxicated in our apartment. As a result, [Ms. V.] brought the police to our apartment.
>
> The police drove [Ms. V.] to a motel. Following this, [Ms. V.] came back to the apartment and continued to get into our apartment. As a result, I began pushing her towards the door to get her out of our apartment, as per the police recommendation." (Exhibit 3, Paras. 70-72).

[77] In addition to these physical incidents, the Father's actions and behaviour demonstrate ongoing emotional volatility. He consistently lashes out to anyone whom he subjectively perceives are "against him". His fuse is short and easily lit. The slightest spark can quickly ignite into an all-encompassing flame. The following are examples:

The Mother and Ms. V

[78] The Mother and Ms. V have been the primary or almost exclusive caregivers of the Father's children since they were infants. Clearly, the Father has no respect for either mother. He describes both as being "abusive", "aggressive" and "predatory women".

[79] In an email dated February 7, 2018, he sent to the Mother, Ms. V., Mr. Whitehead, G.L. and E.'s maternal grandmother, B.W., he says:

> "Too bad for [E.] and [A.] they was born into such a white trash families. You are giving them abandonment issues and they will grow up to know it was you. I'm keeping the evidence. Start working with me now or I'll walk away for now and let you fuck everything up." [Exhibit 15, Exhibit "A", Page 3]

The Mother

[80] The Father describes the Mother as follows:

> "an unfit mother" and "an evil lying whore" (Exhibit 26, Page 5).
>
> A "little rat whore" (Exhibit 26, Page 8).
>
> A "child abducting tinder whore" (Exhibit 26, Page 11).
>
> Coming from a "white trash family" and living in "the ghetto" (Oral Evidence).
>
> A "piece of shit mother" and "shitty role model" to E (Oral Evidence).

A “terrorist” with whom he refuses to negotiate child support (Oral Evidence).

Ms. V.

[81] As noted above, the Father describes Ms. V and her family as “white trash”. He also said that Ms. V. and her family are “Nazi trash” and gave his rationale for why he believes this. As with the Mother, he also accused Ms. V. of “abducting” A.

[82] When asked if he considered his comments about the mothers of his children as being verbally abusive, the Father’s response was that his language was justified after six years of child abduction and abuse and that the more he is “pushed into it”, the more he will say the “truth”.

The Mother’s family

[83] E.’s maternal grandmother, B.M., testified. As noted earlier, the Father characterizes the Mother’s family as being “white trash” and copied B.M., on his email of February 8, 2018, where he used that description of the family [Exhibit 15, Exhibit “A”, Page 3].

[84] B.M. has worked at the IWK Children’s Hospital for 33 years. She has played an active role in E.’s life and helps look after her 2-3 days per week. E. sleeps over at her maternal grandparents’ home when the Mother works late.

[85] B.M. advised she was diagnosed with cancer. On September 26, 2017, she emailed the Father requesting that he not copy her on emails directed to the Mother. Specifically, she stated:

> “Please, again, I ask you, do not include me in any of this. As I have mentioned to you before, or at least I thought I did, I am battling cancer. This is a bit of a difficult time for me, and reading emails like this is not good for my emotional, physical or spiritual health. I love [E.] with all my heart and that is the most important thing to me…Thank you for your understanding.” [Exhibit 15, Exhibit “A”, Page 1].

[86] B.M. also emailed the Father on February 2, 2018, and stated:

> “I do not know what it takes. But I will ask you again. Please, again, do not include me in any of your emails. As I have disclosed months ago, I am battling cancer and am in a fragile state. One of the things I am doing is trying to minimize the added details and stresses in my life. Please again, and [G.L.], I implore you, even though

> you told me about a year ago, that [the Father] takes no counsel from you, could you ask him to do this on behalf of me?" [Exhibit 18, Exhibit "A", Page 3]

[87] Despite this plea, the Father continued to send and copy B.M. on emails.

[88] On February 4, 2018, she sent the Father an email which stated:

> "You want to take on an old lady, battling cancer, please do. I guess your true colours are showing. I will be here at my address…this is my Home. I am not leaving because of you coming over. I just want to feel safe in my home. The last time you were here, I witnessed some kind of melt down by you. I am glad that [E.] was not here to witness how any of it went down." [Exhibit 15, Exhibit "A", Page 2]

[89] The Father responded:

> "…Your true colours are showing while lying about mine. You want everyone to pity you. I'm not taking you on at all. I'm copying you on an email so [the Mother] can't lie or not tell you and hopefully you would talk some sense into her. I feel she has lied in the past and I think you should be informed.
>
> You are making this all about you while hurting [E.]. This is what I've been saying [the Mother] does and I want it to stop. She assaults me and then says I did it to her. I guess I now know where she learned that…
>
> I was hoping to have a good relationship with you and [E.]…but based on this I'll be taking you back to court again and again until [E.] can Google and ride the bus…[Exhibit 15, Exhibit "A", Page 2].

Lawyers

[90] While the Father has had some assistance from his retired lawyer father, G.L., he had also been represented by two private lawyers earlier in this proceeding. Both were removed as his counsel.

[91] As noted earlier, he claims his second lawyer, Ms. Jones, entered into the interim consent order issued on April 18, 2018 without his authorization. That order gave the Mother sole-decision making authority and him supervised parenting time only.

[92] Not only has the Father had difficulty with his own lawyers, but he has repeatedly made disparaging or inflammatory remarks about the Mother's counsel, Mr. Whitehead.

Many were stated in court requiring my intervention. I also offer the following additional examples:

- On November 6, 2018, the Father sent the following email in response to an earlier email Mr. Whitehead sent about the availability of the Father's witnesses for the hearing:

  "You little disrespecting piece of shit maybe you don't know how this works. You have been wrong more times than me and you are unprepared to do your work. I would be ashamed if you were my lawyer. I know how this works but I don't fuck over children for a living so forgive me if I'm unclear on the procedure…"

- On November 9, 2018, Mr. Whitehead sent the following email to the Father:

  "I am attaching copies of our letter to the Court and our client's Supplemental Affidavit of [B.W.]. I will send Court stamped copies next week when I have them back from the Court."

  The Father's response, sent that same day, was as follows:

  "Sorry Pimples,

  I guess you don't know how this works. You need to provide me the court stamped copies. Remember? Or I'll be asking that they be excluded. Also reading through the affidavits are you really sure you want to present them? I will destroy their statements and they will look so bad they will lose." [Exhibit 1]

- On May 28, 2018, the Father emailed Mr. Whitehead, demanding that he arrange for the Mother to set up a Skype call for him with E. They had email exchanges which included the following:

  Mr. Whitehead:

  "Your communications were aggressive, disrespectful and offensive…My client has no intention of subjecting herself to further insults or to have [E] hear you speaking to her or about her in an inappropriate manner."

  The Father:

> "[The Mother's] friends are also whores so why with [the Mother's] behaviour would we not call her one?
>
> …Your client is a fucking child abusing liar. And you aren't much better since you enable child abuse.
>
> Schedule a Skype or I will be coming to see you."
>
> Mr. Whitehead:
>
> "…You are not my client and I do not want you at my office. Your correspondence is threatening. If you show up at my office I will call the police.
>
> The Father:
>
> "You can threaten people with the police all you want. Set up the court mandated calls or you will be abducting my child and I will arrest you." [Exhibit 26]
>
> During his cross-examination, the Father showed no contrition about the inappropriate tone of his emails. To the contrary, he testified that he treated Mr. Whitehead with the type of communication which Mr. Whitehead deserved.

Police Officers/Social Workers

[93] As noted in Justice Burke's decision, the Father partly blames the police and social workers for the reason that he no longer has parenting time with A.

[94] In the present proceeding, the Father was arrested by the police on November 13, 2017, after showing up to B.M.'s home demanding to take E. for a visit. The Mother, E. and E.'s maternal grandfather were out at the time. The Mother and B.M. described the circumstances surrounding this incident in their affidavits (Exhibits 15 and 16).

[95] The Father was charged with the following offences that day: assaulting a police officer with a weapon, unlawfully resisting arrest and uttering a threat to a police officer (Exhibit 15, Exhibit "C"). The criminal proceeding was still ongoing at the time of the hearing.

[96] The Father's version of events in relation to that day are outlined in paragraphs 95-109 of his affidavit sworn on December 6, 2017 (Exhibit 3). While acknowledging that he was "very frustrated" and "upset" that day, and was filming the encounter, he denies

he was yelling or angry. Rather, he claims that the police were "not being helpful" and were "very aggressive", "hostile" and "physically violent" with him (Exhibit 3, Paras. 103-105).

[97] While I certainly acknowledge that the Father is presumed innocent of any criminal wrongdoing, the incident itself is concerning when, by the Father's own admission, he showed up to B.M.'s home "very upset" and "frustrated" demanding to take E. While it's fortunate that E. wasn't present to witness any of the altercation which ensued, the incident is yet another troubling example of the Father being involved in conflict with others and then turning around and blaming them as being the authors of his misfortunes.

The Courts

[98] The Father blames the judicial system for the loss of his relationship with his children.

[99] In his closing submission, he stated:

> "I have lost total confidence in the court and the judicial system. Imagine a country where we are told we are free but men's children are taken from them by predatory women…
>
> …I don't have any confidence in the court to stop the assaults I have received and the damage done in front of my children because the mothers and the court system which positively reinforces this detrimental and abusive behaviour. Why would they stop when you reward them? Do you not think that women are reading up on how to hurt their former partners because they feel they were scorned…So you have women who want the easier option and the aggressive and violent ones use the court system to oppress their former partners.
>
> …We know the societal problems that come from the destruction of family and yet you do it anyway. It may pain me more than most because I know the statistics as an expert in performance majoring in statistics, physics, epidemiology, psychology, human maturation and development…
>
> …It took a lot for me to come here today because of the damaged caused by this court to my and my daughters life over the past 7 years. I have been involved at every chance but I have been denied what I think are basic rights…"

[100] In addition to the general negative remarks the Father makes about the judicial system, he directs specific criticisms at the judges with whom he has dealt with over the years.

Justice Burke

[101] As noted earlier, the Father chose not to attend the final hearing before Justice Burke. He strongly disagrees with Justice Burke's decision and testified that the conditions she imposed were completely inappropriate.

[102] In his pre-hearing brief dated December 3, 2018, he stated on p. 4:

> "…They ruled without him there and brought forth evidence that was completely unsubstantiated. [The Mother] was instrumental in providing statements to social workers. I filed police reports and other documents which show that the social workers twisted the truth. In a disgusting display of unprofessionalism they lied and abusively attacked me. The original judge ordered that the original order be strengthened but then another judge's ruling undid all the previous court and settlement work having us start at zero again. I refused to be abused so they took my child away. Heartbreaking."

Associate Chief Justice O'Neil

[103] The Father directly attributes the fact that Associate Chief Justice O'Neil didn't provide specified parenting time for him in the October 29, 2014, order as being the cause of the breakdown in his relationship with E.

[104] In his closing submission, he states:

> "When the order was made I had a great job at the University of Alberta and was working my way up. I was working two great jobs and opened a new fitness centre. I left all that after the court order wasn't followed because without my daughter [E.] my life was empty…my family life was falling apart due to your incompetence and terrible system I did not have the [resilience] as a young man to keep it all afloat. I just wanted to see my daughter and it would have been ok. But why after the court order was signed should I see my child less?
>
> I am completely frustrated with the court because like I have said before I got to ask only one question and I asked about enforcement. I then sent the court a letter…asking for a specified schedule and even stated that I would allow [the Mother] to pick the schedule. This court refused enforcement to the point it is up to it to correct it. Because the court refused enforcement an amber alert was issued

> and I was charged with parental abduction ending my Master's program at the best lab in the country. Those charges were dropped but the shadow they cast has remained. My partner and I agreed to equal custody but later again I could not enforce the order because she had learn[ed] from [the Mother] what she could get away with."

[105] As noted earlier, in his email responses on costs sent on June 9, 2019, the Father suggests that the court now owes him and E. three million dollars "for this crazy process" and suggests that, due to "dereliction" of the process, he has lost 2.5 million dollars in income and deserves $500,000 for pain and suffering.

[106] When asked about the basis for his claim, the Father advised that the court has destroyed his family and it is the court's responsibility to correct the mistake. He said he is looking for proper support of E. because the court order wasn't enforced and that every year his demands change and will go "up and up" with "the longer he has to wait, the more he will be asking for".

Current Proceeding

[107] As noted in his email response on costs sent on June 9, 2019, the Father suggests the court is more concerned about money than helping E. and says, "shame on you". He says that if the court fails to act as he requests, it is guilty of human rights abuses and the court and the police have favoured the Mother to the point of abuse.

[108] The Father has been a challenging litigant. I don't say that to be unkind to him. I appreciate that he's a self-represented litigant and that all self-represented litigants deserve respect, patience and flexibility when it comes to court processes. I also appreciate that he perceives himself to be, as he described in his email of June 9, 2019, a "hero" fighting "corruption and abuses". As misguided as his views may be, this doesn't diminish the fact that the Father likely believes them to be true.

[109] On the other hand, as aptly stated by Justice Bourgeois in the Court of Appeal's decision of *Raymond v. White*, 2017 NSCA 47, "This does not, however, mandate a separate set of rules or complete restructuring of the conduct of proceedings because a litigant is self-represented." (Decision, Para. 13).

[110] Needless to say, as judges, we must make parenting decisions based on children's best interests, as opposed to whether parents are challenging litigants. Parents often come before us in very stressful situations where the highest of stakes are at play – their relationships with their children.

[111] Thus, I don't reference the above to suggest that the Father shouldn't be able to voice his disagreement over the decisions of any of the judges he has dealt with He, like all litigants, has a right to be critical of those decisions.

[112] I simply reference them as further illustrations that the Father consistently sees himself as being entirely devoid of any responsibility whatsoever for the strained relationship he has with his children. Instead, he angrily points fingers at others for this unfortunate situation and accuses them of things such as child abduction and corruption. In doing so, he flatly refuses to point the thumb at himself in any way for what has happened.

c) The Father's Lack of Insight Justifies Supervision

[113] As noted earlier, in the proceeding involving A., Justice Burke concluded that the Father's behaviour shows poor or no insight into parental responsibilities such that A.'s interests are seriously adversely affected (Decision, Para. 19).

[114] Those words equally apply in this proceeding. The Father entirely lacks insight into how his own conduct and actions would negatively impact on E.

[115] Indeed, while the Father has extreme negative views of all who oppose his position that E. must be placed in his primary care, seeing them as "child abusers", etc., he sees nothing at all wrong with his own actions. Indeed, he describes himself as follows:

- A "passivist" who sees many people's points of views. He says he tries to diffuse things and the only thing that gets him upset is when people like [the Mother and Ms. V.] "abuse children" [Oral evidence];

- An "expert" with kids as he has trained people who work with kids [Exhibit 18, Exhibit A, Page 2];

- "An expert in performance majoring in statistics, physics, epidemiology, psychology, human maturation and development." [Closing Oral and Written Submission];

- "very intelligent" with the "ability to hyper-focus" and "multi-task and do multiple things" [Oral evidence]; and

- a "hero" fighting the court's and others' "corruption and abuses" [E-mail Response on Costs dated June 9, 2019]**.**

[116] Furthermore, while he denigrates the mothers of his children as coming from "white trash families", being poor role models, and making poor choices in relationships, he clearly thinks of himself as being superior to them in every way and provides no explanation as to why he would ever be in a relationship with individuals who he clearly views as being morally repugnant.

[117] In his closing submission, he states:

> "The reason I came is that even though it is painful and has been completely fruitless to attend court over the past 7 years it is in [E.]'s best interests to correct this. Lately I have gained strength hearing great men speak of the fact that [there is] no nobler cause than to fight a losing battle for the right reasons. I take comfort in the fact that throughout history people have been persecuted in similar ridiculous circumstances. I just feel that in the modern era it shows that we still have work to do to end the divides that conquer us. That it won't stop for a while because we aren't even looking in the right place. How many men as compared to women are incarcerated? Why? Would it not be better for our society to fix the big problems of over-incarceration instead of focusing on gender dividing issues the wage gap that can be explained by women more than men doing graduate studies and not taking hi tech or executive jobs like their male counter parts."

[118] With respect, this case has nothing do with "gender dividing issues". It has nothing to do with the Father's misguided views that the courts are in cahoots with "predatory women" with a common goal to deprive him of a relationship with his children. Rather, this case is solely about E.'s best interests. The Father's actions, conduct and lack of insight dictate that it is in E.'s best interests that any parenting time he have with her be supervised.

d) The potential harmful effect on E. caused by the Father's misguided views require supervision

[119] Again, I accept that the Father likely honestly believes what he says. He truly believes he is the victim here and that others are entirely at fault for his situation. There is a difference, however, between being dishonest and being misguided. The Father is clearly the latter.

[120] He views parenting through his own subjective lens as opposed to through a child-focussed one. His distorted views of the world, and lack of insight, cause me considerable concern about how those views would negatively impact on E. should he have unsupervised parenting time with her.

[121] His own words suggest a lack of respect for women generally. He suggests that things such as the gender "wage gap" can be explained by choices women make in relation to their education and employment. He repeatedly denigrates the mothers of his children by referring to them as "whores", "white trash", "Nazi trash", "predatory women", etc.

[122] The Father's misguided views and comments about women are particularly troubling considering that he has two young daughters whose views of the world are yet to be fully shaped. He refers to the Mother of E. as a "shitty role model" and repeatedly threatens to expose the Mother's character to E. He suggests that E., in turn, will grow up to hate the Mother.

[123] Needless to say, I'm extremely concerned about the harm that could be done to E. by the Father imparting his misguided views on his young daughter. He seems more focussed on tearing down E.'s relationship with the Mother than trying to positively build up his own relationship with E.

[124] In an email he sent to the Mother dated February 3, 2018, copied to B.M., Mr. Whitehead, his father, G.L., and Ms. V., the Father states, amongst other things:

> "Stop this now or it is my job as her father to be there for her. <u>You can continue to call the police and I will see [E.] when she is older and I can almost guarantee she will hate you. She will realize you weren't there like you should have been, took her family from her, and are a shitty role model. If you don't stop this right now I will just collect the evidence and show it to her when she is old enough.</u> I will tell her that the justice system is flawed, that I moved across the country twice for her, continually tried to reach her, that I was arrested repeatedly for following the court order…<u>I will show that I never did anything bad</u> and I was always trying to get to her to give the family she wanted.
>
> …I mean jeez I run a multi-million dollar facility with 12 highly educated employees directly under me, I train the people who work with kids since I'm the expert, I've worked for the government of Canada, the University of Alberta, and the most prestigious private training facility in the country…Your resume includes culinary school and serving drinks. <u>I think I can see why you would be scared for her to hang out with me. She might see how shitty of a parent you and your parents are</u>…[Exhibit 18, Exhibit "A", Page 2, Emphasis added].

[125] The threat to collect "evidence" against the Mother to show E. in the future to potentially influence E. into hating the Mother is one the Father makes on several occasions. It shows little consideration for the emotional harm that this could cause E. or the damage it could do to her relationship with the Mother. For the Father to think that

this is appropriate behaviour as a parent only reinforces the need for his parenting time to be supervised.

10. What Should the Ongoing Parenting Arrangement Be?

a) Decision-Making

[126] The Father suggests that the Mother is a child abuser. He describes her as a "shitty parent". He therefore wants to be the one who makes decisions for E. Clearly, in light of the concerns I have noted with respect to the Father, giving him decision-making authority is not in E.'s best interests.

[127] That being said, I acknowledge there have been some concerns in relation to the Mother. For example, during cross-examination, the Mother acknowledged that several years ago when she and the Father were in a relationship, she struck him. She also acknowledged that, in the past, she has also sent texts to the Father out of anger and frustration.

[128] It is also clear that in his 2014 decision, ACJ O'Neil expressed concerns about some of the Mother's behaviours. Nevertheless, he gave her final decision-making authority on any major decisions involving E. if a professional wasn't involved.

[129] While I acknowledge the concerns ACJ O'Neil had about the Mother back in 2014, I'm satisfied that the concerns expressed about her in the past do not reflect the parent she is today. She has been E.'s primary caregiver ever since E. was an infant. The Mother is the parent who deals with E.'s professionals, including her doctor and teachers. She is the parent who takes E. to her activities (e.g. music class, basketball, ballet and yoga) and exclusively financially supports her without any assistance from the Father. E. appears to be doing well under her care. The Mother described E. as doing well in school and being a "well-adjusted child" (Exhibit 18, Para. 7).

[130] In these circumstances, E.'s best interests dictate that the Mother should have sole-decision making authority. Indeed, given the Father's clear hostility towards the Mother, and his current lack of meaningful involvement in E.'s life, it is not in E.'s best interests that the Mother be required to consult with the Father when making decisions. Meaningful consultation simply isn't warranted here because of the hostile communication between the parties largely being initiated by the Father. Giving the Mother sole-decision making authority avoids E. being placed in the midst of further conflict between her parents. As agreed, however, the Father can obtain information relating to E directly from third parties such as her doctors, teachers, etc. Furthermore, the Mother agreed to keep the Father reasonably informed about major issues in E.'s life by sending information to his sister, C.L.

b) Who should supervise the Father's parenting time?

[131] The Mother agrees to the Father having supervised parenting time facilitated by his sister or through a mutually acceptable third party such as Veith House. She struck me as being sincere in wanting E. to have a healthy relationship with the Father. I rely on the following:

- In her Supplemental Affidavit sworn on December 6, 2017 (Exhibit 17), she states:

  > "I recognize the benefit to E. of maintaining a relationship with her father. (para. 42)
  >
  > However, as a result of my personal experiences, my parents' experience, and those of [Ms. V.]…I do not believe that [the Father's] mental health is stable and I'm deeply uncomfortable with him having any unsupervised parenting time with [E.]." (para. 43)

- During the hearing, she said she would love for [E.] to have a relationship with the Father but can't trust him to control his behaviour. She said E. has said, on occasion, that she misses the Father to which the Mother responds that she's sure the Father misses her too, and loves her a lot, but currently needs some time to work on himself.

- The Mother agree that the Father's sister, C.L., could act as a supervisor. She is friends with C.L. on Facebook and feels comfortable with C.L. acting as a go between her and the Father. She would be open to E. having visits with the Father at C.L.'s house to have dinner. She isn't comfortable, however, with G.L. acting as supervisor partly because she doesn't know him and, based on her limited experience with him, is concerned that he simply condones the Father's behaviour.

- She would be willing to give FaceTime or phone calls another try as a way to possibly re-establish the Father having a relationship with E. She suggested such calls could possibly be done on a Thursday evening.

- She would have no objection to the Father sending E. cards on her birthday, Christmas or other special occasions and writing letters to E.

[132] I agree with the Mother that the Father's sister, C.L., would be an appropriate supervisor.

[133] C.L. impressed me as being focussed on E's best interests even if it meant acting contrary to the Father's wishes. During her testimony, she stated:

- The Father has ADHD and impulsivity.

- She has been more of a mother figure to the Father than a sister given their significant difference in age. She believes she has influence over the Father as, in the past, she has been able to influence his decisions in a positive way. The Father also grew up with her now adult son.

- She has told the Mother that whenever the Father wants to visit E., he can do so at her home. Her home is a stable one. She has lived there for 23 years. It has four bedrooms.

- She would be willing to act as a supervisor. If the Father was acting angrily or inappropriately, her role would be to protect E. and take her back to the Mother.

- Her door has always been open to both parents. She went to E.'s fifth birthday party. She has said to both parents that they should focus on E.'s best interests.

- She has witnessed the Mother in a parenting role with E. during birthdays. Her impression is that the Mother is a good mother to E.

[134] I also agree with the Mother that G.L. wouldn't be an appropriate supervisor. In concluding this, I first acknowledge that, as expected from a former senior member of the bar, G.L. was respectful and helpful throughout this court proceeding. I appreciated his efforts to be helpful. For example, when the Father angrily left the courtroom on July 5, 2018, G.L. stayed and indicated he would speak to the Father about what happened. Similarly, when the Father failed to show up on April 15, 2019, G.L. indicated that he would advise the Father of the next court date.

[135] I'm also satisfied that G.L. genuinely wants to have a relationship with E. My reasons, however, for concluding that it isn't in E.'s best interests that G.L. be tasked with supervising the Father's parenting time include:

- At times, G.L. minimized the unhealthy actions of the Father by chalking it up to the Father simply being misunderstood;

- G.L. acknowledged that he had difficulty controlling the volatile or impulsive actions of the Father. For example, at one point when G.L. was texting the Mother about setting up a phone call with E., the Father grabbed the phone

from him and texted the Mother, "Fuck you [lying] whore. She deserves better than you." G.L. then apologized to the Mother for this. [Exhibit 14, Page 5];

- G.L. claimed he was unaware of the Father ever using aggressive language to anyone except for the above text sent to the Mother. However, it is clear that G.L. was copied on a number of emails from the Father where the Father used aggressive language directed towards the Mother and others (e.g. Exhibit 18, Exhibit "A", Pages 1 and 2 and Exhibit 23).

- G.L. testified that, based on what the Father told him, he wasn't aware that the Father had pleaded guilty to a criminal charge in British Columbia arising from the incident of April 2015. Thus, G.L. seems unaware of the extent of the Father's troubling behaviours; and

- G.L. claimed that the only incident when he know the Father to be "violent" as an adult was in relation to the November 2017 incident with the police which resulted in his current criminal charges. He said he was unaware of any physical altercations between the Father and Ms. V. and, to the contrary, believed that Ms. V could seriously physically harm the Father.

[136] Thus, while I appreciated G.L's efforts to be helpful in this proceeding, and view him as a well-intentioned individual who unwaveringly supports the Father, I don't have confidence that he will put E.'s best interests over the interests of the Father. He is either unaware of many of the Father's volatile behaviours or chooses to excuse or minimize them. Furthermore, even if, as suggested by G.L. the Father is misunderstood, parenting decisions must be viewed from E.'s best interests as opposed to parental rights or preferences: *Young v. Young* [1993] 4 S.C.R. 3.

[137] As G.L. candidly acknowledged, he has had difficulty controlling the Father's impulsive actions. Thus, should G.L. be the person facilitating the Father's supervised parenting time, I have concerns that he wouldn't be able to prevent the Father from exposing E. to the Father's detrimental behaviour.

c) Should the Father have specified supervised parenting time?

[138] Crafting a specified supervised parenting schedule for the parties to follow is difficult because the Father has adamantly stated that he wants nothing on parenting unless I gave him everything he asks. His message is clear – parenting has to be his way, or no way.

[139] While the Father insists parenting must be solely on his terms or he wants nothing, I sincerely hope he will reconsider. I say to the Father:

- I accept that he has faced some challenging circumstances in his life.

- I accept that he cares for E. and wants to be a meaningful part of her life. This is a worthy goal. While I don't share his perspective as to the reasons he believes have caused his relationship with E. to become strained, I would like to see this change in the future so that he can have a healthy relationship with E. if this can be done in a manner consistent with her best interests.

- While I don't share his perspective on things, I accept that he is intelligent and has been able to obtain gainful employment in a number of challenging fields. The Father clearly believes he has much to offer E. If he gains insight into his own actions and behaviours, he may be able to become a supportive and positive presence in E.'s life.

[140] While it's tempting to simply order that the Father have reasonable supervised parenting time on reasonable notice, I am concerned that leaving an unspecified schedule could result in further conflict and escalation between these parents to E.'s detriment. It will only fuel the Father's subjective perception that the Mother will unreasonably deny him parenting time and prevent him from having a relationship with E.

[141] Thus, I order that should the Father indicate in writing to the Mother's counsel that he will participate in the supervised parenting/contact time I outline below, and he will abide by the agreed communication guidelines outlined in paragraph 63, he will have specified supervised parenting time/contact time with E. as follows:

- After providing the Mother with notice that he is willing to participate in same, a telephone or FaceTime call will be set up with E. by the Mother during an evening the following week. The Mother will encourage E. to participate in the call and will be entitled to be present during same. The Father's conversation will be child-focussed and positive. He will put no pressure on E. or the Mother in terms of the duration of the call, or the subject matter to be discussed. The Mother will be entitled to end the call if he doesn't adhere to these requirements.

- Weekly telephone calls will occur as outlined above for four consecutive weeks. Should they go well, the Father can then have a visit with E. for three hours to be supervised by his sister, C.L., or an agreed upon third party. The Father must provide at least one week's notice of some proposed times and location for the visit and the Mother will respond in 48 hours to confirm a time when E. will be available. The visit will take place in the Halifax Regional Municipality, or such other location as the parties agree, and can take place in C.L.'s home;

- The Father will have four such visits with E. Provided they go well, and the Father provides the required notice, his visits will be expanded to five hours or such longer duration as the parties agree. He shall then be entitled to further visits of this duration on a weekly basis as arranged between the parties.

- The parties will attempt to make arrangements so that E. can spend time with the Father in Halifax during the Christmas Holiday and any other special occasions (e.g. E.'s birthday, etc.).

- The Father can also send cards and letters to E. in accordance with the agreed upon communication guidelines.

- The parties can agree to such other parenting time or terms as they mutually agree to in writing.

- Should the Father not abide by the parameters discussed above, the Mother will have the right to suspend the Father's parenting time although she is encouraged not to do so lightly but to make all reasonable efforts to help establish a healthy relationship between E. and the Father. Indeed, I fully expect that there may be some bumps encountered in the road along the way to trying to achieve this goal. Thus, the Mother should respond appropriately to same keeping in mind E.'s best interests. I'm accepting the Mother's indication that she recognizes the benefit of E. maintaining a relationship with her father [Exhibit 17, Para. 42). Thus, I expect her to do her part to move this parenting arrangement forward in a positive way for E's benefit.

- If his parenting time is suspended, the Father will be entitled to ask permission to schedule a 30-minute conference before me to discuss what led to his parenting time being suspended. Each party should file a standard pre-conference summary of no more than two pages summarizing what has happened. As the parties are aware, pre-conference summaries are not evidence but are helpful summaries which succinctly outline the issues in dispute. They will allow me to give further directions at the conference as to how the issues will be dealt with.

d) Review of Parenting Arrangements

[142] I recognize that the above parenting schedule limits the Father's parenting time with E. On the other hand, he currently is not seeing E. at all and this schedule will allow him to potentially be positively reintegrated into her life. I'm satisfied that it appropriately balances all the relevant factors and ensures that the Father has as much contact with E. as is currently in her best interests.

[143] No doubt, however, the Father will likely strenuously disagree with my decision. I expect he may conclude that I am but the latest person he has had to face in his self-described heroic fight against the justice system to combat corruption and abuses. Nevertheless, even if he feels I have got things entirely wrong, for E.'s benefit, I encourage him to take meaningful steps which would potentially allow him to be reintegrated into E.'s life in a healthy way. This includes re-evaluating his own actions and behaviour and obtaining professional assistance and support with the goal of becoming a consistent and positive presence in E.'s life.

[144] Furthermore, rather than simply giving up on E., or waiting until she becomes an adult to try to be part of her life, I encourage him to take those steps now so he doesn't lose out on being part of E.'s journey from childhood into adulthood. He says he is heartbroken that he has lost time with his children. While nobody can change the past, this doesn't mean he cannot have a future with E. should he choose to take the necessary steps now.

[145] Thus, while not forming a formal part of my order, those steps could include, but are not limited to:

1. Recognizing that the Mother has been a consistent caregiver for E. He should acknowledge the Mother's efforts on parenting as opposed to vilifying her at every turn;

2. Recognizing that he needs to gain insight into his own issues which cause him to lash out in anger and hostility toward the Mother and others he perceives to be standing in his way from being part of E.'s life;

3. Consider engaging in further professional assistance to assist him in developing positive strategies on how to manage his anger and emotions in a healthy way; and

4. Recognizing that as E.'s father, he has a legal obligation to assist in financially supporting her that isn't dependent on his being granted his desired parenting arrangement.

[146] I am conscious that the requirement for supervised parenting time is not generally intended to be a permanent measure. Thus, if the parties mutually agree in writing in the future, they can terminate the need for supervision so that this restriction can be removed without requiring the parties to come back to court or engage in further litigation.

[147] The Mother's counsel also suggested that should the Father take positive steps and be consistent with his parenting time, the parenting arrangements could be reviewed after four months.

[148] While I agree that a review is appropriate given that supervision isn't intended to be a permanent measure, I direct that no request for a review be scheduled earlier than six months from today's date. Again, what should be requested is a 30-minute conference before me to discuss the scheduling of a potential review hearing. Both parties are required to file a pre-conference summary a week in advance of the conference.

[149] The reason I direct that no request for a review should be scheduled earlier than six months from today's date is because these parties are just coming off the heels of lengthy and very adversarial litigation involving E. In my view, the dust on the litigation should settle and it isn't in the best interests of E. to have the spectre of coming back to court too quickly hanging over her parents' heads. Directing that any request for a review not be brought until at least six months from today's date appropriately balances the need to give the parties the opportunity to focus their energies on working together to hopefully re-establish the Father's relationship with E. while, at the same time, allowing for judicial oversight, if necessary, at an appropriate future point in time.

[150] In support of any request for a review, the Father should also file an affidavit which provides details on the following:

1. What steps he has taken to re-establish a positive relationship with E;
2. What parenting or contact time he has had with E since my decision;
3. What participation, if any, he has voluntarily had with individual therapy or counselling with an appropriate professional to develop positive strategies to manage his emotions and anger in a healthy way. The professional should, if able, advise whether the Father suffers from any condition which could impact on his ability to appropriately parent E. The professional should also confirm whether she or he was provided with a copy of my written decision. The Father should attach a copy of a letter or report from the therapist/counsellor to his affidavit;
4. The outcome of his outstanding criminal charges; and
5. What child support he has paid to the Mother from the date of my decision.

[151] If the Father's affidavit doesn't establish that he has taken meaningful steps to reintegrate himself into E.'s life in a positive way, I may decline to schedule a review hearing. Thus, the Father is strongly encouraged to do what is required to become a meaningful and positive presence in E.'s life.

11.0 Child Support:

Issue 3: Should the Father's child support obligation under the October 29, 2014, be varied from 2015 forward?

Issue 4: If so, how should it be varied?

Issue 5: Should the Father's arrears of child support be reduced or forgiven?

a) The Father's Position

[152] The Father requests that his child support obligation be reduced from 2015 forward and that his arrears be forgiven.

b) The Mother's Position

[153] The Mother initially requested that I vary the Father's child support obligation from January 2015 forward. During closing submissions, she confirmed that she is now content to leave his support obligations unchanged as provided under the October 29, 2014, order.

[154] The Father acknowledged that he hasn't paid the child support required under the October 29, 2014, order although he claims to have made some payments. He agreed he hasn't paid the outstanding costs award of $2500 ordered by ACJ O'Neil.

[155] When asked what amount of child support he paid, he responded that he hadn't done the calculation and that "he didn't care about it". When Mr. Whitehead suggested that the Father didn't care because he has made it quite clear that he will not pay, the Father replied, "Yes, I don't negotiate with terrorists".

[156] At the time of ACJ O'Neil's decision, the Father indicates he held two great jobs – one at the University of Alberta and another at a fitness centre. In his email to the Mother dated February 3, 2018, he states, "I run a multi-million dollar facility with 12 highly educated employees directly under me" and says he worked for the Government of Canada, the University of Alberta and the "most prestigious private training facility in the country." (Exhibit 18, Exhibit "A", Page 2).

[157] During his cross-examination, he acknowledged that he worked in other jobs since ACJ' O'Neil's decision and that he currently works on a part-time basis at a university. Nevertheless, the Father flatly refuses to pay child support for E. and acknowledged he hasn't paid any of the support ordered by Justice Burke in relation to A. and Ms. V.

[158] When asked about this plans for work, the Father indicated that he could move to Halifax and that, as demonstrated by his resume, he can go anywhere and can get a good job which pays somewhere between $30 to $50 per hour. He said the reason he hasn't

done that yet is because he wants to keep food on the table and do things which "interest him" while waiting for the decision of the court so that he could get on with his life. He then acknowledged that he wasn't sure that he could get a job in Halifax within his "pay range" of between $30 to $50 but could definitely get a job which paid at least $23 per hour. He said he was confident he could obtain a job in Halifax which started with paying him an income of $3500 per month and then earn approximately $5000 in six months.

[159] As noted earlier, when responding to the Mother's submission on costs, the Father indicated he will "never pay a dime" to the Mother for abducting E.

[160] Plainly, the Father wishes to walk away from his financial responsibility to support his children unless he gets what he wants on parenting. What he fails to recognize is that paying court ordered child support isn't, as he suggests, about "negotiating with terrorists". Rather, it's about meeting one's legal obligation as a parent to provide financial support for one's children. It respects the core principles of child support which are:

- child support is the right of children;
- the children's right to support survives the breakdown of the relationship between the children's parents;
- child support should, as much as possible, perpetuate the standard of living the children experienced before the parents' relationship broke down; and
- the amount of child support varies, based upon the parent's income [*D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37, at para. 38].

[161] Here, not only does the Father fail to recognize his legal obligation to financially support his children, but he has failed to persuade me that there is any basis to vary his child support obligation as provided for under the October 29, 2014, order or to reduce or forgive his arrears. There has been no material change of circumstances since that order which is significant, long-lasting, and not one of his choice: *Smith v. Helppi*, 2011 NSCA 65.

[162] I therefore dismiss his application to vary child support. Furthermore, as sought by the Mother, his ongoing child support obligation, and disclosure requirements, under the existing October 29, 2014, order shall continue.

12.0 Conclusion:

[163] In an ideal world, E. would have the love and support of both her parents. Unfortunately, this case is far from that ideal world. E. has no ongoing, consistent relationship with the Father. While the Father points the finger at everyone else for this

unfortunate circumstance, I encourage him to look inward and consider what he can do to change things. If he takes the necessary steps to make meaningful changes now, he stands to potentially reintegrate himself into E.'s life in a positive way. If this happens, both he and E. will surely reap the benefits.

[164] I would ask Mr. Whitehead to prepare the appropriate form of Order reflecting my decision. It should be prepared in two weeks and sent to the Father by courier, if possible, for approval as to form only. If the Father doesn't object to the form of order within a week after it is sent to him, the proposed form of Order can be sent to me, along with the courier slip, for my review and approval.

[165] If either party wishes to be heard on costs, written submissions should be sent to me within 30 days. Submissions should be limited to no more than ten pages in length.

Jesudason, J.