

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *J.P. v. B.G.*,
2012 BCSC 938

Date: 20120625
Docket: E093361
Registry: Vancouver

Between:

J.P.

Plaintiff

And

B.G.

Defendant

Before: The Honourable Mr. Justice Walker

Reasons for Judgment

Counsel for the Plaintiff: J.J. Hittrich

The Defendant, B.G.: Appearing in person on his own behalf

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May 29, 2012

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Introduction

[1] This high conflict matrimonial case involves competing allegations of sexual and physical abuse and mental incapacity.

[2] J.P. alleges that her husband, B.G., sexually abused their four young children. Her case is premised on disclosures by the three older children as well as certain objective and expert evidence. The disclosures concern sexual touching, including digital touching of genitalia and the anus, oral copulation, and partial penile penetration. J.P. also claims that B.G. physically assaulted her and three of their four children over time.

[3] B.G. denies all allegations of sexual and physical abuse. In response, he alleges that his wife either fabricated the sexual abuse allegations or holds an honest but mistaken belief as to their veracity even though they are not true; regardless, he says that she suffers from mental incapacity significant enough to make her unfit to parent.

[4] B.G. and J.P. have four children. At the time of separation in October 2009, the children were 7, 5, 3, and 1 years old, respectively. The eldest child is their son, B.T.G.; the next is their eldest daughter, K.G.; the third child is a son, B.N.G.; and the youngest is a daughter, P.G.

[5] The parties began cohabitation on October 15, 1999, and then married on August 31, 2003. They ultimately separated on October 5, 2009, after B.G. was arrested for allegedly assaulting J.P. and their daughter, K.G., who was five years old at the time.

[6] At the time of their separation, B.G. held title to rental property in Vancouver. That property was purchased in 2002. Title was held by B.G. and J.P. as joint tenants until it was transferred into B.G.'s name in 2006. The parties agree that this property is a matrimonial asset. They lived in a rental house on the west side of Vancouver when they separated.

[7] An order of the Court was issued on October 22, 2009, restraining B.G. from any contact with J.P. and the children (“Restraining Order”):

THIS COURT ORDERS that:

1. the defendant, [B.G.], shall be restrained from molesting, annoying, harassing, communicating or attempting to molest, annoy, harass or communicate with the plaintiff, [J.P.], or the children of the marriage ... pursuant to Part 2, s. 37(a) of the *Family Relations Act*, R.S.B.C. 1996, ch. 128 and amendments thereto; ...

[8] I varied that order on December 21, 2009, to permit B.G. supervised access to his children for specified hours (“December 21 Order”).

[9] The children have been in the temporary care of the Director of Child, Family and Community Service (“Director”), residing in foster homes, since their apprehension on December 30, 2009 pursuant to the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 (“Act”).

[10] As a result, and pursuant to a consent order issued by Master Caldwell on October 8, 2010, I sat, as trial judge, as a Judge of the Court and also as a Judge of the Provincial Court of British Columbia in respect of the apprehension proceedings (Provincial Court Vancouver file number 2010-23709). Most of the issues raised by J.P. and B.G. in the action commenced in the Supreme Court and raised in the apprehension proceedings were tried before me at the same time. I will refer to the hearing of both proceedings as the “trial”.

[11] The issues raised at trial were:

- (a) Did B.G. sexually abuse any of the children?
- (b) Did J.P. fabricate the allegations and then coach the children to make their disclosures of sexual abuse?
- (c) Did J.P. inadvertently lead the children into making the disclosures?
- (d) Did the children make up the disclosures, and if they did, what is the basis of their knowledge that founded the disclosures?

- (e) Does J.P. suffer from mental incapacity that affects her capacity to parent and her custodial and access rights?
- (f) If sexual abuse is not found, then did B.G. impart inappropriate sexual knowledge to the children such that his custodial and access rights should be affected?
- (g) Did B.G. physically abuse J.P. and any of the children?
- (h) Where should the Director place the children?
- (i) The appropriate division of assets between B.G. and J.P.
- (j) The determination of child and spousal support obligations, including quantum.
- (k) Whether the Director and any employees and agents of the Ministry of Children and Family Development (“Ministry”) acted in bad faith?
- (l) Whether, when the Director apprehended the children under the *Act*, it acted pursuant to a complete code such that it could ignore a pre-existing order of the Court issued in the divorce proceedings permitting B.G. to have only supervised access to his children?
- (m) Whether the Director lost jurisdiction over the children.

[12] At trial, psychologist Robert Colby, the expert appointed pursuant to s. 15 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 (“*Family Relations Act*”), testified that medical intervention was required for the children regardless of my determination of the allegations of sexual abuse and mental capacity. Without that intervention, he said that B.T.G., who is nine, will turn to acting out with violence as he enters his teenage years, and that K.G., who is seven, will begin to express herself through sexuality before she reaches puberty. Mr. Colby’s testimony left the distinct impression that medical assistance was required without delay.

[13] Mr. Colby's overall concern for the children was expressed in the following way:

A The -- the family has fallen apart, the children's home life is -- is not what it was, their relationship with their parents is distressed in terms of supervision, timing, allocated times. They -- they have made statements that have been reviewed, and reviewed over and over again judgmentally by people. They need to know that they're okay. And -- and not only do they need to know that they're okay but they need to be -- there needs to be an overview to make sure they're okay.

[14] Mr. Colby provided the following opinion concerning the oldest child, BT.G.:

A I have concerns about the oldest two children, who I know with greater detail than the younger two, regarding their current emotional and psychological status. Starting with [BT.G.], he is a very angry child, who acts out his anger in a way that presents risk and danger to his siblings, and quite possibly to others in his environment; school, daycare, wherever else.

He is a very unhappy child, and is willing to demonstrate it readily. He will show how unhappy and over -- and over-exaggerates -- and exaggerate it to its fullest. My concern is what he is going to do to let people know that he is unaccepting of his status ... but he needs to be able to address matters related to his interaction with others or you will -- I'm afraid you're going to be seeing some antisocial aggressive behaviour directed at his siblings and peers.

And part of what he's incorporated into that is also about his sexuality. I think as he matures, as he reaches an age of engagement with peers around issues of sexuality, it's going to also be a violent episode for him because he identifies it aggressively and violently.

[15] In respect of the eldest daughter, K.G., Mr. Colby said:

A ... With [K.G.], my concerns are, and I don't know where she has assimilated the information she has from, but she is using her base of knowledge about sexuality in her interactions with others, and it -- it -- my concern is that will become her means of transacting interpersonal relationships even before she reaches puberty, and -- and there -- there is an acting out that occurs within at least with the three older children around issues of sexuality being the medium through which they interact.

So -- so I -- I -- it's going to lead to a level of -- of disconnect from their peers as --

Q When you say [K.G.], these are my words, not yours, engages in communication through sexuality, are you referring to her engaging in

inappropriate overt sexuality as a means of communication as she gets older?

A Even now, My Lord.

Q Even now?

A In the -- in the -- in the things that she states and to how she interacts with her brothers physically, and the -- the -- the base of knowledge that she has about genital sexuality I think it is going to take a -- a strong degree of oversight.

[16] Mr. Colby's advice, coupled with reports of the children's ongoing sexualized and aggressive behaviour, leads me to conclude that the children's interests are, at this point, paramount to the other issues for determination in these proceedings. As a result, these reasons for judgment concern issues (a) to (h) in paragraph eleven.

[17] The best interests of the children are at the forefront of the custody and access disputes. The governing legislation is s. 16 of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) ("*Divorce Act*") and s. 24(1) of the *Family Relations Act*.

[18] In their pleadings, both parents have brought their claims in respect of guardianship, custody, and access with reference to the *Divorce Act* and the *Family Relations Act*.

[19] The *Divorce Act* does not define or set out the factors involved in determining the best interests of the children. Section 16(8), which concerns custody orders, sets out the factors to be taken into account:

Factors

(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

[20] The best interests of the child are determined from the "child's perspective, and not from the perspective of either parent": *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at para. 69. The child's physical, economic, emotional, psychological, intellectual and moral well-being must be considered: *Gordon* at para. 120.

[21] According to case law, when dealing with custody and access under the *Divorce Act*, the best interests of the children are not the paramount consideration, they are the only “relevant issue”: *Gordon* at para. 19.

[22] Section 24(1) of the *Family Relations Act* states that the best interests of the children are paramount:

24 (1) When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:

- (a) the health and emotional well being of the child including any special needs for care and treatment;
- (b) if appropriate, the views of the child;
- (c) the love, affection and similar ties that exist between the child and other persons;
- (d) education and training for the child;
- (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

[23] Similar considerations apply in apprehension proceedings. Sections 2 and 4 of the *Act* set out guiding principles and the factors to consider when determining the best interests of the child:

Guiding principles

2 This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:

- (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;
- (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
- (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- (d) the child's views should be taken into account when decisions relating to a child are made;

- (e) kinship ties and a child's attachment to the extended family should be preserved if possible;
- (f) the cultural identity of aboriginal children should be preserved;
- (g) decisions relating to children should be made and implemented in a timely manner.

Best interests of child

4(1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interests, including for example:

- (a) the child's safety;
- (b) the child's physical and emotional needs and level of development;
- (c) the importance of continuity in the child's care;
- (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- (e) the child's cultural, racial, linguistic and religious heritage;
- (f) the child's views;
- (g) the effect on the child if there is delay in making a decision.

(2) If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests.

[24] Custody and access rights are not dependent on whether any of the competing allegations of sexual and physical abuse and mental incapacity are proven. In *E.J.L. v. B.J.L.* (1983), 54 B.C.L.R. 164, the Court of Appeal said, at 167, that the question is:

... whether on the whole of the evidence there arises a real risk to the children if access is given without protection against that risk. The degree of risk can only be determined by carefully weighing all the evidence, and that must necessarily involve the credibility of the witnesses and the judge's assessment of the character of the parties.

[25] In *G.E.C. v. M.B.A.C.*, [1993] B.C.J. No. 1393, Newbury, J. (as she then was) said, at para. 93, that in cases involving allegations of sexual abuse, the case law is "clear" that the "Court must focus on whether there is any 'real risk' to the children, rather than on whether any particular allegations have been proven".

[26] In this case, though, I have found sexual abuse to have occurred. For the reasons that follow, I have determined that:

- (a) B.G. sexually abused his three older children;
- (b) B.G. has physically abused J.P. and his three older children;
- (c) J.P. does not suffer from any mental incapacity that renders her unfit to parent;
- (d) J.P. shall be the sole guardian and have sole custody of the children;
- (e) B.G. must not have any direct or indirect contact with J.P. and his children; and
- (f) A police protection clause must be contained in the order to protect J.P. and the children.

[27] My decision concerning the financial and legal issues described in para. 11(i), (j), (l), and (m) will follow in subsequent reasons for judgment. The bad faith allegations (described in para. 11(k)) will be tried at a later date, at the same time as the trial of a tort claim advanced by J.P. against the Attorney General for alleged public malfeasance on the part of the Director and the Ministry.

[28] An unusual feature of this case is that the Director's custody over the children remains temporary, even though the children were apprehended over two years ago.

[29] Section 41 of the *Act* provides that if the Court finds at the protection hearing that a child needs protection, then it must make one of a number of possible orders in the child's best interests, including a temporary custody order for a limited period specified by the *Act* or an order placing the child in the continuing custody of the Director.

[30] Section 41(c) stipulates that a continuing custody order must not be made unless "the nature and extent of the harm the child has suffered or the likelihood that the child will suffer harm is such that there is little prospect it would be in the child's best interests to be returned to the parent."

[31] Where the Director seeks a continuing custody order after a temporary custody order has been made, then the Director must apply not sooner than 60 days before the expiry of a temporary custody order for a continuing custody order.

[32] Section 49(5) states that the court may order a child to be placed in the continuing care of the Director in certain circumstances:

The court may order that the child be placed in the continuing custody of the director if there is no significant likelihood that

- (a) the circumstances that led to the child's removal will improve within a reasonable time, or
- (b) the parent will be able to meet the child's needs.

[33] No finding was made that the children are in need of protection. The children have been in the Director's care pursuant to a consent temporary custody order because J.P. provided a qualified consent to a temporary custody order at an early stage in the Provincial Court proceedings. She has since sought to revoke that consent. Her application was adjourned at a time she was acting without counsel and in custody because she had been arrested in respect of an incident at her brother's home. In a later section of these reasons, I have set out my findings that the incident involved unintended consequences arising out of misstatements made and fears created by B.G. Nonetheless, it has been clear since June 2010 that J.P. no longer consented to the Director's temporary custody of the children and has been seeking leave to formally withdraw her consent.

[34] Section 45 sets out maximum periods of time in which the Director may keep children in its temporary custody. For these children, the *Act* provides that the maximum period in which they may be kept in the Director's custody is twelve months. Here, the order granting the Director temporary custody, granted on April 14, 2010, was for three months. The *Act* provides that the Director may apply for an order extending temporary custody. The Director is required to make that application before the temporary custody order expires. The Director did file that application in respect of its custody of the children. The application is dated June 24, 2010 and the proposed hearing date is shown on the face of the document to be

July 14, 2010. The Director's application has been adjourned several times. As I have noted, the issue as to whether the Director lost jurisdiction (because the maximum period prescribed in s. 45 has been exceeded) or whether it was saved (because the Director filed and then adjourned its application for temporary custody) will be dealt with in separate reasons for judgment.

[35] Another unusual feature to this case is the sudden change in the Director's position, which occurred on March 29, 2012, after 64 days of trial. Until that point, the Director had supported B.G.'s application to have custody of the children. The Director's position had been:

- (a) there was insufficient evidence to establish that B.G. had sexually abused his children or that he was the source of their sexualized knowledge;
- (b) although J.P. provided some evidence of physical abuse or use of inappropriate discipline by B.G., B.G. did not pose a risk to the children; and
- (c) J.P. suffered from mental health and emotional issues that had not been addressed, and as a result, she posed a risk of harm to the children.

On March 29, the Director advised, through new counsel, that it no longer had any protection concerns about the children's mother, J.P., and that the children should be returned to her care. The Director advised that it would not be calling any evidence in these proceedings.

[36] The Director's position was communicated to the Court before B.G. closed his case. At the start of trial, B.G. advised that he had approximately 14 witnesses to call. The Director planned to call at least nine witnesses. Some of those witnesses were employees of the Ministry who were involved in the investigation of the sexual and physical abuse allegations and supervision of the ongoing care for the children.

In all, and in addition to his own evidence, B.G. ultimately chose to tender the evidence of his mother and two witnesses listed on the Director's witness list.

[37] Finally, I wish to point out that rather than set out the competing factual assertions made by J.P. and B.G., I have chosen to set out, in the sections that follow, the facts as I have found them. In those occasions where I have set out competing assertions or the evidence of a witness, I have also provided my findings of fact.

J.P.

[38] J.P. was born in 1972. She grew up in a smaller community in the province. J.P. moved to the Lower Mainland in 1991, and met B.G. shortly thereafter; they dated and then began cohabitation in 1999.

[39] My impression of J.P. is that since at least her teenage years, she has been strongly motivated to find a partner, marry, and raise a family. She is a hard worker, of average intelligence, and wholly dedicated to her children. She has earned income through various jobs, including teaching swimming lessons, part time modelling, first aid attendant, property management on a small scale, and working with B.G. to advance an insurance premium finance business known as "Broker Builders". She pursued these endeavours during the day and often in the evenings after dinner.

[40] J.P.'s personality and attributes were described by her closest friend, whom she has known since she was in grade eight, and by her father and aunt. I found them to have provided a credible account (that I accept).

[41] J.P. was described as a positive, assertive, kind hearted, generous, organized, honest, and hardworking individual who loves children. She was very athletic in school, participating in swimming, basketball, and volleyball. She taught swimming to adults (and continued to do so after her marriage). None of these witnesses have known J.P. to have demonstrated any behaviour or made any

comments to suggest mental instability or suicidal or homicidal ideation. She was described as a very open person who will talk to anyone.

[42] J.P. was also described as a parent who was intent on seeing her children succeed in academics and sports. She sought out extra-curricular activities that she felt would enrich and promote her children's lives.

[43] J.P. grew up with an overbearing mother who was not reluctant to speak ill of her daughter in public.

[44] She and B.G. maintained their family home and modest lifestyle primarily through her efforts to pursue revenue on a piecemeal basis, from rental income and loans from her family members, and by leveraging the equity in their rental property.

[45] Before the children were apprehended, the children shared one bedroom together. P.G. would, from time to time, sleep in a baby's bed in the same room (B.G.'s office) where B.G. slept (B.G. did not usually sleep in the same bedroom as his wife after B.T.G. was born). When J.P. went out in the evening to buy groceries or run errands, B.G. would be left with the children when the nannies went off duty at approximately 8:00 or 9:00 p.m. B.G. also spent time alone with the children on Sunday mornings in order to allow J.P. the opportunity to sleep in or to have some personal time alone.

[46] Witnesses described J.P. to have suffered anxiety from time to time as she sought to maintain the household, balance her children's needs and their extra-curricular activities, and work. In a subsequent section, I have set out my finding that her anxiety was not a manifestation of any mental disorder, mental illness, or psychiatric syndrome.

[47] Although she was assisted by nannies, I find that J.P. was the primary caregiver to the children and ran the household. B.G. admitted in his evidence in chief that he was content to allow her to look after household affairs:

A ... the household was structured in a way that [J.P.], at least, perceived that she had all of the control, and that was fine by me. I

had a lot of things to do every day and if [J.P.] wanted to have this controlling environment, or her perception of a controlling environment, I -- I didn't get in the way, I didn't step in the way, and -- and I let her do that. It was -- it was what made her happy, I guess, in some way.

[48] During his testimony, B.G. admitted to several incidents described by J.P. that at first blush sounded odd or fanciful or indicative of delusional thinking.

[49] Overall, I found that J.P. provided a consistent, credible, and reliable account of events throughout her testimony in spite of her extremely agitated, distraught, anxious presentation and the unfocused (and dramatic) manner in which she gave some of her testimony. I share Mr. Colby's opinion that J.P.'s distress, which manifested itself while she was giving evidence, is the result of: the shock of the sexual abuse disclosures made by her children; subsequent accusations that she fabricated them; and the failure of persons in authority to believe her. I found the instances where she seemed unclear about dates or the precise chronology of events or where she became distracted in trying to explain different events in the same answer to be the result of that extreme distress. I have also determined that J.P. does not suffer from paranoid or delusional thinking.

B.G.

[50] B.G. displayed two sides to his personality throughout the trial. On the one hand, he presented as a suave, engaging, highly intelligent, sophisticated, and articulate person who is quite capable of grasping, very quickly, court procedures and legal issues. His evidence and his defence did not, however, withstand the rigours of the trial process.

[51] When confronted with evidence adverse to his case or when his evidence was challenged, B.G. was quick to anger. B.G. was hostile and unduly aggressive in responding to questions in what I found to be an even-tempered and often soft spoken cross examination style used by counsel for J.P.

[52] B.G. used profanities in answering questions, engaged in obfuscation, and mocked J.P. and her counsel. His evidence was marked by internal inconsistencies

and obscured by deflection and half truths that did not withstand cross examination and the scrutiny of objective evidence.

[53] My impression of B.G. is that he would often say what he thought was convenient for his case at the particular moment, forgetting that his answer was inconsistent with his prior oral testimony or documents. When caught out, he would become confrontational or profane (or both), argumentative, or attempt to qualify his testimony (and in the course of doing so, provide further and inconsistent versions of the same event).

[54] There was also a strange quality to B.G.'s testimony. There were a number of times that he appeared to become either so comfortable or irate while giving his testimony that B.G. would make admissions against his interest in the course of denying allegations adverse to his case.

[55] I have provided illustrations of my observations and findings in this and other sections of my reasons for judgment.

[56] Despite his statement that his "moral code" would not permit him to denigrate his former spouse, B.G. used every opportunity to do so at trial and to the Ministry and the Vancouver Police Department ("VPD"), either through direct attacks or through disingenuous flattery.

[57] While on the one hand, B.G. said that J.P. was not acting maliciously in pursuing the sexual abuse allegations, he suggested, on the other, that J.P. was so unstable that she would prefer it if the children had in fact been sexually abused because it would mean that she would get custody of them:

A And I'm not suggesting that this was an overt but if it were elicited in a non-malicious fashion, that the evidence fuelled -- I suspect fuelled [J.P.'s] -- made her happy. It made her happy in some ways that the children told her what they told her. And the happier she got, the more they said. And I question whether [J.P.] would prefer those children to have been sexually assaulted if it meant she get custody of them or that they were not sexually assaulted and she didn't get custody of them, even if I didn't get custody of them. That is, I think, the quintessential question in relation to the sexual abuse allegation against me. And it's a conundrum and it's not anything we'll ever likely

know. But it is a burning question in my mind and I suspect in the mind of others.

[58] B.G. sought to malign J.P.'s character and motives by suggesting that she was engaged in illicit or illegal activities, such as prostitution or the drug trade. He made similar allegations to others, including the VPD. B.G. offered no evidence to support his assertions other than his mother who could do no more than speculate on her daughter-in-law's activities.

[59] I reject B.G.'s evidence, as entirely lacking in credibility, that throughout their relationship he was never certain what his wife did for a living.

[60] B.G. was inconsistent in his evidence concerning J.P.'s mental incapacity. Contrary to the tenor of his evidence that J.P. suffered from paranoia and mental dysfunction for years prior to their separation on October 5, 2009, B.G. gave the following evidence that appeared to fluctuate as it was being given:

A What -- what -- what I can say about [J.P.], during the entire term of our relationship, is that I have never witnessed her being depressed. I've never witnessed her even being blue, down. I've never heard her make comments regarding harming herself, and I've never -- obviously never heard her make comments about -- about suicide, and I would characterize her as quite the opposite, quite -- again, very positive, positive to the point of being manic on a continual basis, not extreme mania, in my -- in my opinion, but -- but nonetheless elevated mood.

...

A I never got the sense, leading up to October 5th, 2009, that -- that -- that she was suspicious. She was certainly agitated. She was showing signs to me of -- of paranoia, of delusions, and I -- I never -- I never saw anything in her that -- that would lead me to believe that she sensed -- or that I sensed that she was suspicious. I never saw her eliciting those behaviours.

[61] Yet, B.G. persisted in advising Ministry staff and the senior investigator from the VPD ("Senior VPD Officer") throughout his dealings with them that his wife suffered from odd, paranoid, irrational, and delusional thinking stemming as far back as her days in high school. Through B.G.'s efforts, information was provided to Ministry staff and the Senior VPD Officer to the effect that his wife's behaviour was

sufficiently bizarre and irrational that she could harm herself and their children. As I have noted, apart from the testimony that he and his mother provided, B.G. did not call any other witness in respect of his assertions. He caused considerable alarm with the Ministry and the VPD when he told the latter that his two unlicensed rifles were missing and suggested that J.P. may have taken them. His evidence at trial as to when he last saw them was inconsistent with what he told the police.

[62] B.G. also caused J.P. to be falsely arrested. As a result of his false statements to VPD officers, J.P. was arrested outside the rental property she was residing at. B.G. had falsely represented to the police that she was in breach of bail conditions, which prohibited her from being near B.G.'s home. The rental property, which was a matrimonial asset, had been managed by J.P. for several years. B.G. held title to the property. B.G. knew that J.P. resided there after their separation. That property was subject to foreclosure proceedings because B.G. would not make the mortgage payments (even though he was receiving both his and J.P.'s share of the drawings from their business venture). B.G. arranged for the rental property to be listed for sale (without notifying J.P.). B.G. arranged for a real estate agent to show up at the property, unannounced, to place "For Sale" signs. When J.P. came outside and saw what was taking place, she became upset. She had objected to the property being listed for sale at that time. She did not know that B.G. had retained a realtor to sell it. As well, J.P. did not know that B.G. was across the street, sitting in his vehicle with a camera and a copy of her bail documents (that he had downloaded from the internet).

[63] B.G. had called the police. When they arrived, he led them to believe that the property was his home and that he resided there. He knew J.P. would be upset when she found a realtor attempting to place a For Sale sign. I am satisfied that he wanted to catch her adverse reaction on camera to use later to discredit her.

[64] J.P. was arrested and held in custody for two nights. She was ultimately released when a Provincial Court Judge was advised that she resided at the property, not B.G.

[65] I am satisfied that B.G. contrived this arrest in order to have J.P. arrested and to secure a court order subjecting her to a mental assessment.

[66] J.P.'s bail terms arose out of an incident that occurred at her brother's home on June 3, 2010, as a result of her attempt to serve Provincial Court application documents on her brother, G.P., who was acting as one of the children's foster parents at that time. J.P. was seeking to vary a Provincial Court order that permitted B.G. to have unsupervised access to the children at the discretion of the Director. The Provincial Court order is inconsistent with my December 21 Order; it was made on April 14, 2010, and without the Provincial Court Judge being told of the December 21 Order. J.P. wanted it varied to be consistent with the December 21 Order so that B.G. would have only supervised access to his children.

[67] I will say more about B.G.'s unsupervised access below, but at this point I do wish to set out my findings concerning this incident that involved the release of pepper spray. I find that the release of the pepper spray was the unintended result of an unfortunate confrontation between J.P. and her brother. I am satisfied that G.P. had become unduly alarmed about his sister after the children had made their disclosures of sexual abuse because of the conduct of B.G. J.P.'s brother was led to believe that she suffered from paranoia and unpredictable behaviours from misleading information provided to him by B.G. and as a result of B.G. giving him a copy of a confidential report from a psychologist, Dr. Eirikson, that was meant only for the Ministry, J.P., and B.G.

[68] J.P.'s highly distraught and irate telephone calls to G.P., expressing her extreme concern that B.G. was being permitted unsupervised access to the children contrary to my December 21 Order, compounded his concern that his sister was behaving irrationally. G.P.'s alarm coupled with J.P.'s shock at seeing B.G. at her brother's home at the children's bedtime hour, exercising unsupervised access contrary to the December 21 Order, caused emotions to flare. Shouting ensued, followed by unfortunate contact between J.P. and her brother; all of which was aggravated by threats uttered by B.G. to J.P. and a friend she had with her. During

the course of some grappling between J.P. and her brother, pepper spray was inadvertently released from a small container that was inside her purse.

[69] I reject B.G.'s version of this incident. His account was inconsistent, exaggerated, and not credible. B.G.'s testimony that J.P. and her friend stole his briefcase from his vehicle during the incident is also inconsistent with what he told the police.

[70] B.G. did not call G.P. or any other witness to contradict J.P.'s account of the event.

[71] As a result of that incident, J.P. was arrested at a later date while appearing in Provincial Court to speak to her application to withdraw her consent to the Director's temporary custody of the children. She was held in custody overnight, and then released on her own recognizance with bail terms that prohibited her from attending at B.G.'s residence.

[72] B.G. admitted to having a temper. He admitted to being involved in physical altercations with others. B.G. demonstrated his inappropriate character and his opinion of his physical strength in response to a question regarding his temper. As with most of the low key tone taken in cross examination by counsel for J.P., the following question was put to B.G. in a non-threatening and mild-mannered tone:

Q But, sir, you have a bit of a temper at times, correct? I mean, you do lose it occasionally?

A Not these days.

Q Not these days, oh, I see.

A In the past, no, it could -- it could certainly be perceived that I do, because I definitely get frustrated and I'm not shy about expressing my frustration. Physically? If I had a temper around the kids and I let my temper run its course, and anyone in the household, there -- I would kill people. So --

Q You would kill people, did you say?

A Well, I would say if I let -- sorry, let's -- let's be careful for the record. If I let my temper run out of control, it would be very easy for me to -- to kill the young children and women. So no, the temper -- the temper would be, if it's -- if the temper has been portrayed by [J.P.] as being problematic, it's a misinterpretation. Frustration, yes. Verbal

altercations with [J.P.], yes. Physically abusing people with even a fraction of my physical ability, no. No.

[Emphasis added]

[73] B.G. had J.P. followed by a private investigator in November 2009, but failed to mention to the investigator (a former police officer), that a restraining order had been issued against him on October 22, 2009, preventing him from “molesting, annoying, harassing, or communicating” with J.P.

[74] B.G. displayed his animus towards J.P.’s counsel on several occasions, mocking and threatening him.

[75] B.G. criticized the intelligence of counsel’s children. He also mocked counsel personally in the course of minimizing some of BT.G.’s troubling sexualized conduct observed by access supervisors and current foster parents on a number of occasions:

Q Okay. 33, at five o’clock [as read in]:

[K.G.] sits with Dad and listens to music. [BT.G.] has his hands down his pants and underwear. It looks like he is grabbing his penis. [BT.G.] removes his hand. After two minutes [BT.G.] puts his hand back where it was down his pants.

Now, do you remember that?

A No, I don’t. It -- it looks -- based on this it seems as though [K.G.] and I were listening to music, so we would have been maybe facing the other direction. I don’t -- I don’t see him do that to be honest.

Q But you didn’t see him do it this?

A No, no, no, and even if I did in sort of passing I don’t think I would have really remarked at it. Maybe in a very sort of calm way, but I don’t -- I don’t see it as problematic behaviour, like I don’t think he’s -- it’s almost like a -- it would seem to me if he was doing it it would almost be like a nervous sort of thing, like scratching his -- a knee or [indiscernable].

Q This is a nine-year-old boy, sir, fondling his genitals.

A Well, I -- you know, I think we have to be careful about using the word fondling. I don’t think there is any sort of sexual gratification going on.

Q Grabbing his penis, why -- why would have a nine-year-old boy have been grabbing his penis?

A I don’t know. Nine-year-old boys grab their penises; so do 12-year-old boys; so do 15-year-old boys; so do 30-year-old boys.

Q Do they?

A Yeah, they do.

Q On a regular basis?

A I think you probably grab your penis, too, from time to time --

Q Sir --

A -- unless you're not a man.

[Emphasis added]

[76] He admitted to having used threatening words to counsel as well:

Q But you, sir, have expressed some anger towards me during these proceedings, correct?

A And I'd say I've bit my tongue more than any other human being in my position would, but yes. Am I frustrated with you and your conduct in this trial and your appeasement of [J.P.'s] wishes to see me marginalized? Certainly I am. Have I ever physically threatened you? Let's be careful about that.

Q Well, did you tell me that if you weren't such a gentleman, you would kick my ass?

A No, no, what I said was, and I'm going to go to the best of my recollection, and this wasn't that long ago. And this of course wasn't during court time. There was a sheriff present, by the way, and if I -- I'm sure we could figure out who that sheriff was.

Q Yes.

A But I said something to the effect -- you were making comments about costs, the longer you take in your chief there's more costs at the end of this trial, and I perceived it as sort of an infantile cheap lawyer kind of intimidation tactic, and I -- at the end of the session you were persisting in that regard, "How long are you going to be? How long are you going to be? How long are you going to be?" And I think I came around and I sat on that brass pole right there, and I said something to the effect of, "I think you've dragged out this fucking trial so fucking long", I think I used "fucking" two or three times in an attempt to make you know that I was serious that I wasn't going to take your "fucking bullshit" anymore, but --

Q You were obviously angry with me?

A No, no, I'm -- I'm not, I'm just revisiting where I was then. I'm not angry with you right now. You're just doing your job right now. You were being an asshole then and I called you out on it. So I came around and I sat there and I said, "You've dragged out this trial", and F'ing, F'ing, F'ing, and then I said, "and if I wasn't such a gentleman I may or may not give you a kick in the ass." So, yeah, it was a bit of lawyer talk on my part as well because I didn't definitively say I wanted to kick your ass, I didn't definitively say I was going to kick

your ass. I didn't even say I was going to kick your ass, I said I would kick you in the ass. And if I was thinking more clearly I would have said kick you in the pants, or slap you in the face with a glove and discuss a duel at dawn, or something gentlemanly like that.

[77] When giving evidence in chief, B.G. reviewed a remark J.P. is reported by Mr. Colby to have made during their meeting. Mr. Colby reported that J.P. told him:

[B.G.] pushed her into the bedroom. [J.P.] believed that he was going to punch her.

When those comments were read to him at trial, B.G. seemed pleased that his wife was scared. In his evidence he said:

A That may be the case, and I would state that if that was the case it certainly had the desired effect, under the circumstances.

[78] B.G. testified that his sexual interest in his wife diminished after they were married. My impression of B.G.'s evidence is that he had little or no interest in his wife's activities, work, and interests for a significant part of their relationship.

[79] B.G. also disregarded orders of the Court requiring his access to be supervised.

[80] B.G. failed to comply with my December 21 Order permitting him to have only supervised access. He was well aware of that order and I reminded him of it again when he appeared in Court on June 2, 2010. He blamed his failure to abide by it on the Ministry:

A My -- again my recollection of all of the discussions and communications with social workers and MCFD staff is that no one had in -- ever indicated to me that they were refusing to impose supervision on me and -- and no one had ever indicated that -- as best as I can recall, no one has ever -- no Ministry personnel have ever told me even that [J.P.] was attempting to have the supervised visits -- my -- sorry, my access visits supervised.

[81] B.G.'s explanation that he relied on permission from the Ministry for unsupervised access since May 2010, in spite of my order, does not explain his delay in abiding by my order issued on August 15, 2011, where, sitting in my capacity as a Judge of the Provincial Court, I varied the prior order of that Court that

allowed the Director to permit supervised or unsupervised access to either or both parent at its discretion. During Court proceedings on August 15, 2011, in which B.G. participated by telephone, I cautioned all parties in my oral reasons for judgment, which I delivered while B.G. was still participating in the hearing by telephone, that I expected my order requiring supervised access for B.G to be complied with:

[5] I am very concerned that B.G. has and continues to be in breach of my order made December 21, 2009. I am also very concerned that the representations of the Ministry and the Director are facilitating B.G.'s breach and continuing breach of that order. A party who has facilitated a breach of a Court order may also be subject to sanctions by the Court.

[6] Having expressed those concerns, I wish to say that I expect my order of December 21, 2009, to be adhered to. No application has been brought to vary it. It has not been varied, and I have dismissed B.G.'s application for interim custody.

...

[8] In the meantime, I want to make it clear, if I have not done so thus far, that I expect my order of December 21, 2009, concerning B.G.'s supervised access of the children, to be adhered to.

[9] The Director apprehended the children since that order was made. Therefore, my order of December 21, 2009, should be amended to reflect the reality of the situation as well as the spirit of my order, i.e., that B.G.'s access be supervised. That order binds B.G. I expect him and all parties who appear before this Court to comply with my order. I expect the parties to refrain from taking any steps that will facilitate a breach of that order. I do not know how I can be any clearer than that.

[82] I did not know at that time that B.G. had the two older children with him on the Sunshine Coast. B.G. failed to return the children that day. Instead, he waited to bring them back to the Lower Mainland to their foster home until the next day in order to suit his own convenience. In his evidence at trial he explained:

A ... It was -- it's somewhat difficult and inconvenient to get from the north Sunshine Coast to Vancouver. It's a fairly long drive, then a ferry, then another drive, then a stop at my home and then a drive to Male Ridge, so it was -- you know, it's for all intents and purposes a day of travel, a full day.

I had ferry reservations for the next day. I took I guess a realistic approach and the approach of a father, which was I am not going to disrupt what I am witnessing to be an incredibly healthy vacation and trip for my two children, and that's where I left it.

...

Q So you -- you returned the children the following day, that was August the 16th --

A Yeah.

Q -- 2011 --

A Yeah.

Q -- probably what, late afternoon?

A In -- if -- I would say if I had to guess six o'clock, but I -- I certainly don't recall and I don't have notes with me to indicate when that was.

[83] B.G. maintained that the Ministry knew he was on vacation with the two older children. When asked if he contacted the Ministry to determine if he should return the two older children right away, B.G. said that the social worker he had been dealing with may have been away on vacation; to contact anyone else at the Ministry for direction, he said, would be "tedious":

A ... And as I have stated before trying to get direction from After Hours staff, or staff that -- who weren't commanding this file or looking after it, is very difficult and tedious, so again a realistic approach is what I was -- I was taking. I wasn't and I'm not a lawyer and I didn't seek legal advice.

[84] I reject B.G.'s evidence that he could not hear my oral reasons for judgment because of static or noise with the telephone connection. There was no indication of any disruption with the connection or sound quality during the hearing, nor did B.G. ever raise any concern in that respect.

[85] Further, his explanation that no one at the Ministry told him to bring his children back is one of a number of examples of his efforts to blame others for his omissions.

[86] Although B.G. denied that he sexually abused his children, he made a strange remark in his evidence in chief. Oddly, B.G. considered the possibility that he sexually abused his children while in a dream-like state or trance. In his evidence in chief he said:

A And so I can definitively say that I have never sexually assaulted my children, and I say that without a shadow of a doubt. Although I have to say that in the wake of the allegation and the

weight of the allegation, the extremity of the allegation, and given what was a very stressful time, I contemplated, at least if not for a moment, a period where there was a possibility that I didn't -- couldn't recall. I couldn't recall. Perhaps I had a multiple personality disorder or something. I was looking for possibilities in the alternative to what was unimaginable to me, which was at the time at least, that [J.P.] overtly provided sexualized knowledge to the [G.] children in an effort to discredit me in what appeared to be a highly contentious custodial battle, dispute.

[87] When questioned about these statements in cross examination, B.G. mused about the possibility that he may have committed sexual abuse and forgot that he did:

Q Are you saying you gave the idea that you might have had a multiple personality at [sic] moment's thought, is that what you're saying?

A I -- probably no more than a moment's thought. Yet that was something that I -- I contemplated. I mean and this was in no way related to any sort of studies or training in the topic, it was probably just based on some pop culture reference where, you know, people will forget what they do because they have the multiple personalities. I don't really think that that's terribly common in empirical evidence, but I was searching for some reason why this was happening to me.

Q But are you saying there's a possibility?

A No, I'm not saying there's a possibility. There is no possibility, no. No. This was -- this was a time of shell shock, really, but post-traumatic stress disorder probably wouldn't have been out of the diagnosis at the time for me, no.

[88] B.G. also attended his children's school in mid October; and then again on October 30, 2009, contrary to the Restraining Order. He admitted to doing so, but said he was unaware of the Restraining Order. Although there is some uncertainty about when he was formally served with the Restraining Order, I find that he attempted to speak to his children in order to ameliorate any negative comments they may make about him. I accept that K.G. subsequently told her mother that she was not allowed to say anything bad about her father, and she should say that "when daddy kicked me that it didn't hurt, and I'm only allowed to talk about good things about daddy, and daddy makes me pancakes". It is also consistent with a similar remark that she made to Mr. Colby in August 2010 (about her father making

her pancakes) after she spent considerable amounts of unsupervised access with her father contrary to the December 21 Order.

[89] B.G. also proffered an inconsistent account of a discussion he had with BT.G. and K.G. in August 2011 that he perceived would assist his case. He maintained that he reported his children's remarks to John Day, a counsellor retained by the Ministry to provide him with guidance about disciplining his children. This discussion could not have occurred at that time because Mr. Day's involvement with B.G. concluded at the end of May 2011. During cross examination, B.G. provided an account of that discussion with his children that varied with his evidence in chief. When providing his account of the discussion, B.G. said that he had seen the videotapes of the VPD interviews of BT.G. and K.G. by that time. However, those videotapes were not produced to the parties until much later, during the trial (which commenced on October 17, 2011). B.G. never reported that discussion to the Ministry even though he perceives it to be important to his case.

[90] Finally, B.G. scheduled a holiday in the Dominican Republic at a time he knew he was to be in Court for trial. B.G. then delayed his return to Vancouver, forcing an adjournment of the trial, on the basis that his passport had been lost. His explanation was shown to be entirely lacking in credibility when the circumstances surrounding his delay in returning to Vancouver were revealed in cross examination.

[91] I prefer the evidence of witnesses called by J.P. - over B.G.'s evidence - who described from their direct observations B.G.'s lack of participation in raising the children and maintaining the household. I reject B.G.'s evidence that he was the primary caregiver who looked after the household and children while his wife was out of the house.

[92] In all, I found B.G. to be a highly intelligent, sophisticated, and manipulative individual who is quick to anger. He is prepared to cross boundaries and to engage in and make inappropriate and disingenuous conduct and statements when it suits his own purposes. Much of his testimony was not credible. B.G. demonstrated a

continued willingness to provide testimony that distorted the truth throughout his testimony.

[93] In conclusion, where the evidence between J.P. and B.G. is in conflict, I prefer that of the former. Although J.P.'s testimony was unfocused and overly dramatic at times, I found it to have been consistent with the surrounding credible objective evidence. It was clear that she was highly stressed when giving her evidence.

Sexual Abuse

Introduction

[94] I have found that BT.G., K.G., and BN.G. were sexually abused by their father. Although there is some evidence to suggest that P.G. was sexually abused, I am reluctant to make that finding because I lack a disclosure from P.G. (she was just over 15 months old when the disclosures were made by her older siblings) and lack the sufficiency of objective *indicia* that exist for her older siblings.

[95] My determination that B.G. sexually abused his three older children and that J.P. does not suffer from mental incapacity is not predicated solely upon my overall view of B.G.'s poor credibility and lack of truthfulness. The gravity of the competing allegations made by each spouse against the other requires careful scrutiny of all of the evidence.

[96] I have approached the evidence with great caution. I have carefully considered whether the sexual abuse allegations are the result of fabrication and coaching on the part of J.P., whether they are the unintended result of her conduct, and the potential sources of the children's sexualized knowledge that might have led them to provide false reporting.

[97] I also wish to make it clear that my decision has not been influenced by statistical data cited by experts in their testimony and during argument regarding the prevalence of reporting of valid and false claims of sexual abuse and incidents of recantation. My decision is based upon the specific evidence that concerns this

case, and not whether the various and competing allegations advanced by the parties are more or less likely to be true (on a balance of probabilities) based on statistical data, probabilities, or trends.

[98] Before proceeding any further, I wish to say that after considerable reflection for the need to include sexually explicit content in these reasons for judgment, I have decided to set out the disturbing words used by the children when making their disclosures. I have done so because it is important to consider the actual words used in the face of competing assertions by B.G. that his wife fabricated them (and coached the children), led the children to make up the disclosures based upon her questions to them, or that the children made them up on their own.

[99] I find that the children's detailed descriptions of their father's sexual contact with them are too elaborate for children who are seven, five, and three years of age to concoct on their own absent sustained exposure to external sexualized information (for which there is no evidence). The children's statements are either the result of fabrication or actual sexual abuse. In these reasons, I have set out my finding that J.P. did not fabricate or coach the children or ask them questions that would cause them to make up the disclosures.

[100] In this section, I comment on evidence (including admissions made by B.G.) which demonstrates his vulgar mindset, his distinct lack of regard for appropriate sexual boundaries, and his willingness to conduct or express himself in highly inappropriate ways. But I have found that B.G.'s vulgarity and inappropriate conduct with and in front of his children do not, on their own provide the basis for the words used by the two older children in their disclosures.

[101] My findings of fact, set out in the factual narrative that follows, as well as my ultimate determination, are based upon the totality of the evidence, which includes objective and expert opinion evidence in addition to admissions made by B.G. I found there to be a significant body of evidence from which I am more than satisfied, on a balance of probabilities, that B.G. sexually abused his three older children and physically abused them and his wife.

Admissibility of the Children's Hearsay Statements

[102] It is important to ensure that the children's statements are admissible since the trial involved a custody and access dispute pursuant to the *Divorce Act* and *Family Relations Act* (where a determination of the veracity of the sexual abuse and mental capacity allegations are determined on a balance of probabilities) together with apprehension proceeding brought under the *Act*.

[103] The threshold for admissibility of hearsay evidence is less stringent in apprehension proceedings. Section 68(2) of the *Act* permits the admission of hearsay evidence that the court considers reliable in apprehension proceedings:

In a proceeding under this Act, the court may admit as evidence

- (a) any hearsay evidence that the court considers reliable, or
- (b) any oral or written statement or report the court considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding.

[104] In *K.M. v. British Columbia (Director of Child, Family, and Community Services)*, 2004 BCSC 560 at para. 38, leave to appeal to the C.A. refused, 2004 BCCA 603, Joyce J. affirmed the decision of the trial judge (who was a Provincial Court Judge) from the apprehension proceedings that the test of "admissibility under the *Act* is not as stringent as the dual test of necessity and reliability that applies with respect to the common-law principled approach to the admissibility of hearsay evidence set out in *R. v. Khan*, [1990] 2 S.C.R. 531".

[105] Admission of hearsay evidence concerning the children's statements in apprehension proceedings is recognized in case law: *S.M. v. British Columbia (Director of Child, Family and Community Service)*, 2011 BCSC 1131 at para. 9; *D.D.J. v. P.M.J.* (1999), 70 B.C.L.R. (3d) 366 at paras. 24-26 (S.C.); and *K.M.*

[106] In *S.M.*, Macaulay, J. said at para. 9:

The courts have consistently recognized the need to apply these statutory principles in child protection cases: see, for example, *L.(A.) v. British Columbia (Director of Child, Family & Community Service)*, 2008 BCSC 819, at para. 25. The Provincial Court has long accepted that the question of reliability does not require a *voir dire* before admitting the hearsay evidence

of children in child protection cases. Instead, and the experienced trial judge would have been well aware of the practice, the court hears all of the evidence and then receives submissions on the reliability of the impugned hearsay based on that overall context: see *A.J. (Re)*, [1998] B.C.J. No. 1888 (Prov. Ct). This approach is sensible and is consistent with the approach taken in the present case. Counsel at trial did not object to the admissibility of many volumes of evidence that included hearsay evidence from one or more of the children.

[107] Turning to custody and access cases involving alleged sexual abuse, hearsay evidence of children's statements is permitted provided it is both necessary and reliable. A child does not necessarily have to be produced for cross examination where the evidence cannot otherwise be admitted under an existing exception to the hearsay rule (e.g., the spontaneous declaration exception): *J.K.F. v. J.D.F.*, [1988] B.C.J. No. 278 (C.A.); *P.V. v. D.B.*, 2007 BCSC 237 at paras. 17 and 18; *S.F.R. v. E.C.R.* (1997), 41 B.C.L.R. (3d) 239 (S.C.); and *R. v. Khan*, [1990] 2 S.C.R. 531 at 543, 544, and 547.

[108] In *P.V.*, the test of necessity was met because the child (who was 10 years old) did not testify and the admission of her hearsay evidence was necessary "in order to fully consider the question of her best interests" (at para. 18). In *S.F.R.*, Dillon J. had "no hesitation in determining that the hearsay evidence of these statements was necessary given the age of the child [under seven years old] and the nature of the proceedings" (at para. 42).

[109] The approach that seems to be taken in these cases is that once the necessity test is met, the hearsay evidence is heard. The reliability of the evidence is then assessed at the conclusion of the trial as part of the court's determination of the merits of the claim: see, e.g., *S.F.R.* at para. 42.

[110] The test to assess reliability was described in *J.K.F.* Decisions of this Court have also considered the description set out by the Supreme Court of Canada in *Khan*.

[111] *J.K.F.* involved a custody and access dispute brought per the *Divorce Act* that involved allegations of sexual abuse. In setting out the test for reliability, the Court of Appeal formulated the following factors to be considered in assessing reliability:

With respect to reliability, it was for the learned trial judge to assess this issue. In this respect, having regard to the gravity of the allegations against the father, the learned trial judge would have regard for the following:

- (1) Were the statements made by the child spontaneous?
- (2) Was the child coached?
- (3) Was there harmony between the evidence of one witness and another?
- (4) Did the questions asked of the child suggest an answer?
- (5) Did the evidence of the expert witnesses, as accepted by the learned trial judge, support the allegations of sexual abuse?
- (6) Was there consistency over time of the child's disclosures as to sexual abuse?
- (7) Was there other evidence supporting the allegations supporting sexual abuse?

[112] In *S.F.R.* (para. 43) and *P.V.* (para. 18), the factors to be considered when assessing reliability are stated to be: timing of the statement; demeanour and personality of the child; intelligence and understanding of the child; absence of motive of the child to fabricate; absence of motive or bias of the person who reports the child's statement; spontaneity; statement in response to non-leading questions; absence of suggestion, manipulation, coaching, undue influence or improper influence; corroboration by real evidence; consistency over time; and whether the statement was equally consistent with other hypothesis or alternative explanation.

[113] In addition to the children's statements, other supporting or contrary evidence may be considered in evaluating the reliability of the hearsay evidence: *P.V.* at para. 19.

[114] No objection was taken by any of the parties to the admissibility of the statements made by the children to their mother and father, experts and other health care professionals, supervised access supervisors employed by the Ministry, foster parents, and to the VPD. Each party sought to tender in evidence statements made

by some or all of the children. None of the parties sought to have any of the children called to testify. There is no doubt that the children would be unduly traumatized if called to give testimony given their age and what they have endured. I have no hesitation in concluding that the test of necessity has been met.

[115] During argument, fulsome submissions concerning the reliability of various statements made by the children to determine the issues of sexual and physical abuse, the source(s) of sexualized knowledge, and J.P.'s mental capacity were made by B.G. and counsel representing J.P. The Director did not make any submissions.

[116] In assessing the children's disclosures, I have considered the *indicia* described in the cases.

[117] Further, and apart from the following exceptions, evidence regarding the children's statements was only admitted from those persons who were subject to cross examination. The persons not called to testify were:

- (a) Dr. Serena Kot, a psychologist retained by the Ministry to assess the children's needs;
- (b) the VPD officers who conducted the interviews of the two older children;
- (c) social workers;
- (d) foster parents; and
- (e) the access supervisors who prepared access reports (that included notes about the children's adverse behaviours and statements).

[118] Some of these individuals were listed on witness lists submitted by B.G. and the Director - Dr. Kot, the lead VPD investigating officer, foster parents, and the social worker. They were not called to testify.

[119] The reports of Dr. Kot, social workers, and the access supervisors were made in the ordinary course of their duties. The VPD videotapes depict interviews with BT.G and K.G. that were conducted during the course of a police investigation. These documents and the videotapes were admitted into evidence as business records. No party claimed that these records did not contain an accurate account of what the children said. Further, no party required any of those individuals to be produced for cross examination.

[120] I am not aware of any reason to suggest that the records setting out or recording any of the children's statements are inaccurate. In the circumstances, and apart from a concern I have regarding Dr. Kot's reporting, I am satisfied those documents and the videotapes contain a reliable recording of the children's statements that were made to or in front of those particular recipients. The question is the weight to be attached to the statements contained in those recordings.

Background Facts Leading up to the Disclosures of Sexual Abuse

[121] Following B.G.'s arrest on October 5, 2009, J.P., BT.G., and K.G. were interviewed at the family home by a social worker in respect of the alleged physical assault on November 10, 2009.

[122] Summaries of the interviews are contained in Ministry documents. BT.G. confirmed that he had witnessed his father hit his mother.

[123] The social worker found that K.G. was reluctant to speak with him. She would not face him. Instead, K.G. bent over and told the social worker to speak to "Mr. Butt", referring to her bum. As a result of expert evidence given during the trial, I am satisfied that this is a pre-disclosure example of K.G.'s sexualized behaviour. The interview got underway with K.G. facing the social worker in that posture. Later, she moved about the room as she answered the social worker's questions. During the interview, K.G. confirmed that her father had kicked her, said it did not hurt, and that she had also observed her father throwing chairs at her mother in the past.

[124] J.P. had become concerned about a labial tear to and what she perceived to be a larger than normal opening of her youngest daughter's vagina. She ruled out diaper rash because she and the nanny used zinc cream. She spoke to the nanny about the possibility that a diaper wipe may have inadvertently tugged P.G.'s vagina during a diaper change. She was satisfied with the answer and dismissed it as a possible cause. J.P. eventually ruled out a yeast infection because the redness went away. She remained concerned, however, about the larger than normal opening in her daughter's genitalia (even though the opening had shrunk somewhat from its original size and the redness has disappeared).

[125] J.P. reflected on what she knew of B.G.'s vulgarity and his untoward behaviour in touching and kissing the children. She reflected on certain remarks he made to her at K.G.'s gymnastics event in June 2010 along with photographs and highly graphic and sadistic drawings on desk blotters she found amongst B.G.'s keepsakes following their separation. J.P. began to question whether B.G. had done something to P.G. She spoke with the VPD on November 28, 2009 to express her concern about the possibility of sexual abuse of P.G. and asked the police to investigate.

[126] The police advised J.P. to take P.G. to the hospital. J.P. took all four children to see a pediatrician at Children's Hospital on December 7, 2009. Dr. Jain examined the children. She did not find any evidence of sexual abuse. In her report dated December 8, 2009, she cautioned that: "[A] normal physical examination does not rule out the possibility that abuse may have taken place."

[127] Dr. Jain's report was tendered into evidence as part of the Ministry's documents, which were submitted as business records and not for the proof of truth of their contents. Dr. Jain was not called to testify. The report does not provide any indication that Dr. Jain discussed the children's disclosures with them. Dr. Jain's report does contain a summary of statements made by J.P. concerning physical and suspected sexual abuse of P.G., together with her concerns about B.G.'s inappropriate behaviour with the children. No party has suggested that the report of

the account provided by J.P. that is contained in Dr. Jain's report should be submitted for proof of truth of contents. Nor has any party suggested that the account is inconsistent with J.P.'s evidence. No one sought to cross examine J.P. on the document. As a result, I have not considered Dr. Jain's account of J.P.'s statements in reaching my decision in this case.

[128] A meeting was scheduled with the VPD to take place on December 23, 2009. J.P. thought that in addition to providing her account, the older children would be interviewed by the police as well. J.P. received advice from her lawyer that in view of that impending meeting with the VPD, she should ask her older children if there had been any inappropriate contact from their father. Her evidence is corroborated by an email she sent to her counsel.

[129] Following that advice, and upon her return home on the evening of December 16, J.P. asked her two older children these questions, "Did daddy ever do anything, did he ever touch you?"

[130] According to J.P., she was expecting her children to respond with blank looks or with the comment "what are you talking about?" Instead, she says that disclosures of sexual contact by B.G. came pouring out of their mouths.

The Children's Disclosures to J.P.

[131] A young child's disclosure of sexual abuse is usually the last means by which the abuse is discovered. That is because young children are not mature enough to hold moral judgments about sexual conduct, especially where a parent (to whom the child looks for love and support) is the abuser. Disclosures often occur when the child is free from the abusing parent's control (e.g., when the abusing parent has left the family home).

[132] In this case, the children's disclosures were first made to their mother approximately one and a half months after B.G. attended at the children's school on October 30, 2009.

[133] When J.P. came home on the evening of December 16, 2009, she spoke first to B.T.G. and K.G. They were sitting on the couch watching television when she came into the house. B.N.G. and P.G. were in another room with the nanny. She told the children that the television would be turned off for a moment so that she could ask them something. Immediately after she asked the two questions I have set out above, K.G. jumped off of the couch and said, “yeah, suck it, suck it, pretend it’s a lollipop”.

[134] J.P. was stunned. She recalled B.G. using the word lollipop to her about three years earlier when he was encouraging her to engage in oral sex with him. B.G. told her to pretend his penis was a lollipop.

[135] Still in disbelief, J.P. asked, “really, what are you talking about?” K.G. responded, “Daddy makes me suck his penis”. She mimicked her father and said, “put your mouth on my penis and suck it”. She moved about the room moving her shoulders back and forth, saying, “Daddy let’s me suck his penis”, as if she was being allowed a form of treat by her father. When asked how often this occurred, K.G. replied, “oh, about a hundred thousand times”.

[136] K.G. went on to tell her mother about a game she played with her father, saying, “daddy makes me play milk the cow”, and says “mooooo”, and “I have to squeeze his penis till the milk comes out”. She said that her father “pushed me on my head and said put your mouth on my penis and suck it”. K.G. also simulated oral sex. She described her father’s ejaculation as “pee pee farts”, and then pointed with her hands at an angle (simulating an erection) saying “pht, pht, pht”.

[137] K.G. made other disclosures to her mother that evening. K.G. demonstrated what she said her father does to her sister, P.G. She pulled down her pajama bottoms and put her fingers up her vagina, indicating where her father rubs, tickles, and scratches her sister while she is in the bathroom. She tried to show J.P., by using her tongue, the manner in which B.G. kisses her. K.G. walked over to her mother and tried to put her tongue in J.P.’s mouth. She also said that her father “sprayed glue from his pee-pee onto my chin and it was dripping on my dress”. And

she described an incident where her father took off her underwear, saying, “daddy had a pee-pee fighting game with me [and] that’s where our pee-pees fight together.” K.G. also told her mother that B.G. partially inserted (“stuck”) his penis inside her vagina (“pee -pee hole”) and that it hurt.

[138] K.G. also reported seeing her father rub his hands over and in the baby’s genitalia while changing her diaper (pinching, tickling, scratching, and rubbing). K.G. also told her mother that she saw her father put his penis in P.G.’s mouth.

[139] Some of K.G.’s narrative to her mother was given in a child’s sing-song voice, describing the events to have occurred on Sundays (which K.G. called “bathroom time”).

[140] BT.G. eventually joined in the conversation. He told his mother that when he is in the shower with B.G., he is told, “go ahead son, touch my penis”, and that he “plays” with his father’s penis “because he taught me to”. He also told his mother that he touches his father’s penis until B.G. has an erection. He showed his mother the rubbing and lifting motions he would use with his hands on his father.

[141] J.P. then spoke with BN.G., separately from his older siblings. She asked, “did daddy ever touch you anywhere on your body”? He replied immediately, stating, “daddy puts his lollipop here”, and pointed to his penis and his bum. BN.G. also told J.P. that his father “licks his fingers and puts up inside where the poo is”. By now, J.P. was in a state of utter disbelief. She challenged BN.G. He assured her that he was telling the truth and that it happened lots of times. BN.G. gestured with his fingers and pointed to his penis and his bum. When BN.G. told her that his father was naked when he did this, J.P. asked him what B.G.’s penis looked like. He responded that his “pee-pee was really, really big” and that “daddy sprayed pee-pee on myself”. J.P. also asked BN.G. if his father touched anything else, to which he responded, “the floor”. J.P. asked if B.G.’s legs were touching the floor and BN.G. responded, “yeah” and that he put his finger in the toilet. J.P. asked if B.G. was hanging on to the toilet and BN.G. said, “yeah”.

[142] BT.G. and K.G. came into the room during the conversation between J.P. and BN.G. An audio recording reveals that at one point, BT.G. tried to explain to his mother what BN.G. was saying. At another point, BT.G. tried to interrupt to demonstrate his father's erection, at which point his mother told him to "be quiet".

[143] J.P. remembered that she had a hand-held tape recorder in her purse that she used to record voice reminders for herself. She took it out to record the children's remarks, and to do so, she asked them to repeat their statements. Unfortunately, the batteries were not fully charged and the recorder stopped functioning. She switched to use the recording device on her iPhone. As a result, J.P. was only able to record portions of the children's disclosures, which she candidly admitted were a repetition of what they had previously told her. The audio recordings vary in length; some are very difficult to hear.

[144] It is not clear from the audio recordings if BN.G. told his mother that his father touched his bum with his penis or tried to insert it.

[145] Even though a meeting with the VPD was scheduled for December 23, J.P. sought the Ministry's assistance in view of what the children had told her. She called the Ministry's Helpline on December 17, 2009 asking to speak with a social worker. Documents produced by the Ministry record that she called that evening, wanting to "ensure that a s/w hears what they [children] have to say".

[146] J.P. also called and left several voice messages for the VPD police officer that she was to meet on December 23, in addition to calling the VPD's non-emergency line to seek assistance.

[147] J.P. set out the children's disclosures in her affidavit sworn on December 21, 2009 ("December 21 Affidavit"), which was used for an interim application heard in this Court the same day.

The Disclosures to Dr. Edamura

[148] On December 18, 2009, J.P. took BT.G. and K.G. to see Dr. Arthur Edamura, who had been their family doctor since 2000. He has treated children for over 30 years. In addition, Dr. Edamura has attended ongoing legal education courses that include psychiatry and sexual functioning. He has been taught that when sexual abuse cases are presented, a referral to a highly trained psychiatrist should be made.

[149] J.P. attended the office on a “fit/in” basis since she did not have a scheduled appointment. She brought the children and a friend with her. Dr. Edamura met with J.P. alone first. He was made aware of her concerns that the children were being abused by their father. She described the children’s account to him.

[150] Dr. Edamura met with BT.G. and K.G. separately. J.P. and her friend remained in his private office for both interviews. Dr. Edamura was careful to look for any signs of coaching. He did not see any, nor did he see any indication of communication between mother and child. He told J.P. to remain quiet when she tried to interject. I am satisfied that Dr. Edamura took careful notes, trying to record what the children were telling him as verbatim as he could.

[151] Dr. Edamura asked BT.G. some open-ended questions, such as “How are you today?” and “How are you feeling?”. He tried to stay away from sexual matters, and sought to let the children raise them. He challenged BT.G., for example asking, “What do you mean Dad is really bad?” BT.G. complained of physical and sexual abuse. He told Dr. Edamura that his father grabs him by his neck and squeezes it hard enough to hurt. He also complained that B.G. twists his arm behind his back and pushes him forward. BT.G. reported being in the shower with his father (at B.G.’s request), “to play with his penis to get an erection”. He knew what an erection was, explaining that his father’s “penis goes up and larger ten times”. Dr. Edamura had a vague recollection of BT.G. making squeezing marks with his hand.

[152] BT.G. also told Dr. Edamura about his father’s sexual interaction with K.G., stating that he learned from his sister that B.G. tells her to lick his penis and “it tastes

like a lollipop”. He reported that this happened as recently as two nights ago, and that K.G. told him “tasted it [-] pretty bad”.

[153] Dr. Edamura asked BT.G. specific questions to make sure that he knew what an erection was as opposed to simply recounting something he had been told to say. He said that BT.G. also told him that K.G. had to squeeze his father’s penis and when she did, their father yelled “moo”.

[154] Dr. Edamura spoke separately with K.G. He approached the interview with open ended questions as well. He did not raise sexual matters; as with BT.G., he waited until she did before asking her questions about sexualized conduct. K.G. described several examples of sexual conduct. She described a game she played with her father called “milk the cow”. She said her father gets on his knees without his pants and underwear on, and she squeezes his penis “to milk it out”. She related that her father told her she was very good at it. She described an erection, and used the words “pee pee farts”. K.G. also told Dr. Edamura that her father puts his penis in P.G.’s mouth.

[155] K.G.’s narrative was provided to Dr. Edamura in a mechanical fashion, without any judgments attached to her words. He testified that she did not appear to understand the implications of what she was saying, but well understood the facts of what she was recounting. She seemed torn, telling Dr. Edamura that it “feel[s] good that Daddy is away” and yet she missed him as well. On the other hand, BT.G. seemed to be more concerned about whether the conduct was right or wrong.

[156] Dr. Edamura found the children to have described sexualized events that he would not expect children of their age to know about. He found their statements to be credible, sincere, and explicit in corroborating J.P.’s concerns. He was struck by the level of detail of their knowledge. He decided to place a call to the emergency department at Children’s Hospital and asked to speak with a child psychiatrist. He provided particulars to the doctor on staff that he spoke to. He was told that a specialist would call him back, and further, that the matter would be a case for the

Ministry to look after. Dr. Edamura understood from J.P. that the Ministry was already involved.

[157] No one called him back. Dr. Edamura was due to leave the following week for vacation and scheduled to return to his office for only a few days to a week in early January, and then to take an extended leave of absence for cancer treatment (nine to ten months).

[158] He decided to dictate a letter to the Hospital. He instructed his assistant to send it by fax to the Hospital on the same day in order to confirm his call. He assumed that his letter would be given to the Ministry. He also gave J.P. a copy of his letter to give to the Ministry.

[159] His letter advised:

This is to state that I have been [J.P.'s] G.P. since 2000. She has not had any mental problems.

I have discussed her concern today, regarding child sexual abuse by their father. I have discussed this directly with the two older children, [K.G.] and [BT.G.], who appear credible and sincere, explicit in corroborating their mother's concern.

I have called BC Children Hospital and they have advised me to contact the MHR and they would contact me with the number to call.

[160] Dr. Edamura's role in speaking with the children and his letter were disclosed in the December 21 Affidavit. J.P. also made the VPD aware of the two older children's visit to his office. Neither the Ministry, the VPD, or any medical professional retained by the Ministry to investigate the allegations followed up to make enquiries of Dr. Edamura.

Videos Taken of the Disclosures

[161] When J.P. told her lawyer that she had audio recordings of the disclosures, he asked her whether she had taken any video recordings as well. She understood from their discussion that he would prefer if she had video recordings of the disclosures.

[162] J.P. used the video function on her still camera to record B.T.G. and K.G.'s statements in a quiet, private area of a recreational facility for children located in Richmond. She asked each child, in the absence of the other, to repeat their statements. She made the recordings following a Court hearing on December 21, 2009.

[163] The camera only permitted short video recordings to be taken. That prevented J.P. from securing ongoing streams of video footage of her children's statements.

[164] J.P. asked B.T.G. and K.G. to repeat their previous statements, which they did. The videotapes show the children demonstrating different aspects of the sexual touching. For example, B.T.G. used his hands and a highlighter to show his mother the manner in which he touched his father and what happened when the erection occurred. K.G. provided a demonstration of the "milk the cow" game, "pee pee farts", oral sex, and the manner in which her father put his penis in the younger daughter's mouth.

[165] At trial, J.P. said in her examination in chief that at the time the video recording was to be made, K.G. used the words "daddy's disgusting penis", claiming that it hurt her. None of the video recordings capture K.G. making these remarks. I accept J.P.'s evidence that she did not use or suggest those words to her daughter. From all accounts, including those provided by her parents and Mr. Colby, K.G. is a very bright and perceptive young girl. I am satisfied that K.G. was sufficiently bright to have picked up on her mother's distress by this time. However, this did not cause K.G. to augment the disclosures. K.G. had already disclosed her father's sexual contact with her, including his partial penile contact that she equated to physical discomfort.

[166] J.P. was able to have the audio and video recordings burned onto a disc with assistance from an employee working at a Best Buy retail store.

Discussion

[167] I have reviewed the audio recordings and videotapes several times. It is clear that the video and audio recordings were not made with any form of sophisticated equipment. The clicks and interruptions in those recordings are explained by the nature of the equipment that J.P. used.

[168] I find that the descriptions of sexual contact provided by the children contain words that are appropriate to their age. The words they used were also consistent. Although there was some variance in some of the words they used when re-telling their accounts, those variations were minor and do not convey any different meaning or events.

[169] I do not find any evidence of coaching or scripting. The disclosures contain accounts of elaborate sexual contact. I am satisfied that children of their age lack the capacity to remember those elaborate details if they had been scripted. In reviewing the recordings and videotapes, I was struck by the overall naivety of these children when providing their elaborate accounts. I am satisfied that the children were not sufficiently mature to provide such a complex narrative if their mother had coached them. I do not accept B.G.'s assertion that the fact that K.G. sang some of her words or described the "milk the cow" contact as a game to suggest concoction. It is natural for a five year old to express herself in song and in games.

[170] I do not find the initial questions that resulted in the disclosures to be leading. The question, "Did Daddy ever touch you?", was an open ended question that did not demand an answer suggesting sexualized contact. There is no reference to genitalia or sexualized matters in the question. The children could well have said that their father hugs them, or kisses them good night, or (as they have reported in interviews with health care professionals) made complaints of physical abuse. Although there were some questions asked at a later point in the narratives that could be seen as leading, they were directed at frequency of sexualized touching as opposed to the nature of it.

[171] There was one question J.P. put to the children that should not have been asked. Later in the evening, after the children had made their disclosures, J.P. asked her three older children if they thought their father's conduct was good or bad (to which they responded "bad"). I am satisfied, however, that this question, which asked for a judgment from the children, did not affect the credibility or reliability of the children's disclosures.

[172] I accept J.P.'s evidence that there was no overt means in the family home by which they could have gained knowledge of sexualized information. There was no satellite television. J.P.'s house rules, of which the nannies were aware, limited the children to watching children's programs such as "Treehouse" network and children's cartoons. I also accept that J.P. had not consumed alcohol or was impaired when the disclosures were made.

[173] Criticism has been levelled against J.P. for speaking with the children about possible sexual contact with their father. Experts recommend against a parent speaking with a child about this subject; it is preferable to have the interviews of young children left to highly trained experts. Otherwise, inappropriate and leading questions may be asked that impede the fact finding function.

[174] In this case, J.P. acted, *bona fide*, on what she thought were her lawyer's recommendations. I find her efforts to speak with her children, and then to gather evidence and speak to authorities as logical and natural for any highly distressed parent faced with disclosures of sexual abuse. I accept that in the circumstances of this case, she thought she was doing what any responsible parent would do to protect their children.

[175] Concerns were also raised at trial about J.P.'s pre-disclosure knowledge of B.G.'s vulgar behaviour and inappropriate interactions with the children (i.e., long kisses, kissing on genitalia, letting them kiss his nipples, and their showers together). Her knowledge does not mean that sexual abuse did not occur. Nor does it mean that she fabricated the disclosures. As I see it, the questions to be asked are why she only suspected sexual abuse when she made her reports to the police,

Ministry, and Dr. Jain prior to the children's disclosures, and, why did she fail to see B.G.'s conduct with his children that she was aware of as sexually abusive? This point was raised by counsel for the Ministry when cross examining Dr. Dunne in the context of J.P.'s failure to take P.G. for medical assistance when she first suspected a labial tear.

[176] Dr. Dunne's explanation, which was not challenged, was similar to her description of battered women's syndrome (which I have set out in the physical abuse section). Her evidence, which I accept, was:

A Yes, and I would've thought, yes, she dissociated.

Q And can you just explain dissociation for the court --

A Sure.

Q -- for me?

A Sure. Dissociation is a coping strategy, it's not conscious. It's like the state of your nervous system and your brain goes in when you daydream ... and then someone says, "Did you hear what I was saying?" "Oh, no, I was daydreaming". That's really the core of disassociation, although it can be much more elaborate. It's a removal of consciousness from present awareness so that you're not in touch with what's going on. So for example, the more -- there's the kind of daydreaming variety, but there's also -- children and adults can leave their bodies if what's going on -- what's happening to them -- they can just leave their sense of being embodied even. That pathway gets laid down in childhood typically and it becomes automatic later in terms of distress.

...

Q But fair to say that it would be unusual for most people on seeing concerning injuries to their baby that they wouldn't -- that they would dissociate around that and forget to follow up?

A Unless they had a prior history of abuse that --

Q Right.

A -- you know, feels, "Oh, no, this is an awfulness that's happening and I need to go away from it." So, yeah, a prior history of some form of abuse likely, sure.

Q Okay.

A And also, too -- I mean, this is also quite common. The enormity of the possibility is -- I mean, it's almost -- for many partners of people who sexually abuse their children it's just too much. I mean, a child can actually say, "Mommy, daddy's doing this." "Oh, you must be wrong," is almost always the first response. It's -- denial is one of the primary

...
coping strategies for any kind of, you know, loss or any kind of state of affairs that's intolerable psychologically. And so you needn't dissociate, it could just simply be, you know, denial, the conscious, you know, "Oh, no, you must've misunderstood."

...

A The thing to kind of, I think, really take note of is that many moms, or in some cases dads, they can just permanently be in denial. I mean, that's one of the reasons -- that's how sexual abuse gets perpetuated over generations.

[177] There is nothing about J.P.'s failure, prior to the children's disclosures, to believe that sexual abuse was taking place that supports B.G.'s multiple theories regarding the origin of the disclosures. Nor does it detract from her credibility. I accept her evidence that she found his behaviour inappropriate and asked him to stop. I do not see any basis to support the suggestion that J.P. is responsible for failing to protect her children.

[178] I am satisfied that despite her concerns and objections to B.G.'s behaviour, including his parenting abilities, his outbursts and physical aggression, and despite her suspicions and growing concerns, J.P. did not believe that B.G. was actually sexually abusing his children until B.T.G., K.G., and B.N.G. made their disclosures on December 16, 2009.

B.G.'s Response

[179] B.G. was aware of J.P.'s evidence concerning the children's disclosures because he was given the December 21 Affidavit at the interim hearing that took place the same day. In addition, J.P. told the Court, in B.G.'s presence, that she had an audio recording of the disclosures. Up until the time of production of that affidavit, and notwithstanding the existence of the sexual abuse allegations, B.G.'s position (set out in an affidavit) was that he was prepared to let his wife have joint custody of their children, notwithstanding his stated concerns at that time about J.P.'s emotional and mental stability.

[180] Now, with the advent of the children's disclosures, B.G. was confronted with something more than statements made by his estranged spouse, i.e., actual

statements made by his children. As a result, B.G. intensified his concerns about his wife's mental capacity and his children's well-being to his friends, the Ministry, and eventually the VPD. He enlisted the help of others to call the Ministry to report concerns about J.P. in a baseless attempt to discredit her. He pressed his unfounded remarks on J.P.'s brother (who became one of the children's foster parents in January 2010).

[181] B.G. also raised fears to the Ministry and the VPD that the children's whereabouts were unknown. He suggested to the VPD that his unlicensed rifles were missing from the family home and implied that his highly distraught and unstable wife might use them on herself and the children.

[182] B.G.'s unfounded comments to the Ministry about his wife's mental instability were a significant factor in the children's apprehension.

[183] When the audio recordings and videotapes were produced, B.G. became so concerned that he sought to meet with his children before they were interviewed by the VPD. He sought to do that in order to minimize any damaging comments his children might make to the police. As I have noted, B.G. led the VPD to believe the children were in imminent danger. He wanted them removed from J.P.'s care as quickly as possible in order that he could gain unsupervised access to them. He changed his position on custody, to seek sole custody, when he filed his Statement of Defence on January 5, 2010.

[184] At trial, B.G. vacillated between three different possible explanations for the children's disclosures: fabrication and coaching by J.P.; inadvertent conduct on her part that led to their disclosures; and the children made them up based upon inappropriate exposure to sexualized knowledge.

[185] B.G. agreed with J.P. that there was no means by which the children could gain access to sexualized material at the family home. They did not have satellite television, their access to adult television channels was restricted, and there were no pornographic magazines at the house. The children could not inadvertently view the

pornography situated on B.G.'s computer hard drive because his computer was locked and needed to be accessed with a password.

[186] I reject B.G.'s evidence that his children's sexualized knowledge came from J.P. or from the school yard. The words that they used are not something three, five, and seven year old children pick up from other children at school and kindergarten.

[187] B.G. was unable to identify a means by which the children were inadvertently led to make disclosures, other than to say that they misinterpreted stories and events in order to please their mother's dislike of him.

[188] I reject B.G.'s attempt to attribute his eldest daughter's precociousness and BT.G.'s intelligence as a possible reason for their remarks. He blamed BT.G.'s account of their showers as a misinterpretation on the part of J.P. and BT.G., yet he admitted to frequent showers with his children in a small shower stall. B.G. took the same approach with K.G., stating that his daughter misinterpreted their discussions about milking cows.

[189] I also reject his accusation that J.P. backed the children into a corner to make their statements:

A And it makes logical sense to me, because look at the kids, they look really healthy. But whenever those videotapes were taken they looked like shit, they were cornered, they were backed into a corner, they weren't allowed to say anything other than the bullshit that their mother was fucking forcing them to say for purposes of marginalizing me, and annihilating me. But thankfully it didn't work and now I am stronger than ever. And I am younger than you, so I can sit here as long as you want to keep me, and you will be the one dying of old age and heart failure before I will, even though apparently I am a drug addict and a -- and an abusive alcoholic, who is drunk right now, according to you, the master --

Q Now, sir --

A -- of the legal science on projection --

[190] I also wish to remark upon an admission made by B.G. in the midst of denying he sexually abused the third child, BN.G. Quite suddenly, B.G. said that he would not say that one aspect of his son's disclosure to his mother was erroneous.

B.G. gave the following testimony (in his evidence in chief) concerning J.P.'s account to Mr. Colby about the disclosures made by BN.G. of digital penetration of his anus and about the word "lollipop" he said that his father used to describe his penis:

A ... The next paragraph [of Mr. Colby's report]:

[J.P.] says that she took [BN.G.] to the bedroom on his own. She questioned if anyone had ever touched him and [BN.G.] said his father touched him with his "lollipop."

Of course, [indiscernible] never touched [BN.G.] with my penis, never referred to my penis as a lollipop, in his presence or in anyone's presence that -- that I know of. And if -- if -- if it may have happened, it may have happened potentially in front of [J.P.]. And I'm not -- I'm not saying definitively that I never said that, but I'm saying that I certainly have no recollection of making that commentary, and certainly not in front of [BN.G.], and never touched him with my penis and never -- and then, further, that the - - further in that paragraph it states:

He also said Daddy licks his finger and "puts it up where the poo-[poo] is."

Never. I would've seen [BN.G.'s] behind in changing his diapers, but certainly not touching it inappropriately and never, of course, inserting my finger in his behind or anything. So that is -- well, I won't go as far as saying it's an erroneous statement by [BN.G.] I will say it's an erroneous -- it's an erroneous characterization by [J.P.], and -- and I suppose that I certainly wasn't there when that allegedly happened, and so I can't really indicate what the circumstances were, but, certainly, that never happened between [BN.G.] and I.

[Emphasis added]

[191] I find B.G.'s evidence to be most troubling. His evidence could be taken as an admission that BN.G.'s disclosure is true. Yet, I am reluctant to predicate a finding of sexual abuse to BN.G. based solely upon that evidence in the midst of other evidence denying sexual abuse to his youngest son.

[192] I also reject B.G.'s submission that K.G. appeared to be in distress in the videotape, suggesting that she had been coerced against her will to make a false statement. I found nothing unusual about her appearance in the video except that she appeared to have messy hair. I accept J.P.'s explanation that this was the result of K.G. playing in the recreation centre immediately prior to the video recording

getting underway. The only other aspect that stood out was K.G.'s desire to end the videotaping and get back to playing.

The Children's Sexualized and Aggressive Behaviours Following Their Apprehension

[193] One method used to assess whether sexual abuse has occurred to children is to examine their conduct and behaviour. For younger children, under 12, indicators include age inappropriate sexual knowledge, sexualized or highly aggressive behaviour with other children or adults (including requests for sexual touching), night terrors, using sexualized language, making efforts to insert foreign objects into the vagina or anus, touching genitalia in public settings, excessive masturbation, unusual toileting behaviour, exploring sexuality with younger siblings, engaging in drawings that are sexually explicit, bed wetting, withholding bowel movements, spreading feces, and throwing temper tantrums.

[194] All four children have displayed a number of these behaviours, including sexualized and physically aggressive behaviour. Some have been observed by foster parents and by professional access supervisors during supervised access visits.

[195] In their reports and testimony, Dr. Eirikson and Mr. Colby described some of the children's behaviours and statements reported by foster parents as well as J.P.

[196] No party objected to the admissibility of these accounts even though the foster parents and access supervisors did not give evidence. Instead, each party made use of those reports in evidence, cross examination, and in argument.

[197] One of K.G.'s foster parents advised Dr. Eirikson that K.G. had told him about lengthy tongue in mouth kisses that she had with her father, which K.G. called "slobber shots". She actually used the words "slobber shot" when describing them to her foster parent. Dr. Eirikson provided the following account in his report:

On January 5, 2010 [K.G.] had not been playing well with the other children and the foster mother took the other children to the park and [K.G.] was finishing lunch and said the words "slobber shot", "are they allowed, I don't

think slobber shot is allowed here". The foster father asked what and [K.G.] responded "it's when you push your tongue in someone else's mouth and lick to lick is when you touch tongue to tongue". Queried where she learned this, [K.G.] said "I play them with my dad and I make them up". [J.P.'s father] had also said he observed kisses like this.

[198] The children's foster parents also told Dr. Eirikson about sexually inappropriate comments made by BT.G. when bathing with his sister K.G. In his report, Dr. Eirikson wrote:

Queried about any behaviour consistent or inconsistent with the allegations, the foster parents initially had [BT.G.] and [K.G.] in the bath together. They would play, get clean and get out. On one occasion [BT.G.] asked his Uncle [G.] to watch and there was a pulling together of the two children, apparently by the arms and [BT.G.] said the words "vulgar lunch". The foster parents took this as a reference to eating the privates or oral genital contact. The children were told they do not do things like that, shared bath time was stopped and no other behaviour of a similar nature has been seen.

[199] Mr. Colby reported on advice he received that K.G. was found to engage in simulated sexual behaviours, stating "one concern was that she pulled down her pants at one point, inserting her finger into her vagina". He reported that BT.G. and K.G. have engaged in "simulated sexual behaviour".

[200] Prior to his parent's separation and more recently as well, BT.G. has engaged in obsessive cleaning, fully undressing as part of his toileting routine and standing on a counter to check himself while wiping. Mr. Colby has also remarked upon BT.G.'s "exaggerated self-cleaning" in the first of his two reports.

[201] K.G. suffered from night terrors while living at her parents' home. J.P. testified that she had to rush into K.G.'s bedroom at night because she was sitting up screaming. In addition, a medical consultation report from the Children's Hospital dated August 17, 2009 (prepared as a result of a consultation to determine if K.G. was gluten intolerant), admitted into evidence for proof of truth of its contents, states: "[K.G.] is sleeping well, she does appear to have developed night terrors in the last 6 months with waking up in the middle of the night but appearing to be awake otherwise".

[202] In a consultation report concerning BT.G.'s possible gluten intolerance, also dated August 17, 2009, and admitted for proof of truth of contents, a comment is made concerning BT.G.'s unusual toileting behaviour:

He tends to get naked when he goes to use the toilet. He will sit on the toilet for up to 20-30 minutes. He is quite gassy, but otherwise no other issues with regards to his bowel movements.

[203] Numerous supervised access reports contain accounts of sexualized and highly aggressive physical contact between the siblings, including fighting, punching, kicking, and grabbing by the neck, and instances of them yelling or screaming profanities at another sibling. In one instance, BT.G. threatened to kill his younger brother. Those access reports also reveal that the children were told that their mother is mentally ill.

[204] A significant amount of sexualized and aggressive behaviour, that I find connotes sexual abuse, is described in numerous supervised access reports. I have set out some excerpts from reports prepared by professional access supervisors. The behaviours complained of occurred in front of J.P. or B.G. Both parents were questioned about the incidents that took place during their supervised access visits:

- (a) When BT.G. began to perform pelvic thrusts as a dance in front of his mother, K.G. told J.P. that her brother does the same thing to her while she is playing video games, that he is naked and acts out that way "right in her face."
- (b) BT.G. told his father and an access supervisor that he liked P.G. so much that "I'd kiss her on her bum". BN.G. said he'd kiss her with a dirty diaper.
- (c) When playing roughly with some dolls, BT.G. said that he was "putting them in jail" because they had no clothes on.

- (d) BT.G. is observed on numerous occasions to either be putting his hands or to have his hands down the front of his pants. It appeared to the access supervisor at times that BT.G. was playing with himself.
- (e) BT.G. said he had a rash on his penis at one time and it felt like it was going to fall off. A month later, he also told K.G. about graffiti which read, "Big balls and suck my dick". They both laughed. BT.G. changed the graffiti to "SMD". When K.G. asked, "What's dick?", BT.G. pointed to his penis.
- (f) When BT.G. and K.G. were walking back from a playground, BT.G. announced that he was putting his cold hands on his bum inside his pants, in order to warm them. K.G. copied him and then "mooned" by pulling her pants down. They were both laughing.
- (g) At another time, K.G. reported that BT.G. was daring her to "kiss his ass."
- (h) BT.G. pushed K.G. onto a couch and then put a book between her legs on her private area.
- (i) K.G. took BT.G.'s feet and put them between her legs, on her private area, and then laughed. BT.G.'s response was, "Don't do that [K.G.]. That is disgusting".
- (j) At the park, with B.G. and her siblings, K.G. pulled up her dress, danced, and pointed at her crotch with her thumb.
- (k) While sitting at a restaurant, BN.G. said he had to use the restroom, and then pulled out his penis from his pants.
- (l) BN.G. stood up and put a carrot on his pants and pretended it was a penis, and then began to simulate peeing on his siblings.

- (m) BN.G. held up a toy to his penis and waved it around. He told his older brother to look at it. The access supervisor wrote:

[BN.G.] held a toy up to his penis and waved it around. He told [BT.G.] to look at him. [BT.G.] told him that he is being weird. [K.G.] put her leg between [BN.G.'s] legs, near his private area, and she laughed.
- (n) BN.G. was observed to completely undress, including his shoes, in order to go to the bathroom. This was one of a number of times that BN.G. has been noted to take an unusually long time to go to the washroom. BN.G could not explain why he took his shoes off. When asked why he took his shirt off, he explained “so I don’t get ‘poo’ on it”.
- (o) On another occasion, after using the washroom, BN.G. refused to put his pants on and ran around the room naked.
- (p) BN.G. tried to grab his (paternal step) grandfather’s groin during an access visit. On another visit, BN.G. hit J.P. and BT.G. in their private areas with his play sword. At another time, BN.G. repeated a statement that LegoMan “got him in the balls.”
- (q) BN.G. hid under a table and took off his pants and underwear. He then put his pants back on and hid his underwear that was slightly wet.
- (r) BT.G. refused to share some chips with his brother despite his several requests. When BN.G. complained to his mother, BT.G. is reported to have “got up from his seat, grabbed [BN.G.] again by the shirt, and yelled at him, “Shut your hole!” [BN.G.] again had the same look of fear and began shaking again. [BT.G.] then yelled, “Well how come my dad can grab me by the shirt and yell in my face but I can’t?”
- (s) BT.G. drew a picture that he described to his father to be a picture of “him punching a guy dead”.

- (t) P.G. was stretched out on a blanket, laughing as K.G. blew on her tummy, her brother BN.G. joined in. All three siblings were laughing. As K.G. was wiping the spit off of P.G.'s stomach, P.G. said, twice, "Blow on my pee pee", to which K.G. laughed and said, "no that is your belly button."
- (u) BN.G. asked his father if he could take his pants and underwear off. B.G. joked and said, "[S]ure and then we will stand you out front of the rec centre where people are walking by." The kids laughed.
- (v) BT.G. put his hands around BN.G.'s neck and shouted, "Why'd you have to cry?" BT.G.'s face was red and his hands were shaking.

[205] According to Mr. Colby, these behaviours fall into three categories: sexuality; anger; and exploration.

[206] The pelvic thrust incident, which he said was graphic, is an example of sexualized behaviour and is something a child would not do naturally. BT.G.'s conduct towards his siblings indicates his extreme anger. Discussion about body parts is exploration; the issue is the appropriate interpretation to be given to it.

[207] Mr. Colby was very concerned about BT.G.'s anger. He described BT.G. to have demonstrated a "fierceness for display which I have very rarely seen in a child":

- A ... But when -- but -- but he asks, "How come I can't do this and my dad can?" So -- so there is that component, that he sees himself as not being able to do that which he experienced and that which -- and these children have seen a lot of violence. I think the anger is part and parcel of what they've seen and possibly what they've experienced.

[208] The children's exploration of body parts during play indicates inappropriate sexual knowledge. I accept Mr. Colby's opinion that it should not be taken as typical child's play:

- A The issue about penis and cookies and nipples and the pig may just be children exploring stuff. They -- they explore things, their humour gets very scatological at some point, they're curious about their body parts and where the boundaries are. But we have a whole history here

where the children are talking about sexuality, so sexuality takes on another turn for all these children. There's something that has exposed these children to a knowledge base. Even if a little boy, you know, waving his penis around, something little boys might do, it fits within the whole knowledge base about erections, masturbation, ejaculation, which makes all the sexual behaviour suspect and all the aggressive behaviour suspect.

Q What do you mean by "suspect"?

A ... It just falls within the category from a different perspective. Children play and explore around body parts, and that's play. But when there's a sexual knowledge, and sexual has to do with -- with the use of body parts in a sexual act, then everything becomes sexual, and it can't just simply be a little boy waving his penis around, it has to have a context which is sexual because everything else is in that context.

[209] I reject B.G.'s attribution for his eldest daughter's precociousness and B.G.'s intelligence as the reason for the children's ongoing sexualized behaviour during supervised access visits. The children are too young to construct these types of behaviours and comments on their own or from the school yards at pre-school and elementary schools.

Imparting Sexualized Knowledge and Inappropriate Behaviour

[210] J.P. described her husband's vulgar behaviour and use of profane language around her and the children. She provided examples that included jokes B.G. would make around the children, such as referring to a "heinous penis" to mean "a pain in the butt". He would use vulgar language around the children.

[211] B.G. did not deny or refute a number of significant events described by J.P. in her evidence. In argument, B.G. justified his failure to do so on the basis that they "did not deserve my attention." Yet, he thought it important to spend many hours in his evidence and in argument trying to pick apart the logic of her evidence.

[212] Rather than deny most of her allegations, B.G. testified that he did not knowingly make vulgar and profane remarks in front of his children. According to B.G., he has a very sarcastic sense of humour that she has misinterpreted. He also used the opportunity to demean his ex-wife again, stating she misinterpreted his

remarks, and that her failure to understand his humour is the result of her inferior intelligence.

[213] I accept J.P.'s evidence that B.G. regularly showered with his three older children, over her objection, sometimes twice per week and then some weeks not at all. B.G. admitted that he regularly showered with his children in a small shower stall. I accept J.P.'s evidence, which B.G. did not deny, that over her objections, he locked the bathroom door on several occasions while he was showering with one of the children.

[214] She also heard her children tell their father while in the shower, "daddy don't pee on me". She thought it referred to the children seeing water running off of him in the shower.

[215] B.G. did not deny J.P.'s evidence describing instances where he would tickle the children into a frenzy, causing them to squirm, and from there, he would pull their pants down and then kiss their bums.

[216] During his cross examination, B.G. bragged about a game K.G. played, when she was four, that made fun of her mother. J.P. was unaware of this game until B.G. gave his testimony.

[217] According to B.G., K.G. put on her mother's maxi-pads in a way to make it look like she was wearing a bikini. B.G. did not rebuke his daughter for her conduct. He was not concerned. Instead, he laughed. He thought it was very funny because it made fun of his wife:

A Then [K.G.] came up and she had what appeared as -- as she was coming up the stairs appeared to have a bikini on, but as she got closer I realized that it wasn't a bikini, but it was a bikini for all intents and purposes, but I looked more closely and it was I guess maxi pads of [J.P.'s]. Big, big ones. ...

...

So [K.G.] came up with these very oversized maxi pads, and they were probably eight to ten inches across, and she had one across her chest, like where a bikini would go, and then she had one from here underneath of her pubic area, and then she had one across the

cheeks of her bum. ... [S]he had covered herself up like as if she was wearing a bathing suit. ..

And she just sort of looked at me and smiled, like, is this funny? And I -- of course I started laughing. I didn't want to say anything like why did you take those or where did you get those? I thought it was funny, and to be honest with you I thought it was funny because I thought she was actually making fun of [J.P.] and the size of her maxi pads, and maybe that's what she was doing. And we didn't talk about it. But I thought it was really funny, but not something you'd expect from a four year old at the time.

[218] B.G. admitted that prior to separation, he played a game where he let his oldest son and daughter kiss, lick, and suck on his nipples. He said they thought it was funny that he had large pectoral muscles that "looked like women's boobs". B.G. did not find their behaviour to be inappropriate. I find that he encouraged as opposed to discouraging their behaviour (as he claimed at his examination for discovery).

[219] J.P. also witnessed B.G. kiss BT.G. on his testicles when changing his diaper, remarking that the baby was cute. She saw him kiss K.G. near her genitalia, and heard him refer to the area above K.G.'s vagina as "cute" and "chubby". She told him to stop, telling him that it was inappropriate.

[220] In addition to J.P., two witnesses identified instances of B.G. making inappropriate remarks or engaging in inappropriate behaviour with the children.

[221] J.P.'s father, John P., who is currently 72 years old, has spent time with B.G., J.P., and his grandchildren over the years. He visited them from his homes in Oregon and British Columbia, regularly. He identified several troubling behaviours that he witnessed.

[222] When BT.G. was several months old, John P. observed B.G. "buzz" BT.G.'s belly and kiss his penis while he was changing his diaper. It was not an accidental brush. He also heard him remark, "You're a beautiful baby". He and J.P. observed B.G. engage in full mouth and sloppy kisses (with an exchange of saliva) with BT.G., K.G., and BN.G. several times. B.G. let the three older children run around the house naked, over J.P.'s objections, on a regular basis. He also saw B.G. laugh when the children used toilet humour.

[223] J.P.'s close friend, G.B., described an incident she witnessed while visiting J.P. and B.G. at their home at Easter 2006. She was visiting with her son and daughter. Both she and J.P. had a rule that their children must be clothed. G.B. was surprised when her son and BT.G. returned at meal time, naked, and ran around the dining area. J.P. immediately told the boys to get their clothes on and that they knew the rules. B.G., however, made light of the situation, by making a joke to the effect that his son "has some catching up to do", referring to the size of BT.G.'s penis in comparison to the other boy.

[224] I reject B.G.'s argument that J.P. should not have criticized his ongoing showering with the children since she bathed with them several times. I accept J.P.'s evidence that this rarely occurred (three to four times in total), when the children were very young, at the end of her bath in order to wash the children at which point she would hand them back to the nanny. J.P. stopped this practise when she learned from a health nurse that it was dangerous to bathe with her children. In hearing J.P.'s account, I am satisfied that she did not impart any sexualized or inappropriate knowledge to the children.

[225] In the section dealing with the evidence of counsellor John Day, I have set out B.G.'s admission that he continues to engage in lengthy mouth kisses with his children.

[226] I have determined, however, that B.G.'s reported behaviours do not provide the genesis for the children to concoct their disclosures. Although B.G.'s conduct and remarks are highly inappropriate, they do not, on their own, account for the complex nature of the children's disclosures. There is nothing in B.G.'s jokes and conduct that could cause a child to conceive of a sex game involving milking a cow, oral sex, digital penetration of the vagina and anus, and sexual touching that could cause an erection. What B.G.'s conduct does demonstrate, however, is the nature of his character, an aspect of his personality that reflects poorly on his parenting skills, and his failure to appreciate appropriate boundaries. It will become clear in the sections that deal with Dr. Eirikson and John Day that what is even more troubling is

B.G.'s defiant attitude; even now, after having his issues with inappropriate boundaries drawn to his attention, he will not change his parenting style at all.

Anal Fissures

[227] When she was three months old, K.G. was taken to Children's Hospital on December 6, 2004 by J.P. because she had found blood in her stool. K.G. was diagnosed as having three anal fissures, which are cracks in the anus.

[228] Dr. Edamura read out the hospital notes (admitted for proof of the truth of their contents), which were taken by a fourth year medical student. The fissures were found at three different places on K.G.'s anus, at six, seven, and nine o'clock, with the deepest fissure located at six o'clock. Rectal bleeding was also discovered and confirmed (to be occult blood) by a laboratory test. A red rash was also noted around the rectum that spread up to the perineum.

[229] Anal fissures usually occur when a person has been constipated. A tear in the anus mucous membrane can occur as a hard stool is passed. While anal fissures can occur in infants and young babies, they are not common to babies who are being breast fed and not given solid food absent intestinal problems.

[230] Dr. Edamura was of the opinion that K.G.'s anal fissures were not caused by stool movement:

Q Now, if I told you that the evidence of the mother was that up to this point [K.G.] was breastfed and had no solid food and had never had any hard stool, is there any reason for you to believe that this could have been caused by some sort of stool movement?

A I can't see that happening. And the other examination showed that the abdomen was soft, not tender. There was normal bowel sound, so there was no problem with the intestines moving. And usually on breastfeeding, stools are sort of yellow, soft and pasty, seedy. I would not expect any constipation to cause fissures --

Q So --

A -- in this child at this time.

...

Q And would it be consistent with some sort of anal penetration, either digital or some other form?

- A That -- that would be a consideration.
- Q All right. Is there any other logical explanation that you could conclude from these notes?
- A Not that I can, but I suspect that's why the referral was put through to the pediatrician.

[231] K.G., who was three months old at the time, was being breastfed. I accept J.P.'s evidence that soft baby food was not introduced into her diet until K.G. turned four months, that K.G. was not suffering from hard stools or unusual rash or irritation on her posterior area prior to her being taken to the hospital, and that J.P. routinely applied zinc oxide to prevent diaper rash and irritation. J.P. also testified that B.G. refused to attend at the hospital with her and moreover, that he criticized her for taking K.G. to see a doctor as another example of her hypersensitivity to the children's ailments. B.G. did not challenge J.P.'s evidence.

[232] Dr. Edamura did not adopt the opinions expressed in two medical articles, shown to him in cross examination on behalf of the Director, suggesting that 80% of infants will suffer anal fissures by the end of their first year. The articles do not discuss circumstances that can lead to the presence of three anal fissures in a three month old breastfed infant who does not present with intestinal distress. No evidence was called by B.G. or the Director to challenge Dr. Edamura's evidence or the observations and findings contained in the hospital records. There is nothing in the hospital records to suggest that K.G. had large or hard stools or suffered from intestinal difficulties or constipation.

[233] The staff on duty at the hospital raised the possibility of sexual abuse with J.P. I accept J.P.'s evidence that she was surprised by the question and could not, at that time, conceive of the possibility that it had occurred.

[234] Confusion surrounds a referral purportedly made for K.G. to a medical specialist that J.P. and K.G. did not attend. No witness was tendered to confirm that a referral appointment was made and actually communicated to J.P. I accept J.P.'s explanation that she did not know about the referral.

[235] The Children's Hospital records concerning the anal fissures were delivered to the Ministry before B.T.G. and K.G. were interviewed by Dr. Eirikson. Those records were not, however, produced to Dr. Eirikson, nor were they sent to other doctors who had previously examined the children for their further consideration.

[236] Even though B.G. does not have any recollection about his wife telling him about K.G.'s anal fissures, he used the opportunity while giving his evidence on the topic to minimize her evidence, stating that "A little anal fissure on an infant, to me, would not be something to attend emergency for". He expressed his "serious concerns about [J.P.'s] recounting of why that is a meaningful point in history".

[237] In the circumstances, I am satisfied on a balance of probabilities and find that the anal fissures were caused by inappropriate digital or other sexual contact by B.G. with K.G.

Blotter Drawings

[238] Graphic drawings of sadistic scenes of torture and sexual abuse of women drawn on large calendar desk blotters owned by B.G. were admitted into evidence. These drawings were made at a time after B.G. had completed high school and moved to live away from home. The drawings are highly disturbing. They portray women being brutalized in different ways. Some show women being abused by swords, guns, scissors, knives, or hot poker being inserted into their anuses, vaginas, or mouths. Others show forced sex, including anal sex, by grotesquely enlarged male genitalia and digital penetration. One drawing shows a woman shouting in pain as her arm is broken ("snapped") during forced intercourse; another depicts a woman being tortured with a spiked bat. It is no coincidence that B.G. was given a spiked bat by his grandfather in 1991, close to the time B.G. admits the drawings were made. Another drawing appears to show a pregnant woman about to be abused with a sex toy.

[239] Sadistic words uttered by some of the male figures depicted in the scenes are drawn. Another drawing depicts a woman saying, "Break My Arm - give me a

lacerated neck - give me rope burn”. Another contains a degrading remark made to a woman about impending anal sex.

[240] Telephone numbers and people’s names also appear on the drawings, some of which B.G. admitted that he drew.

[241] B.G.’s evidence concerning his participation in the drawings on the blotters was inconsistent. There were times that he denied drawing any of them except for two innocuous drawings (a truck and motorcycle helmet). At another time, he admitted it was possible he drew a disturbing scene of a woman about to have a hot poker inserted into her anus while her arm is being broken and wrote the words, “This chick’s gonna have one hot ass when I’m done with her”, and “snap” next to her right arm as it is being broken. In his discovery evidence (read-in), he admitted it was possible that he drew some of them when he was 18 or 19 years old and that the blotters contained his handwriting. At trial, he put his age to be between 19 to 20 years old. B.G. did not deny leading Mr. Colby and the VPD to believe he had participated in drawing some of them, saying that he wanted to err on the side of caution.

[242] J.P. recognized some of the drawings and handwriting to be B.G.’s.

[243] Curiously, although B.G. would not want his children to see the blotters, he testified that he would not be ashamed to let adults see them:

A ... I mean I -- I certainly wouldn’t want my children to see these types of things, but any other adult I wouldn’t be ashamed to -- to have them see them.

[244] B.G. testified that he does not think the blotters are important. His embarrassment and concern about his role in the blotters arises only from the level of scrutiny they are receiving in this case.

[245] Those experts who looked at the blotters while testifying expressed concern and disgust in varying degrees when they looked at them.

[246] I accept the evidence of Dr. Claire Reeves, a prominent clinical counsellor practising in the United States who specializes in the treatment of victims of sexual abuse, and the evidence of criminal behavioural expert and former RCMP Superintendent Glenn Woods that although the drawings themselves do not directly point to pedophilia; they indicate the mind-set of the person who drew them. The blotters drawings and captions are not the result of aimless doodling. They are elaborate and perverse; the drawings show that attention was paid to details. They do not appear to have been sketched quickly.

[247] Mr. Colby described the drawings as “graphic”, “violent”, and “perverse”. He agreed that the drawings would cause him concern about B.G.’s propensity for abhorrent behaviour or for disturbed fantasies; he also agreed they would raise a question in his mind that B.G. has underlying sadistic or dysfunctional sexual fantasies.

[248] Mr. Colby understood from B.G. that he had participated in making the drawings on the blotters while an adolescent and was now embarrassed about them. That caused Mr. Colby to reduce his risk assessment of B.G. at the time he wrote his first report:

A [B.G.] acknowledges those were his drawings. He said that was at a different point in his life. Hopefully he has been able to reach a greater degree of maturity than that. If not, then I would have concerns about his internal sexual fantasy life, but nonetheless there is no implications in those drawings, although there are children in those drawings, babies in those drawings, that there is any correlation, inevitability or predictability, about incestuous interrelationships with one’s own children. Even if going forward what we have is an adult male who is emotionally and sexually an adolescent.

...

I have more concern about the retention of them than of the making of them, if they were made in adolescence than as a young man.

[249] B.G.’s statement to Mr. Colby about his embarrassment is contrary to his evidence that he was not ashamed for adults to see the drawings even now. As a result, I am not satisfied that Mr. Colby’s risk assessment arising from those drawings is based upon reliable information.

[250] I find B.G.'s retention of the blotters to be most troubling. It illustrates his lack of embarrassment over their graphic and disturbing content. Mr. Colby was also troubled by B.G.'s retention of the blotters in his 30s:

A My concern is what value they would possibly have especially to someone who is embarrassed about them. Well, why -- why would they -- why would someone not want those -- if they don't reflect any common current mental set to have these in existence to be discovered by anyone, if you are going to disown them, then why would you not destroy them?

...

It augments my concerns to the point that I think it becomes an issue that requires therapeutic intervention.

[251] I reject B.G.'s evidence as entirely lacking in credibility that J.P. took the blotters from his custody in 1999 in order to keep them to use against him some day. J.P.'s involvement with the blotters was limited to her seeing the top page (which is innocuous with a drawing of a truck) one day at an early stage of their relationship. She was prevented from seeing the remainder of the blotters because B.G. immediately took them away from her. I am satisfied that B.G. participated in the drawings and writings on the blotters, drew many of the scenes and captions himself, and then retained the drawings amongst his boxes of keepsakes that were stored in the garage of the family home.

[252] None of the experts have testified that the blotter drawings (and captions) are, of themselves, indicators of pedophilia. But they do reveal a mindset that revels in sadistic torture of women of various forms. They are indicative of B.G.'s view of sexuality at a younger age; his retention of those drawings with his other keepsakes suggests that he never matured. But most troubling of all is his evidence that he would not be ashamed to show them to adults at this time. That statement also demonstrates that he never matured and underscores B.G.'s ongoing difficulties with sexuality and his failure to appreciate boundaries. It is part of the overall nature of his character described by Mr. Colby – his view that dominance and control are exerted through penile prowess.

Photographs

[253] Photographs located by J.P. amongst B.G.'s belongings after they separated also depict immature, inappropriate conduct.

[254] One of the photographs shows B.G. kissing BT.G.'s bottom (very close to his anus) shortly after he was born. B.G. explained that even though "[i]t may not be what your average parent does," he was showing paternal affection for BT.G. within the "confines" of what he perceived to be morally acceptable behaviour. I reject B.G.'s evidence that J.P. took the picture as pure speculation designed to implicate J.P. in his conduct.

[255] Another photograph shows B.G. kissing a newborn BT.G. on his lips quite intently. B.G. explained that he has played a kissing game with his children, kissing them on the lips for up to five seconds:

A From time to time, we have played a game, where the kids know it's a game. They know what my intentions are, and I say, "Big kiss," and, "Mmmmm," and we do this, "Mmmmmmm," [makes kissing sound]. So it may last two, three, four seconds, but that -- that's as far as it goes. It's just purely affection, and it -- and it's reciprocated affection, I would -- I would submit.

[256] B.G. testified that he continues this kissing game with his children while on access visits, even though BT.G. has told him he does not like it.

[257] Other photographs show B.G. engaging in simulated sexual acts and immature conduct with friends as an adult in his late 20s and 30s (e.g., simulating anal sex with female figure made of sand on a beach, phallic figures made of seaweed, and partying with cocaine and alcohol). According to Mr. Colby, these photographs show "the behaviour that a confused young adolescent engages in regards to what sexuality means in relationship to your own prowess in the world". Mr. Colby defined adolescence to be a young person in age between 14 to 19 years of age. For Mr. Colby, "[I]ssues [are] raised because [B.G. is] now an adult and it is a focus on penile prowess as a point of power".

[258] B.G. characterized his escapades with his friends that are shown in the photographs as fun time spent with his male friends. He had no problem stating that his conduct depicted in the photographs was “somewhat immature”, claiming, “that was the point”.

Computer Pornography

[259] J.P. had the hard drive from B.G.’s home office computer copied onto another hard drive before the computer was returned to him in December 2009. The original hard drive was retained for examination. The copy was inserted into B.G.’s computer.

[260] Subsequent forensic analysis of the original hard drive by TCS Forensics Ltd. (“TCS”) disclosed the presence of wiping software designed to remove evidence of access to internet sites and software programs. The software was installed on June 6, 2008. Data stored on a computer is not automatically deleted from a hard drive when a user engages the delete icon on the computer because the data is still retained on the hard drive. A wiping program - a “Window Washer” - allows the computer user to overwrite existing data. The Window Washer must be manually engaged each time a person wants to overwrite existing data.

[261] TCS found that the wiping software had not been sufficiently engaged to remove all data from the computer. It found data concerning B.G.’s email and banking and financial information as well as references to 9,023 deleted pictures (or JPEG) images. JPEG images can be obtained by downloading photographs from a camera or scanned documents, or from the internet.

[262] TCS was instructed to search for pictures and websites that have been accessed that contain sexual content. Some of the images have been partially overwritten, preventing TCS from determining the access or download date or in some cases, accessing the image altogether. TCS reproduced a sampling (on DVD format) of 135 images containing sexual content. They depict females engaged in various erotic poses or having oral sex. Although it is not possible to determine the age of each person, the images appear to show young females who are under 19

years old and in some instances, considerably younger. TCS found at least six pornographic websites, which had been accessed prior to B.G.'s arrest on October 5, 2009, with names suggesting teenage pornographic content.

[263] I accept the evidence of Mr. Holmes, the TCS consultant who testified, that creating fictional internet history on this hard drive would involve an extremely complex process that could only be performed by a person with highly sophisticated computer skills and equipment.

[264] B.G. did not deny that the images came from his hard drive, stating instead that he had never seen those images prior to August 2011. He did not claim that J.P. or anyone on her behalf had those photographs and pornographic websites inserted onto his hard drive. Instead, he said that he was "suspicious". He admitted to accessing porn websites but added that he has "never knowingly gone to a website that is for the purposes of viewing imagery that is underage."

[265] I find that the pornographic images and the web history reported by Mr. Holmes come from the hard drive taken from B.G.'s computer. I accept Mr. Holmes' evidence that it is extremely difficult and very costly to add to the web history showing that B.G. accessed internet pornography with names suggesting teenage content. J.P. lacks the knowledge, equipment, and funds to have altered the web history on the hard drive of B.G.'s computer.

[266] I am also satisfied that B.G. accessed the pornographic websites detected by Mr. Holmes. Nonetheless, that does not mean that B.G. knowingly accessed illegal websites. There is no proof those websites actually used females who are below the age of majority (even though some of the females depicted appear to be young pubescent teenagers or were dressed to appear as teenage school girls). Moreover, Mr. Woods testified that many pornographic websites using adult women as models make reference to teenage girls in their names. Nor am I certain that B.G. knowingly saved the photographic images onto the hard drive. Their presence may be explained by his mere access of pornographic websites (to which he has admitted).

[267] Following his arrest, B.G. sought every possible means to obtain the immediate return of his computer. I wish to note my finding that he did so because he was concerned about the ramifications that could arise from discovery of his access to pornographic websites.

[268] I wish to conclude this section by setting out Mr. Colby's opinion that accessing pornographic websites on the internet is not an indicator of pedophilia.

[269] Dr. Reeves also opined that when there is sexual abuse, physical abuse (quite often, spousal battering) is common. According to Dr. Reeves, the perpetrator has a need to exert power and control over the other spouse and the children.

[270] According to Mr. Colby, accessing pornography is not predictive of pedophilia (including incest). In this case, though, he testified that the pornographic websites accessed by B.G. reflects an "immaturely developed sexuality not incorporated well into an adult male's concept of themselves and the role sexuality plays in their lives", and moreover, is "not at great odds with [J.P.'s] description of [B.G.'s] sexuality."

[271] I also wish to set out my finding that the children could not access B.G.'s computer on their own because it was always locked.

August 21, 2009 Email Communications

[272] My attention was drawn to email communications dated August 21, 2009, which is less than two months before his arrest in October, B.G.'s closest friend sent him an email suggesting their children get together and asked where he could be reached. When B.G. advised he was working at a local library that afternoon, his friend responded:

Hey, which library. Maybe I can come by with a two-six and we can perv out on the youngens!!

I was just going to make a proposition to you. It can wait.

[273] B.G. responded:

I'm at the Dunbar library -- not much perving to be had here. If the proposition has anything to do with substance abuse I'm all ears!

[274] Mr. Colby did not recall seeing the email when preparing his reports. In his testimony, he described the communications between these two adults to demonstrate a mind set of adolescent boys aged 16 to 19:

A Again it -- it touches on the issues of maturity, of priorities established in -- in interpersonal relationships and communication, the value of sexuality in relationship to youngsters, references to substance abuse and alcohol. I assume that's the two-six.

[275] Standing on its own, this email communication does not prove that B.G. sexually abused his children. What it does illustrate, however, is the nature of B.G.'s character and off-hand approach to sexuality and substance abuse prior to his separation from J.P. I found his explanation that when he used the word "perving" he was thinking of college girls in their 20s showing up at a Vancouver west-side community library to be contrived.

Discussions Following K.G.'s Gymnastics Event

[276] J.P. provided an account of statements made by B.G. during their eldest daughter's gymnastic event in June 2009. K.G., who was four, participated in a gymnastics event with girls whose ages ranged up to thirteen. J.P. testified that B.G. made a sexual remark about the physical attributes of a twelve year old girl in the competition. Later that evening, J.P. said, B.G. made sexual advances towards her, giving her the impression that he was excited by the girl at the gymnastics event. J.P. told him that she thought the remarks he made earlier in the day were inappropriate. In the course of denying that he made any sexual remarks about the girl, B.G. admitted that he told his wife that sex for men has nothing to do with love; instead, he testified, it is "a fairly common characteristic" for "men in general", that "sex is about what men can get away with."

[277] B.G. admitted that he may have told J.P. that he viewed sex to be appropriate with a girl when she was "fully blossomed" and by that, he said he was referring to girls who are at least 18 years old. J.P. recalled him referring to younger girls, as young as 14, saying they are "fair game". I am satisfied with J.P.'s account of the conversation except for the age limit she attributed to B.G.'s remarks. This is one of

the few areas of the conflicts in the evidence between B.G. and J.P. where I have concerns about the facts. In reflecting on the evidence given by B.G. and J.P., I am unable to determine if B.G. actually referred to a specific age range or whether through his choice of words, he gave J.P. the impression that he would be aroused by girls closer to 14 years of age. I have no doubt that J.P. honestly holds that belief and that her understanding stems from that conversation.

[278] What I do find disturbing, though, are the remarks B.G. made when giving his evidence about his view that gymnastics would not make his daughter, K.G., sexually attractive to him:

A I made comments about the physique of this young girl, more in amazement that a female body could be that developed muscularly. But it was simply a -- if anything, what I was doing was trying to discourage [K.G.'s] competitive gymnastics because, to be quite frank, I don't really find that kind of physique attractive. If [K.G.] wanted to look like that, that's fine, that's her choice, but I don't -- I don't like that in a sexual sense at all, it's just not attractive to me.

[Emphasis added]

Recanting

[279] According to Dr. Reeves, it is not uncommon for children who have been sexually abused to recant their previous disclosure at some point. Dr. Reeves said that recanting occurs in at least 70% of cases. In Mr. Colby's opinion, recanting is "not determinative", "not indicative that an abuse did not occur", and does not "negate" the original disclosure of sexual abuse. He explained: "recanting, in and of itself, is -- is not of great value" in determining whether sexual abuse occurred.

[280] Children recant because they are ashamed, embarrassed, "feel dirty", are threatened, or assume the guilt of the perpetrator. There are times that children are unable to cope with their feelings and seek to compartmentalize them.

[281] Apart from an overt statement denying the prior disclosure, a child who is unable to cope with the distress caused by sexual abuse may withdraw, stating they can no longer recall. Another coping mechanism is for a child to do what K.G. did in

her interviews with the VPD, i.e., stop speaking of any matter that is connected with the sexual abuse and the prior disclosures.

The VPD Investigation

[282] For the reasons that follow in this section, I have determined that I can place no weight on the conclusions reached by the VPD - which are the opinions of the Senior VPD Officer - that there was no merit in the sexual abuse allegations, that B.T.G. failed to provide appropriate context when making his statements, and that K.G. recanted.

[283] Videotapes of the VPD's interviews with both parents and B.T.G. and K.G. were admitted into evidence.

[284] The videotapes of the VPD's interviews were not disclosed until after the trial had commenced. As far as I am aware, those videotapes were not disclosed to any expert or health care professional who has been involved with assessing the children or the sexual abuse and mental incapacity allegations during the course of their investigation.

[285] Following their production, the videotapes were reviewed by Glenn Woods, a recently retired RCMP Superintendent. Mr. Woods spent 35 years with the RCMP in positions of increasing responsibility. Before his retirement in 2007, Mr. Woods spent eleven years as a criminal profiler having worked on homicides, sexual assault, arson, and other cases involving interpersonal violence (in addition to other major crime and drug investigations). Mr. Woods has been involved with over 2000 sexual assault cases. He led the expansion of the RCMP's Threat/Risk Assessment Training Program and was responsible for the development, design, management, and implementation of the RCMP's National Sex Offender Registry in Canada. Mr. Woods has received extensive continuing education and has also taught courses for police officers, lectured at conferences, and taught new recruits at the RCMP's police academy. In addition, Mr. Woods is a certified criminal investigator qualified to profile criminal behaviour. He received his certification following three years of formal training administered by the International Criminal Investigative

Analysis Fellowship that works in partnership with the U.S. Federal Bureau of Investigation. I found Mr. Woods to have been a very candid, forthright witness, who gave evidence, most reluctantly, that was critical of another police officer. I found his evidence to be logical and appropriate to the nature of the VPD investigation shown in the videotapes of the interviews and the documents prepared by the two investigating officers. Mr. Woods prepared two reports that were admitted into evidence; they are dated October 19 and November 23, 2011.

[286] The first interview conducted by the VPD was with J.P. It was conducted by the Senior VPD Officer on December 23, 2009. J.P. attempted to provide information about the disclosures. J.P. appeared distraught in the videotape. Her account lacked focus (which she explained was due to her lack of sleep). J.P. was not permitted to tell the Senior VPD Officer all of the information she wished to provide (and was, instead, told to leave documents for the officer's subsequent review). Most of the questions the Senior VPD Officer put to J.P. during the interview concerned J.P.'s background, her sleep, suicidal ideation, mental health, emotional stability, and the nature of assistance her family may provide to her and the children over the holiday break. She asked very few questions of J.P. about the children's disclosures. She made no attempt to determine the source of them. She did not follow up to obtain details concerning J.P.'s statement to her that B.G. had threatened to kill her and that she was worried for her personal safety. Once the Senior VPD Officer completed her questioning, another officer asked J.P. some questions about the children's disclosures and their visit to Dr. Edamura.

[287] Mr. Woods was critical of the approach taken during the interview of J.P. Rather than focus on the veracity of the sexual abuse allegations, he said the approach taken in the interview illustrated the Senior VPD Officer's belief that J.P. was a suspect. He wrote:

Det. [R] interviewed [J.P.] for approximately one hour on December 23rd, 2009. At the outset, questions in relation to the alleged sexual abuse were asked, however the focus, throughout the interview appeared to be [J.P.'s] reliability as opposed to the nature and details of the complaint. Much of the interview was spent discussing [J.P.'s] health and personal details in respect to family support, financial and home ownership. She was also asked if she

had ever contemplated suicide and what if any medication she was taking at the time. The detective monitoring the interview asked most of relevant questions, in relation to the allegations of sexual abuse.

There were very few questions regarding the video taped disclosures which was somewhat surprising given the potential value this type of information would have had in terms of determining whether [J.P.] influenced the children and, if so, to what degree.

After watching this interview in its entirety I was left with the impression that Det. [R.] went into the room with a pre-conceived notion the children had been coached by their mother and had already decided the allegations were unfounded. This would account for the reason [J.P.] was treated more like a suspect than a witness.

[288] In his testimony, Mr. Woods added these remarks:

A Well on the big picture my impression was that there was very little focus on the nature of the complaint, although there were questions asked about the abuse. Much of the interview was focused on [J.P.], on -- on her financial status, how -- what support she had, how she was able to live, her mental -- whether she had any suicidal ideations and I thought that a little strange under the circumstances, a conventional or traditional investigation of this nature, and I understand having done these things that you almost -- in the back of your mind you almost have to keep in mind the credibility of a witness, but it shouldn't be to the extent where you are -- you are not doing your investigation and I just found that this interview was more of a suspect interview than it was an interview to gain information about a sexual assault or a sexual abuse.

[289] In watching the videotape of the interview, I found that the approach taken by the Senior VPD Officer accorded with a belief that J.P. suffered from mental instability and that J.P. suffered from mental health issues that were not the result of her shock at hearing her children's disclosures of sexual abuse. The Senior VPD Officer appeared to have a minimal interest in hearing from J.P. about the children's disclosures. I also found that both officers often stopped J.P. in the midst of an account or provision of information, advising her that they would read her documents at a later time. This was the only interview the VPD conducted of J.P.

[290] Interviews with B.T.G. and K.G. were conducted on January 6 and 21, 2010. They had been removed from their family home by then, and were living with their aunt and uncle (who were their interim foster parents).

[291] During his first interview, BT.G. confirmed that his father asked him to engage in sexual touching while in the shower. BT.G. provided information consistent with his previous disclosures to his mother. I found in watching the videotape that BT.G. provided context to his statements. He also demonstrated to the interviewing officer (who was not the Senior VPD Officer), with his hands, how he touched his father's penis and illustrated his father's erection with his finger. BT.G. repeated his statements during the second interview. He also used a toy he had brought along with him to demonstrate his father's erection. He did not recant in either interview. I found BT.G. to be consistent in providing his account. He used his own words and was quick to correct any misstatements or incorrect information. He was also careful to distinguish his first hand observations from information he was given by his sister. I could not see any indication of fabrication or coaching.

[292] Mr. Woods has provided what I find to be an accurate description of the context in which BT.G. provided his statements during his two interviews:

[BT.G.] was also interviewed on two separate occasions. He was much more comfortable than [K.G.] and more forthcoming during these interviews. He talked about his fathers temper being out of control at times and recounted an incident where he physically abused [K.G.]. When asked about sexual touching in the shower he described what occurred and included details and even demonstrating the nature of the touching. On at least three different occasions interviewers probed him on whether or not he came up with the words himself, including two leading questions specifically asking if his mother was involved. [BT.G.] responded by saying that it was his words and it was true.

[293] I find that the Senior VPD Officer's written report concerning BT.G.'s evidence does not provide a complete and accurate account of BT.G.'s statements and the context in which they were provided. I agree with the following assessment expressed by Mr. Woods:

Det. [R] dismissed [BT.G.'s] disclosures as untruthful stating in her report, *"Even though [BT.G.] stated twice that [B.G.] had told him to touch his penis [BT.G.] used the same words and could not provide any more details of the event. This is not typical as a truthful event usually contains more specific details before and after the event and not only one sentence."* I am not sure on what basis Det. [R] came to this conclusion nor do I feel that her account of what [BT.G.] stated accurately reflects his disclosure during the interview.

[Emphasis in original]

[294] K.G. would not acknowledge anything of substance during either interview. Despite the interviewer's best efforts to engage K.G. in a meaningful discussion, K.G. would not cooperate. I agree with Mr. Colby's assessment (following his review of the videotapes) that K.G. "did not participate" in the interviews. It was clear that she wanted to leave both interviews as soon as possible, making comments that would bring the process to a quick end. Although K.G. was initially interactive with the interviewing officer during the first interview about matters unrelated to the sexual abuse disclosures, she eventually became impatient and asked when she could leave. The officer told her four more questions, to which K.G. counted each question as the officer asked them. I agree with the description of the interview given by Glenn Woods, i.e., that K.G. became restless and had no interest in carrying on with the interview once the disclosures were raised. Mr. Woods wrote:

At the beginning of the first interview [K.G.] was somewhat interactive with Det. [F], particularly during the introductory process of collecting information regarding family and school. [K.G.] also participated when the interviewer asked her to identify body parts on a flip chart. Her interest diminished very quickly when asked questions about the alleged abuse and denied ever having experienced inappropriate touching or other forms of sexual abuse. She also denied ever telling her mother and brother about any inappropriate sexual behaviour. She became very restless and clearly had no interest in continuing with the interview, which was evident by the fact that she answered, "no" or "couldn't remember" to most if not all the questions that were asked of her.

[295] Following the first interview, the officer who conducted the interviews wrote of her concerns, advising that she did not view K.G.'s statements to be tantamount to recanting. Instead, she spoke of her minimal rapport with K.G.:

[Detective] feels that there was minimal rapport with [K.G.] and that she did not want to be questioned in any form. Due to the nature of the disclosure made by [B.T.G.] about what his father is alleged to have done to [K.G.], [Detective] cannot rule out that something may have occurred to [K.G.] but that she [K.G.] is not comfortable at this time to talk about it.

[296] During her second interview, it was clear that K.G. could recall many of the details of the first interview. She was able to summarize many of the questions she was asked in the first interview. She refused to engage, however, in any meaningful discussion with the interviewing officer. Eventually, she told the officer she would

answer four more questions. K.G.'s overwhelming refusal to engage in her second interview is illustrated by her firm refusal to discuss the videotapes of her disclosures to her mother made at the recreational centre less than a month before. At one point, K.G. admitted to making a movie, but denied it was the videotape of her disclosure that appeared to be playing on the computer screen in front of her. She was restless and appeared to be very uncomfortable, eventually curling up with her back to the interviewer. When asked what she and her mother discussed in the video, K.G. said "nothing". She was asked if she made up a story in the movie, to which she said she did, and when asked who had helped her she replied that no one did.

[297] I also agree with Mr. Woods that the Senior VPD Officer mischaracterized the context in which K.G. said that she made up a story in the video being shown to her. Mr. Woods wrote:

This admission was documented in Det. [R's] report as [K.G.] admitting to making the stories up in the video. I believe Det. [R's] version of the admission was taken out [of] context and does not truly reflect how this interview unfolded.

[298] B.G. was interviewed twice. His first interview was conducted after the VPD met with J.P. and the children (for the first time). In watching the videotape of the interview, conducted by the Senior VPD Officer, I was struck by how quickly and easily B.G. took control of the interview. It appeared to me that the officer was enamoured of B.G. in some way. At an early stage of the interview, the Senior VPD Officer began to laugh at B.G.'s off hand remarks, and then continued to laugh as B.G. tried to make light-hearted comments that appeared intended to deflect the officer from asking difficult questions. I thought the approach taken by the Senior VPD officer to be an interview technique at first, but the tone of the interview never changed. Only a few hard questions were put to B.G. Instead, B.G. continued to distract the officer's questions with long narratives that contained detailed descriptions of J.P.'s mental incapacity and obfuscation.

[299] Some difficult questions were put to B.G. in the second interview, but only a few more than the first one. B.G. quickly took control of the interview.

[300] It appears from the videotapes of B.G.'s interviews, that the Senior Investigating Officer held the belief, prior to the completion of the investigation, that he had not abused his children. In fact, at the end of his first interview, she told B.G. that if she had "huge doubts", he would be in jail.

[301] My view of the interviews of B.G. was confirmed by Glenn Woods. Mr. Woods also thought that the Senior VPD Officer was a "bit smitten" with B.G., and allowed him to take control of both interviews.

[302] B.G. denied that he tried to control the interviews or sought to divert the Senior VPD Officer's questions. When responding to the evidence that the officer seemed to have been mesmerized by B.G., he made a bizarre remark that he thought she was a lesbian.

[303] I also find it odd that the Senior VPD Officer continued to assist B.G. after the VPD had closed its case. An email communication dated June 9, 2010 shows that she advised the Ministry that she had "lobbied" to have J.P. undergo a mental examination following J.P.'s arrest in respect of the pepper spray incident. My view is also confirmed by Mr. Woods.

[304] Mr. Woods was highly critical of the VPD's investigation. In his opinion, there was no basis for the VPD Senior Officer to arrive at her conclusion that the allegations "were completely unfounded". He said there was a "rush to judgment" in the absence of following normal investigative routes.

[305] In terms of the interview of B.G., Mr. Woods said:

A Yeah, again it was -- it was kind of the reverse here where this is supposed to be a suspect. Clearly Detective [R.] didn't seem to have any concern that [B.G.] was responsible and I think even at one point I have got her in one her notes saying she said to him "If I thought for a minute you were responsible for this you wouldn't be -- you wouldn't be on the street."

 So -- so the whole interaction, although there were some questions asked about whether or not he abused his kids, a majority

of that interview was about the relationship he had with his wife and a good part of the interview was of [B.G.] talking about in the negative -- in a negative sense the problems he has had with his wife and essentially discrediting -- discrediting her. And so -- so there is a kind of a reversal of roles here. The suspect was being treated like a complainant and the complainant was being treated like a suspect and I think it would be quite obvious to anyone watching this -- these interviews how they would arrive at the same conclusion.

...

Q So is this a typical police interview about a sexual abuse --

A Well, it depends. I mean sometimes there is this kind of interaction going on to do a little bit of bonding, make him feel comfortable, those kinds of things have to be kept in mind, but you don't see a transition from that into kind of an interrogation mode which you would expect if -- if there was any consideration for the offences. It simply tells me, you know, I get the impression there is -- that there has been a rush to judgment, that the complaint is unfounded in the investigator's mind at this point, going through the motions, getting the information they need to get, and it is not really pushed. The laughing and joking is a little bit inappropriate. I think it has to be more professional, but it -- but I think it indicates the kind of dynamic there that is -- isn't very successful in getting at the truth most of the time.

...

Normally you wouldn't allow someone to go on and on on this, particularly when they're straying from the question that was asked. The question was asked, "Is there any validity or anything to these?", and it's one thing to allow someone to expand or -- and talk about it, but to have them go off, you know, for almost ten minutes without -- not making much in the way of notes either ...

But the biggest issue I see here is the allow -- allowing the subject to go on and on, and it's not even on the topic that was -- not even on the question that was asked is -- is not a usual form of -- of interview in these kinds of cases.

...

There should be more pointed questions. I mean, she asked if there's any validity, and when someone -- when the subject is going through a story ... so you would ask some pointed questions. None of this is done. It's not the normal course of an interview by any stretch.

...

I think that one of the major flaws in the investigation was that rush to judgment and not investigating even following the normal course and - - and pursuing the normal avenues of investigation. Simply because they didn't believe it happened. And -- and I think that belief was -- was arrived at very early on before some of the elementary steps of the investigation would have taken place.

...

... it struck me that that second interview may have been an afterthought if -- if the detective thought maybe they'd -- she'd missed some questions or failed to answer -- ask some questions during the first interview, because she clearly she had a line of questioning she wanted to get through, it was much more succinct and -- and focused, but he still was able to gain control of the interview for the most part. ... I mean the lack of questioning I think is -- is consistent with the belief she had that really there wasn't anything to this complaint.

[306] Mr. Woods' opinion that the Senior VPD Officer approached the investigation with a pre-determined mind was reinforced by the lack of warning or caution given to B.G., which, he said, indicated that the Senior VPD Officer did not consider B.G. to be a suspect from the outset.

[307] He was also critical of the investigator's failure to object to B.G.'s request to speak with his children first prior to their being interviewed by the VPD:

Q ... Now, that appears to be a request from [B.G.], the suspect, to postpone the interviews until he's had a chance to see his children. Would that be a common thing that you would see or would that raise any questions in your mind?

A Well, first and foremost, as an investigator, once I'm ready for an interview, I want to get it -- get it done as quickly as possible. ... I would certainly, on the basis of this kind of message, would -- would have responded to the effect that I would ask that no access, I'd prefer to have -- to interview the children before there's any further potential influence. And by access, I have to assume from reading this, access meaning that [B.G.] would want to speak to his children and that's -- you try to stay away from that. There's already, you know, any kind of contact with someone before you've had a chance to interview means a potential for more influence.

[308] Overall, Mr. Woods was of the opinion that the VPD investigation fell short of normal investigative procedures:

Under the circumstances one would expect police to question the credibility of key witnesses particularly those alleging serious criminal behaviour, to ensure the veracity of information being provided. In this case however, the belief that [J.P.] was not credible and even described by some as mentally unstable set the tone for the entire investigation. Rather than being focused on the allegations of sexual and physical abuse against [B.G.] it seemed to be directed almost exclusively towards [J.P.'s] reliability. Because this approach was taken many of the normal basic avenues of investigation were not followed. ... However, given the circumstances and nature of the allegations there should have been a more objective evaluation and

comprehensive investigation before dismissing the disclosures in their entirety.

[309] Mr. Woods' evidence was not challenged. No VPD officer, including the officers who conducted the investigation into the sexual abuse allegations, were called to give evidence.

[310] When the VPD completed its investigation, the Senior Investigating Officer sent a letter to B.G. dated February 2, 2010 advising him:

As you are aware, I have been investigating an allegation of Sexual Interference against you. This allegation was reported on November 28th 2009 and involved your children [B.T.G., K.G., B.N.G., and P.G.]. I have now concluded the investigation and have found the allegation to be completely unfounded. You are no longer considered a suspect by the Vancouver Police Department.

[311] The VPD also advised the Ministry on February 1, 2010 that it had concluded its investigation and had found no evidence of sexual abuse.

[312] The VPD sought assistance from the RCMP's Behavioural Sciences unit located in Vancouver at an early stage of the investigation. The RCMP ultimately concluded that the material it had received did not show B.G. to have a deviant sexual interest in children. They did not express an opinion concerning sexual deviancy or inappropriate obsession.

[313] Curiously, two officers from the RCMP unit provided an opinion concerning J.P.'s mental stability, even though their report does not indicate that they received any documents about J.P.

[314] A closer review of opinions expressed by the RCMP officers who signed the report leads me to conclude that they cannot be relied upon.

[315] The blotter drawings were sent by the VPD to the RCMP along with some photographs of B.G. (including some introduced into evidence). It is not at all clear whether a complete copy of all of the drawings were provided. I say that because the RCMP officers who examined the drawings concluded from her review that the

drawings did not depict any visual pain, humiliation, and degradation suffered by the female victims. Yet, even a cursory review of the blotter drawings reveals several such scenes.

[316] The RCMP officers wrote in respect of the blotter drawings:

While there is no question the illustrations are wholly concerned with violent sexual activity, the visual pain, humiliation and degradation as experienced by the victims in these depictions, is absent. Therefore, while the drawings no doubt illustrate intense anger that is played out in sexually violent activity against adult women, I am unable to definitively conclude they are representations of an interest in sexual sadism.

[317] I have set out below examples of some of the highly disturbing drawings and captions that go with them that depict humiliation and degradation suffered by the victims because they demonstrate that the foregoing conclusion reached by the RCMP Behavioural Sciences Unit is simply not sustainable.

[318] The drawing of the woman whose arm is shown as being snapped demonstrates her pain when she exclaims, "OWW YOU BROKE MY ARM!"

[319] Another shows a woman being hit in the head with a spiked ball from a mace-like device with blood flowing out of her head. She is also being whipped. There are bloody whip marks on her back. A spiked bat is inserted in her anus with blood flowing from it, and a large poultry leg has been inserted into her vagina. The woman is depicted as saying, "OHH YAH MORE PLEASE, WHIP ME, BEAT ME, MORE PLEASE". And another drawing shows a woman with her eyes enlarged (as if in distress) while an enlarged male genitalia is being inserted into her mouth. Another drawing caption shows a woman saying, "OWWWW!" while she is being slapped on her bottom. Finally, there is a drawing of a woman standing with her eyes closed while she is, all simultaneously, being whipped on her head and enduring having a rifle inserted into her anus, a pistol in her mouth, and a high heeled boot pushed against her vagina.

[320] It is also troubling that the VPD never provided a copy of the videotape of B.T.G.'s disclosure to his mother that was made in December 2009. As well, RCMP

records indicate that they received only seven of the eleven videotapes that J.P. took of K.G.'s disclosure.

[321] In their report to the VPD, the two RCMP officers who signed the report expressed a negative opinion about J.P.'s mental behaviour ("significant mental decompensation") and that the Ministry should be encouraged to have her undergo a "complete forensic assessment as a prerequisite to any consideration of the return of her children to her custody". Unfortunately, none of the information provided to the RCMP about J.P. is set out in the report.

[322] As a result, I am left with significant concerns that the approach taken by the RCMP officers to their investigation was adversely affected by incomplete, incorrect, and inappropriate information. In the circumstances, I cannot rely upon the opinions expressed by the RCMP Behavioural Sciences unit.

[323] I am satisfied from my own viewing of the videotapes of the interviews of J.P., B.G., and the two older children and from the evidence of Mr. Woods that the VPD investigation was conducted by the Senior VPD Officer with a pre-determined approach, and that the conclusions reached by the Senior VPD Officer cannot be relied upon.

Dr. Serena Kot

[324] Dr. Serena Kot is a psychologist who works for the Children's Hospital Child Protection Service Unit. She prepared two reports, one concerning B.T.G. and the other K.G., following her meetings with them (and one meeting with B.G.; she did not meet with J.P.). They are dated April 27 and 28, 2010.

[325] Dr. Kot's reports were introduced into evidence by the Director as part of a binder of business records. They were not introduced for the proof of the truth of their contents. The Director had planned on calling Dr. Kot to give evidence, but as I have noted, the Director ultimately decided not to call any evidence. B.G. did not seek to call Dr. Kot either.

[326] Dr. Kot's reports contain an account of certain statements made by BT.G. and K.G., along with a summary description of questions she put to them and her concern that K.G. may have been sexually abused.

[327] I agree with the submission of counsel for J.P. as to the use that can be made of the reports: they may be referred to as a record, albeit in summary form, of statements made by the two older children. Yet, because Dr. Kot was not called to testify, I have significant reservations about the extent to which I can rely on those statements in reaching my determination in this case. From reading the report, I cannot be certain that all of the questions put to the children by Dr. Kot are set out in her report, nor can I be sure that I have an accurate picture from which I can determine the context and order in which the questions were asked.

[328] For example, it is not clear whether BT.G. actually used the words "sexual touching" when speaking with Dr. Kot, or whether those are her words. I do not know if BT.G.'s initial recanting was firm, fleeting, perfunctory, prolonged, qualified, or expressed in a hesitant manner; nor can I ascertain the manner in which he subsequently resiled from it and insisted that his father asked him to engage in sexual touching in the shower. Likewise with K.G., there is no context in which I can determine the nature of her denial of sexual contact in circumstances where she is reported by Dr. Kot to have a heightened awareness of sexual knowledge and seemed sensitized to sexual information. I say that because Dr. Kot expressed her opinion that her sexual knowledge and reported sexualized behaviours may "indicate a higher risk that sexual abuse may have occurred."

[329] I am also mindful of the concerns expressed by Mr. Colby about the nature of the discussion between Dr. Kot and BT.G. that occurred after she told him that she knew about the video J.P. made at the recreation centre. Dr. Kot wrote in her report about BT.G.:

I followed up on the video-taping conducted by mom and told [BT.G.] that the police and social workers are confused. I told him that they have been trying to figure out if

1) what mom said was true and dad hurt kid by sexual touching, or,

2) dad did not do sexual touching.

I asked if [BT.G.] could help. He first indicated that dad did not do sexual touching. When I confirmed with him and added that what mom said was not true, he changed his answer and indicated that dad hurt kid by sexual touching. He talked about showering together with dad and that dad asked him to touch dad's penis.

In this conversation, I observed [BT.G.'s] struggle. [BT.G.] may be struggling for many reasons. He might be struggling because of the complexity of the information presented. He might be struggling because of the loyalty to mom or dad.

[330] According to Mr. Colby, the approach taken by Dr. Kot with BT.G. places a child in a difficult, conflicted position; it "places the child in an awful bind", he said. He explained that appropriate questions are those that seek clarification and avoid the implication of judgments. In referring to the nature of Dr. Kot's questioning, he said:

A I think that places the child in an awful bind ... about loyalty, commitment, about what the end result is of what they say, what the outcome is, and who is going to be affected by it, which parent is going to be distressed, unhappy. They are well aware, both these children, the level of conflict, the level of distress that exists.

Q So whether the word is, "This is what Mommy says. Is she right?" or, "Is it true?" it's the same thing. You're putting the child in -- in a difficult position.

A Puts the child in a difficult position and there -- there's a wide body of empirical research about how placing children in the conflicted marital relationship has long-term negative effects.

...

I think you can go for a clarification question as long as it's non-judgmental.

...

Q What if you said, "I've watched the videotape that your mother took and the police department and the social -- the social workers are confused from that videotape"? Is that -- could that be perceived by the child as judgmental or is that putting the child in an awkward position?

A It -- there's a demand in there for clarification, so it depends on who's asking the question, My Lord.

Q The professional.

A It's on the borderline, because on one hand if I -- if I was to do that -- and I have to bring it back to myself and why would I ask a question

like that. Why would I say I was confused? I might go about it a bit differently. I might say, "I've looked at the videotape. Is there anything else you'd like to say?" In all probability, you'll get an answer that said, "No, because the tape is there." "I'm confused"? Perhaps. You may want to get more information. It really is on the borderline, depending on tone of voice, how you look at the child, whether you're making a demand that the child unconfused you --

Q Mm-hmm.

A -- because maybe the child's confused. I wouldn't go past that. I think that's right -- right on the borderline of acceptable.

[331] Dr. Kot's report does not describe the basis of her retainer nor does it appear to list all of the information and documents that she reviewed. In argument, counsel for J.P. submitted that Dr. Kot's report should be considered with caution because she was retained to provide a therapeutic assessment of the children and not retained to conduct a forensic investigation. Counsel for the Director and B.G. did not take issue with that submission.

[332] Dr. Kot's report also describes an interview that the Ministry conducted with the children in December 2009 and January 2010. No further details are provided. Even if I were to assume the January 2010 interview refers to the VPD interviews, there is no evidence that the children were interviewed by the Ministry or the VPD in December 2009.

[333] In the circumstances, without Dr. Kot's testimony, I am not able to rely on her assessment of the children's statements concerning their prior disclosure of sexual abuse allegations.

Robert Colby

[334] Robert Colby was appointed as the Court's s. 15 expert on June 2, 2010. I set up his appointment in a manner that was designed to avoid external influence. He was appointed to address the following issues: the sexual abuse allegations; parental capacity; place of residence of the children; custody; access; and issues of parental alienation. Mr. Colby prepared two reports. His primary report is dated September 13, 2010; the addendum is dated October 11, 2011.

[335] I ordered that Mr. Colby was to be provided with a copy of the Ministry's entire file, save the text portion of Dr. Eirikson's report and any documents the Ministry deemed privileged or of such confidential nature such that production would prejudice the interests of the children or the Ministry, in which case those documents should be listed. I ordered that list to be provided to Mr. Colby so that he could consider whether he required production of any of those documents. Mr. Colby was not to receive documents from either parent or any other source without direction from the Court.

[336] I ordered Mr. Colby to interview both parents. I left the decision to interview any or all of the children to be within his sole discretion.

[337] I rejected B.G.'s request that Mr. Colby be directed to refrain from interviewing the children. In making that order, I said:

The expert is to interview the father and mother, [J.P.] and [B.G.], and to carry out such other interviews as the expert may deem or determine appropriate.

...

The expert is not to take instructions from any off] the parties nor from the Ministry. The expert is at liberty to apply for directions to this court. The parties are at liberty to apply for directions to this court, as is the Ministry.

Both parties are to cooperate with the expert, and [all] requests for interviews and access of -- for information, as well as so is the Ministry for interviews, access for information and access to the children for the purpose of interviews.

When the expert's report is complete, it shall be provided to the court and the parties and the Ministry simultaneously. There should be no advance review and vetting by any of the parties or the Ministry.

[Emphasis added]

[338] Mr. Colby interviewed BT.G. and K.G. on three occasions: August 12 and 26 and September 2, 2010. He also interviewed BN.G. on the latter two dates.

[339] When asked by Mr. Colby if he knew the reason he was being brought for the interview, BT.G. responded that it was because, "My parents not allowed to be together." Mr. Colby reported that BT.G. told him that a social worker had told him that "a judge has to decide where he would be." At one point, BT.G. told Mr. Colby

that he wanted to go to his mother's house because his father "hurts me a lot" (and grabs him by the neck, he said). He also told Mr. Colby that his father had been violent towards him. B.T.G. confirmed that B.G. "kicked" K.G. out of the bathroom because she was "bugging me when I was brushing my teeth," that she "hit the wall and then fell to the floor and was crying for half an hour." B.T.G. reported other incidents of violent conduct at the hands of his father, including being thrown onto the bed and having his mouth closed to the point that he could not breathe.

[340] B.T.G. maintained his account of sexualized contact with his father in the shower when speaking with Mr. Colby, although he minimized it, saying it occurred "once" when he was "little". He reported the "milk the cow" game involving K.G., describing it as a "very vulgar game".

[341] B.T.G. also passed along recent advice from his father to the effect that his mother suffers from a mental illness. B.T.G. was also told about the pepper spray incident. Mr. Colby reported the statement in his report:

[B.T.G.] stated that he is currently living at [foster parent's] house [and] "Mom has a mental illness." ... [B.T.G.] stated that his father has told him that his mother is mentally ill. She has to see a doctor to fix that and she [may] need surgery and "they may need to open her head".

[342] B.T.G. also told Mr. Colby that his father makes inappropriate jokes, referring to the "heinous penis in the anus" joke, and laughed as he told it.

[343] B.T.G. also told Mr. Colby that he did not see his father engage in inappropriate behaviour with his youngest sister, P.G.

[344] Mr. Colby did not regard a statement made by B.T.G. that he wished to live with his parents and siblings to be at odds with his disclosures of inappropriate sexual and physical contact. In my opinion, the opinion expressed by Mr. Colby applies to the internal conflict and motivations faced by the children:

- A Children are bonded to their parents. They've spent their developmental years relying on their parents and wanting a closeness to them. He's a young boy who wants a closeness with his father. His father is significant to what he says. It doesn't surprise me that he maintains a desire to be with his father, although he says he hasn't

seen his father for a while and doesn't miss him, but still, there's that parent-child, father-son bond.

Further, it is not unusual when I ask that question to children about what they -- how they would see a household, if they could create it, to say they want both their parents back together again. They want to have a stable home. They want to be able to say to their friends that they have a mom and a dad. They don't want to be travelling back and forth between two households, or be in another accommodation altogether, to be able to always have their toys available, and their pets, and not have to leave them behind to go to another house to have their Nintendos, their Wii's, their electronics all in one place. So that doesn't surprise me.

[345] Mr. Colby found K.G. to be quite open and talkative during the interviews. She told Mr. Colby that she made up the disclosures on her own. K.G. did not deny making the disclosures to her mother. She admitted to making the disclosures. K.G. denied that J.P. was involved in making up the disclosures. K.G. claimed to have learned about body parts on her own. She also reiterated her statement that her father "kicked me out of the bathroom" and was "holding me on the neck".

[346] From his interviews with K.G., which occurred prior to watching the VPD videotapes, Mr. Colby determined that K.G. has an "intrusive base" of sexualized knowledge, inappropriate for her age, which "has to have come from somewhere". He wrote in his report:

... Psychologist assessed the quality, status and implications of the matters presented. The children, in particular, [K.G.], has a precocious knowledge about genital sexuality. She has knowledge of oral/genital contact, penile/vaginal penetration, ejaculation, masturbation and erectile function. There is no presentation of any secondary means of gaining such information, through photographs, videotapes, exposure to adult sexuality, interference by any third parties, including same-age peers, or any sibling explorations, that would account for her knowledge. It was unlikely that she was able to concoct this type of information, therefore it has to ... come from somewhere.

[347] Mr. Colby also said that K.G.'s denial of sexual contact from her father is not, of itself, determinative. It is important, he explained when being cross examined by B.G., to consider potential factors that underlie her statement such as K.G.'s desire to keep her family intact and her perception of the repercussions arising from her disclosures to her mother and Dr. Edamura. For example, Mr. Colby raised the

prospect that K.G. perceived her disclosures to have been the cause of her mother's ongoing distress or impeded her contact with her mother or affected the relationship with her father. I would add to that my determination that K.G. was aware that her disclosures resulted in her removal from the family home.

[348] BN.G. complained to Mr. Colby about his sister's sexualized behaviour, telling him that she does "bad things to him", that she "will touch his private parts when he is putting on his clothes." BN.G. also reported to Mr. Colby that his father has been violent with him, telling him that his father "grabbed" him by the neck and it "really, really hurt me". He also told Mr. Colby that B.G. has punched him in the stomach and that it was not play. BN.G. denied any sexual touching by his father.

[349] I am unable to conclude from the statements made by K.G. and BN.G., to Mr. Colby, that sexual abuse did not occur. I find that the integrity of the s. 15 process was undermined by events that followed the hearing in Court on June 2, 2010 ("June 2 Hearing"). I say that for two reasons.

[350] First, Mr. Colby's ability to conduct his interviews of the children without concern for interference by the children's father was impeded.

[351] During the June 2 Hearing, I was made aware B.G. was exercising unsupervised access to the children (purportedly as a result of a Provincial Court Order) contrary to the December 21 Order. I expressed my concerns to B.G., J.P., and to a social worker whose attendance had been compelled by B.G.:

THE COURT: All right. Now, are you -- you're -- are you having access to your children?

[B.G.]: I am, yes.

THE COURT: Is it supervised or unsupervised?

[B.G.]: Unsupervised, and it's at my discretion to organize and coordinate the visits with [the foster parents].

...

THE COURT: Is [the social worker] in the courtroom? Ms. [P.], I'm going to ask you if you can communicate back a message to the lawyers [for the Ministry], that is the [Provincial] court order says that Mr. -- that the parties may have reasonable access to the children, supervised, at the discretion of the Director.

UNIDENTIFIED SPEAKER: Yes, My Lord.

[J.P.]: Yeah.

THE COURT: And I'm not -- and I'm now hearing that [B.G.] is being allowed unsupervised access, and that doesn't appear to be what the order states.

...

THE COURT: ... I want you to communicate my concern ... to counsel, and I want them to --

UNIDENTIFIED SPEAKER: I will let them know.

THE COURT: -- I want them to address that issue.

[352] I did not know that B.G. would be permitted to have continued unsupervised access nonetheless. His access increased over time, to permit him access to his children for overnight visits, weekend visits, and vacations lasting up to slightly over two weeks. Thus, when Mr. Colby interviewed the children they had been exposed to considerable unsupervised contact with their father, all at a time where the children had no contact with their mother since May 20, 2010.

[353] B.T.G., K.G., and B.N.G. spent a considerable amount time with their father prior to and following each interview. There was no supervision. Between the first and second interviews, B.G. had at least five unsupervised access visits with the children (totalling at least 21 hours).

[354] B.G. also drove all four children to their second interview on August 26. The children had an overnight visit with their father on August 28, which was prior to their third interview on September 2. The children were with B.G. on overnight unsupervised access visits thereafter (usually every Saturday) until August 16, 2011.

[355] Mr. Colby reported that the night before her second visit with him, K.G. had been up the entire night unable to sleep, stayed in bed, and did not tell anyone except Mr. Colby. According to Mr. Colby, this suggested that she was stressed about seeing him.

[356] J.P. had no access to her children from May 20 until August 31, 2010. All access visits thereafter have been supervised. Her visits with the children are the

subject of supervised access reports. Unlike B.G., it was not possible for J.P. to influence her children while they were being interviewed by Mr. Colby without detection.

[357] Second, information adverse to J.P. was provided to Mr. Colby that I find impacted the approach he took to the investigation, including his views of J.P. and the veracity of her account. I find it caused Mr. Colby to be uncertain about J.P.'s reporting and the statements provided to him by the three older children.

[358] At the time I appointed Mr. Colby to act as the s. 15 expert, I rejected B.G.'s request for an order that Mr. Colby refrain from interviewing the children. Notwithstanding the Order I made at the June 2 Hearing that Mr. Colby should not take instruction from either parent or the Ministry, the Director's concerns about interviews of the children were communicated to Mr. Colby prior to those interviews taking place.

[359] Late production of certain Ministry documents during trial, which occurred after Mr. Colby gave his evidence, revealed that the Director's concerns that the children not be interviewed any further were communicated to Mr. Colby. In addition to stating his concerns to the Court that the children should not be interviewed by Mr. Colby during his submissions at the June 2 Hearing, B.G. also expressed his concerns in an email exchange with counsel for the Director on June 23, 2010. B.G. wrote:

It was my impression that *MCFD* had concerns regarding the s.15 report. Specifically, the impact that questioning the children about false egregious events could have on their emotional well-being. They have just recently made considerable emotional progress - it would be a travesty to have Mr. Colby re-hash fictitious events after they have been inundated with them so many times. This would allow [J.P.] to continue the emotional harm by proxy. Is this something that the Director plans to communicate to Justice Walker at the next SC appearance?

[360] In response, B.G. was advised by counsel for the Director:

[B.G.],

The Director does have some concerns about further interviewing the children. However, after speaking with Robert Colby, I am satisfied that he is

well aware of that concern and, in fact, shares it. He confirmed he make [sic] his decision as to whether further interviewing is warranted after reviewing the materials provided to him. He expressed considerable reservations at the notion of doing further interviewing about the sexual abuse allegations given the conclusions reached by the police and Ministry in relation to their investigations.

[Emphasis added]

[361] The email from the Director's counsel was sent at the outset of Mr. Colby's investigation, at an early stage of his investigation and prior to his interviews of the children.

[362] It is clear from another email communication, produced after Mr. Colby testified, that Mr. Colby was made aware of the conclusions reached by the Ministry that J.P. posed a danger to her children even in supervised access settings. Mr. Colby was copied on a series of email communications dated August 19, 2010 between J.P.'s prior counsel and counsel for the Director.

[363] The first email that was copied to Mr. Colby was sent by counsel for the Director. It stated:

I discussed this matter with my client this morning and confirm the following:

1. Social Worker [X.P.] will contact Robert Colby to confirm his opinion that [J.P.] should have a supervised visit with the children and a further session where he is able to observe [J.P.] with the children for the purpose of completing his assessment. [X.P.] will elicit any further input he may have around ensuring the safety and well-being of the children during such contact and confirm where he would propose the observation visit to occur. Assuming [X.P.] is satisfied that such contact can occur without unnecessarily jeopardizing the children, the Director will agree to produce the children for a supervised visit at Tin Harbour, the agency you proposed, contingent on your client's agreement to comply fully with all visit guidelines imposed by the agency and the Director.

[364] In response (copied to Mr. Colby), J.P.'s counsel asked for the basis of the Director's concern for the safety of the children:

I am curious as to what danger you think the children will be in during a supervised access visit?

[365] Counsel for the Director wrote in reply:

Robert Colby's letter is very brief and does not state how or why he believes the contact should occur. As you know, it is the Director who is responsible for the safety and well-being of the children, not Robert Colby.

...

As for the danger your client could pose during a supervised access visit, I confirm that I was counsel on a Ministry case a few years ago where the mother, in the presence of an access supervisor slit her child's throat, nearly ending that child's life. So please, don't get me started on the potential risk to these children. As for when a decision will be made, that will happen once we are satisfied that the visit can safely happen and satisfied that your client will abide by all guidelines around such a visit.

Mr. Colby was copied on this response as well.

[366] I am satisfied from Mr. Colby's evidence and Ministry documents produced by the Director that he was also advised during oral communications with the Ministry about the pepper spray incident in a manner that was adverse to J.P.'s character and credibility, about safety concerns she might cause for the children, and that she suffered from mental instability.

[367] Apart from the concerns I have expressed, it is, in my view, also important to note that Mr. Colby was not aware of the sexualized and aggressive behaviours described in supervised access reports prepared following August 31, 2010 until he testified at trial. It does not appear that Mr. Colby was provided with a complete copy of the blotters; only a portion of them were contained on a disk provided by the Ministry. It appeared to me that when Mr. Colby was giving evidence about the blotters, he was surprised at their scale. Finally, it is unclear whether Mr. Colby was aware of the Children's Hospital records concerning K.G.'s anal fissures (even though they were contained in the Ministry's files by the end of March 2010) when he prepared either or both of his reports.

[368] In conclusion, I find that Mr. Colby looked at the facts through a distorted lens. In addition to the concerns I have expressed, I have concluded from his testimony that Mr. Colby was significantly and adversely influenced by the negative reporting about J.P. and the report of the VPD's conclusion. Mr. Colby's admission that his

perception of J.P.'s dramatic and often frantic presentation influenced his opinions that he expressed in his report is also noteworthy.

[369] In addition, Mr. Colby did not know, because he testified early in the trial prior to B.G., that B.G.'s evidence at trial would support J.P.'s allegations concerning her false arrest at the rental property where she resided and would provide a basis for her to think that B.G. had been accused of raping a girl some years ago. Mr. Colby could not know that with the exception of his mother, B.G. would not call any evidence from the persons who called the Ministry to report J.P.'s alleged mental instability. And he did not know that B.G. caused, by his misstatements, J.P.'s brother (G.P.) to misapprehend J.P.'s mental stability and caused him to fear that she could cause harm. The information provided to Mr. Colby in advance of his investigation also caused him to approach his investigation with suspicions about J.P.'s credibility and the veracity of information she provided to him (including her intention to serve documents on her brother and not to break and enter her brother's home and take the children away with her).

[370] Although Mr. Colby found J.P. to be coherent, he thought that some of her logic was unusual and that she expressed irrational ideas, all in her frantic attempt to persuade him that "something horrible" had happened to the children. But Mr. Colby did not know there was a basis for J.P. to think that no one believed her. He did not know that a senior social worker at the Ministry had told J.P., before the children were interviewed and the investigation was complete, that he and others believed that she had fabricated the allegations.

[371] It is understandable, therefore, for Mr. Colby to have questioned J.P.'s belief system and her need for psychiatric attention when she reported about events that on their face would appear odd or illogical.

[372] One result of the distorted lens through which Mr. Colby looked at the facts is shown in his approach to B.T.G.'s ability to protect himself in the event that he is given over into his father's custody. According to Mr. Colby, B.T.G. would not be at

risk of sexual abuse because he would be able to protect himself - he could call the Ministry, his aunt or uncle, or his mother:

Q ... Now, are you saying that if there had been inappropriate sexual contact between dad and [B.T.G.], that the fact that he can talk about it, there is no risk? Is that what you are saying?

A No. It isn't an issue about whether or not there was inappropriate contact in that regard. Let's say that happened, at least once. [B.T.G.] having disclosed that, and his ability to verbalize his anger at intrusion, which I observed when I -- when I was seeing him --

THE COURT: I didn't hear -- his what intrusion?

A His anger at any intrusion.

THE COURT: Oh, his anger. All right.

A Convinces me that he has the full capacity to be limiting of others and self-protective in relationship to any intrusion that would be perpetrated upon him. So, he, I think, at nine years of age -- maybe he is ten at this point, I have lost track -- is capable of being self-protective and refusing advances, refusing contact, telling pe --

MR. HITTRICH:

Q Really.

A -- telling people if any such thing happened, so I don't see him as being at risk.

Q So you are saying that -- assuming there was inappropriate sexual contact, just because he is nine. He is nine now. And he is obviously more advanced intellectually than the younger children, that there is no risk? Is that what you are saying?

A I don't think he is at risk. I think he is a very self-protective individual, who will go to his mother. If anything happens, he will go to the Ministry, he will go to his foster parents, he would go to his uncle.

...

His ability to talk about it on videotapes, his ability to talk with me about it, the degree of anger that he exhibited. He is an absolutely furious young man. He wants an association with his mother. He wants to maintain contact with his father, but these are ready-made statements. It's no longer secretive. He knows that he can come forward. He knows that he can talk about things that happened. He knows a greater scope about human sexuality than just touching. He knows about intercourse. He knows about ejaculation. He knows about erections. He has a scope of information that he has already talked about, so he has the vocabulary, and he had found people that will listen to him.

[Emphasis added]

[373] Mr. Colby's answer overlooks the facts: B.T.G. told his mother about the sexual touching, he provided a consistent statement to the VPD, and he told Dr. Kot and Mr. Colby about the sexual contact with his father; yet no one apart from his mother has said that they believe him. The Ministry is aware of his disclosures and yet, B.T.G. has been placed in foster care since December 30, 2009, and his father has been allowed unsupervised access while his mother has been permitted only supervised access (and at one point, denied access altogether).

[374] In what way could this nine year old boy think that he could protect himself from further exposure to sexual touching by simply talking about it? The only protection the child could muster would be to fend for himself in a physical manner by seeking to resist the abuser.

[375] In fairness to Mr. Colby, his approach and conclusions shifted during his testimony after he was shown the videotapes of the VPD's interviews of the two older children and a sampling of some of the supervised access reports illustrating sexualized and aggressive behaviour and after he was provided with additional information, including the blotters. It was clear to me that he was grappling to rationalize the new evidence he was being shown with information previously provided to him concerning J.P. and B.G.

[376] Mr. Colby remained of the opinion throughout his testimony, however, that there is no evidence to suggest that J.P. fabricated the disclosures and coached the children to make their statements. He could not find any indication of fabrication or coaching.

[377] I reject B.G.'s submission that his negative test results on self-reporting tests he completed for Mr. Colby means that he does not fit the profile of a pedophile. Mr. Colby refused to make that admission when being cross examined by B.G. In his first report, Mr. Colby wrote that B.G.'s test results needed to be viewed with caution. In his testimony, he added that B.G. could fit the profile of a sexual offender notwithstanding the test results.

[378] In conclusion, I am of the view that the independence and integrity of the s. 15 investigation was impeded. I find that the children were influenced by their father in an attempt to preclude them from making further disclosures to Mr. Colby. Though his efforts failed with BT.G., they: caused K.G. to lie awake all night prior to her second interview; caused K.G. to tell Mr. Colby that she made up her disclosure even though she said that she did not know what some of the words that she used meant; and caused BN.G. to recant (claiming, now, that he had been sexually touched by his older sister).

[379] Overall, I found that what can be taken from the totality of Mr. Colby's evidence is:

- (a) the children were either sexually abused or BT.G., K.G., and BN.G. concocted their disclosures as a result of receiving highly inappropriate sexualized knowledge from elsewhere;
- (b) the three older children have an intrusive base of inappropriate sexualized knowledge;
- (c) Mr. Colby could not find any indication that J.P. fabricated or coached the children into making their disclosures;
- (d) J.P. appeared truthful;
- (e) J.P. honestly believes that her children were sexually abused and her presentation is consistent with a mother who believes her children have been sexually abused;
- (f) there are significant concerns about B.G.'s approach to sexuality and his lack of perception of appropriate boundaries;
- (g) recantation is not determinative of sexual abuse;
- (h) the children are in need of medical assistance without delay;

- (i) BT.G. did not recant; and
- (j) the children did not recant from their prior disclosures of physical abuse at the hands of their father.

The Evidence Called in Support of B.G.’s Case

[380] In addition to his own evidence, B.G. called three witnesses in support of his defence: psychologist, Dr. Paul Eirikson; counsellor, John Day; and his mother, J.T.

(a) Dr. Eirikson

[381] Dr. Eirikson was the only expert to testify who thought that the disclosures may have been fabricated by J.P. He is a psychologist whom the Ministry engaged to conduct a parental capacity assessment. Both J.P. and B.G. agreed to participate in his investigation. Dr. Eirikson met with both parties, albeit separately, met with the children, and spoke with others (whom he referred to as “collaterals”) such as family members, friends, and the foster parents at that time. Dr. Eirikson was retained in March 2010 and completed his work by the production of his report dated May 11, 2010.

[382] Dr. Eirikson was inexplicably condescending in his approach to answering questions. Overall, I found Dr. Eirikson to have engaged in a persistent and dogged determination (which, from time to time, involved defensive argument) to support the opinions he expressed in his report regardless of evidence put to him that was either inconsistent with important factual foundations for his opinions or called into question the accuracy of the VPD determination and his opinions concerning J.P.’s purported manipulation and mixed personality issues. Dr. Eirikson was not willing to reconsider his opinion about the veracity of the sexual abuse allegations and his views of J.P. even though the evidence clearly shows that the advice he received that the children had recanted during the VPD interviews was incorrect. I found that at times, Dr. Eirikson engaged in illogical or inconsistent reasoning to support his opinions.

[383] Dr. Eirikson remained pre-disposed against J.P. and of the view that B.G. should have unsupervised access of the children throughout his testimony, no

matter what evidence was shown to him that demonstrated an objective basis for J.P.'s seeming paranoia that B.G. and others set out to falsely portray her as mentally unstable and a legitimate basis for her belief that a rape had occurred.

[384] In my view, Dr. Eirikson's pre-disposition stems from his knowledge of the VPD determination and the manner in which J.P. presented herself during her interview. As a result, he continued to give significantly greater weight to information suggesting J.P. to have engaged in coaching the children to provide false disclosures of sexual abuse throughout his testimony despite defects in that information. I found that he remained prepared to place the worst possible characterization on all of J.P.'s conduct and motivations.

[385] I am satisfied that Dr. Eirikson's approach to his interview of the children was also significantly influenced by the formal conclusion reached by the VPD. For that reason, he did not see any need to depart from his normal practise to conduct only one direct interview with each of the two older children to discuss the sexual abuse allegations (which in this case was approximately 30 minutes in length). Dr. Eirikson reported that the two older children denied sexual contact with their father. In listening to Dr. Eirikson describe his approach to the interviews with the two older children, I can only conclude that Dr. Eirikson took what B.G. has described as a "cut and dried" approach to those interviews, accepting what the children told him at face value without questioning it. I am satisfied that there was no rapport built with the children.

[386] Dr. Eirikson was provided with information about the VPD interviews of B.T.G. and K.G. by social workers who watched from behind a one-way mirror. Regrettably, the accounts provided to Dr. Eirikson did not, I find, adequately reflect the dynamics and results of the interview process nor did they provide a complete and accurate summary of the statements made by the children. Dr. Eirikson only saw the videotaped interviews of those two children well after he had prepared his reports.

[387] I accept the evidence of Mr. Colby and Dr. Elterman that it is essential for professionals to build rapport with children who are alleged to have suffered sexual abuse; it is likely that two or more interviews are required, over time, in order to

establish that rapport in order to ascertain the truth. Dr. Eirikson echoed that sentiment when he said that it is important to ascertain “who the children are, what they are like, what their characteristics are, and what their behaviour is like”. I am satisfied, and unfortunately so, that Dr. Eirikson’s interviews of the children, conducted for such a short period of time in a case involving such significant allegations of sexual abuse, that followed upon prior questioning by others, did not permit him the opportunity to develop the requisite insight and rapport with the children.

[388] Dr. Eirikson’s opinions were greatly influenced by his conclusion that J.P. was overtly trying to manipulate the interview process by making a false allegation that B.G. had raped a woman some years ago. One of those opinions was his opinion that J.P. suffers from mixed personality features (as opposed to any specific psychiatric disorder), which he said manifests in unfounded paranoia.

[389] Dr. Eirikson was not prepared to reconsider his opinion that J.P. engaged in overt manipulation even though he was shown a transcript of B.G.’s testimony (from his examination in chief) that provided a *bona fide* factual basis for J.P.’s belief about the rape.

[390] Dr. Eirikson persisted in his overall negative view of J.P.’s personality issues, including her perceived paranoia concerning the Ministry’s conduct in investigating the sexual abuse allegations, even though he was shown a transcript of a discussion between the Ministry’s team leader and J.P. that occurred on December 31, 2009. Their discussion took place the day after the children were apprehended by the Director, when J.P. attended at the local Ministry office to drop off clothing for her children. At that time, the team leader accused J.P. of fabricating the sexual abuse disclosures, before the children had been interviewed by the authorities and before the investigation into the sexual abuse allegations was underway in any meaningful way.

[391] A transcript of a tape recording of that meeting also reveals that J.P. was told by the team leader that her fabrication was one of the reasons why her children were apprehended by the Director and further, that she had caused them emotional harm.

[392] The Director did not call any evidence to dispute the accuracy of the tape recording and transcript of that meeting.

[393] A relevant portion of the transcript reads:

[MR. S.]: So in my view, and I again am not responsible for the criminal outcome of whatever proceedings happen with respect to the allegations of sexual abuse, but in my view it appears to me that the children are being coached to --- to disclose this information. And in fact they appear to be under some duress to produce the information that you would like them to say.

[J.P.]: No.

[MR. S.]: Which to me amounts to emotional harm, right, and that's why we -- that's why we are --- one of the reasons why we are involved in this fashion that we are. And I will sort of document all of this ---

[J.P.]: So are you saying coaching in terms of making them say something that's not true?

[MR. S.]: Yes, yes, that's my feeling.

[J.P.]: Or coaching just trying to get them to say what they already told me.

[MR. S.]: No, it --

[J.P.]: So you are --

[MR. S.]: Fabricating.

[J.P.]: Oh, yeah --

[Mr. S.]: That's how it appears in those videos. And there are a number of people unfortunately that feel the same way.

[Emphasis added]

[394] Dr. Eirikson maintained his opinion about J.P.'s paranoia in spite of the contents of the transcript because he preferred to rely on statements (referred to only in his report and not in evidence) provided to him by B.G.'s step-father and sister (neither of whom testified) that J.P. had discussed theories with them concerning the end of the world. I found that Dr. Eirikson preferred to hold onto any available information he could that would support his opinions concerning J.P.'s

personality issues. He was not prepared to consider whether the information he had been provided by persons closely related to B.G. was truly reliable. His negative opinion of J.P. continued to cause him to minimize any evidence that tends to demonstrate sexual abuse of the children occurred.

[395] Dr. Eirikson also expressed his opinion that J.P. “co-opted” the medical professionals who have seen her, including psychologist Dr. Michael Elterman. He was highly critical of Drs. Sidky and Dunne because they expressed views about the veracity of the sexual abuse allegations without having interviewed B.G. Dr. Eirikson did not provide any basis, however, for his opinion concerning Dr. Elterman. I am satisfied that Drs. Sidky and Dunne approached their assessments of J.P. with appropriate skepticism and a critical mind. Moreover, their opinions concerning J.P.’s mental health as well as those expressed by Dr. Elterman are consistent with J.P.’s test results obtained by all of the psychologists (including Dr. Eirikson).

[396] The only substantive concession that Dr. Eirikson made, and reluctantly so, was an admission in cross examination that if J.P. did not engage in manipulation and in fabrication and coaching of the disclosures of the sexual abuse allegations, then her intense presentation would be “normal” because “mothers, if they develop the belief that their children are being abused can get extraordinarily protective”.

[397] It is noteworthy that Dr. Eirikson did not include in his report a concern he held at the time he prepared his report that B.G. may have engaged in inappropriate sexual touching of his son, B.T.G., during one or more of the times they showered together. Instead, Dr. Eirikson’s report would lead the reader to the conclusion that no sexual abuse occurred and that there is no risk of abuse posed to the children by B.G. For example, he wrote:

In my opinion, [B.G.] is not at risk to sexually abuse the children. The Vancouver Police indicated the allegations were completely unfounded and likely coached. Dr. Kot’s conclusion was that it is inconclusive whether the children were sexually abused, although [B.T.G.] seems to have a knowledge of some sexual behaviour such as male erections, but the source of this is not attributed. Interviews conducted by the writer did not arise in any disclosure, in fact their descriptions are more of a description that nothing sexually inappropriate occurred. In my opinion the children have subjected to

three different assessments and none of the three showed a disclosure of sexual abuse by [B.G.].

...

In my opinion, [B.G.] does not have undue sexual interest in children other than the allegations made by [J.P.]. No other source of allegations or observations regarding undue sexual interest in children were made other than by [J.P.] or via people she told about [B.G.]. ... Safe contact between the children and [B.G.], in my opinion, would be at minimum unsupervised access and the Court's consideration regarding placement with him. In my opinion the court will need to consider what is safe contact between [J.P.] and the children related to placement or access. Consideration in this is [J.P.'s] insistence that [B.G.] is a psychopathic pedophile and the impact of this view upon the children.

[398] When Dr. Eirikson wrote those remarks, he was aware that BT.G. had told the VPD during his interviews that he complied with his father's requests to engage in sexual touching of B.G.'s penis while in the shower together.

[399] It was only after being shown the videotapes of the VPD interviews of BT.G. and K.G. during cross examination that Dr. Erikson conceded that his opinion would vary, and then, only slightly. He said that he would increase his evaluation of the risk of sexual abuse by B.G. to BT.G. by a marginal amount. Even so, and quite surprisingly, Dr. Eirikson stuck to his opinion that it would be appropriate to allow unsupervised access by B.G. to his children (assisted with parental education on setting appropriate boundaries). Dr. Eirikson's rationale is that even if the sexual touching disclosures made by BT.G. are true, J.P.'s mixed personality issues will result in alienation of the children against their father, which, in Dr. Eirikson's opinion, is worse than the sexual touching complained of by BT.G. Dr. Eirikson said that if BT.G.'s sexual touching in the shower disclosures are true, he would rate the gravity of them as low, or as he put it, 5 on a scale of zero to 100. To Dr. Eirikson, it is a matter of degree. In his testimony, he said that he considered the occurrence of sexual touching described by BT.G. to the VPD to be "minimal", reflective of "poor parenting" and "bad practice".

[400] In his testimony, Dr. Eirikson expressed his confidence that B.G. would attend counselling to assist him in setting boundaries, in spite of the following opinion he

provided in his report concerning B.G.'s test results from a test referred to as a Personality Assessment Inventory ("PAI"):

[B.G.] may be rather defensive and reluctant to discuss personal problems, meaning that he may not be willing to make a commitment to therapy; engaging him in the therapeutic endeavour is likely to represent a formidable problem.

[401] I wish to note parenthetically, and regrettably, that B.G.'s PAI test results have been borne out - B.G. was adamant, when giving his testimony, that he had no intention of changing his parenting style and the manner in which he shows (what Mr. Colby and others consider to be inappropriate) affection towards and physical contact of his children.

[402] Dr. Eirikson was told about K.G.'s description of lengthy tongue in mouth kisses with her father, yet he conceded that his notes do not show that he followed up on this information in his investigation or that he attempted to find out from K.G. if she engaged in such behaviour with her father. Dr. Eirikson tried to recall what he might have done to investigate K.G.'s comments, but I found his recollection to be the result of conjecture.

[403] Nor did Dr. Eirikson follow up on the origin of BT.G.'s knowledge about his sexually inappropriate remarks and behaviour in the bathtub with his sister when he spoke of "vulgar lunch", nor did he consider the potential significance of those remarks in the context of the sexual abuse allegations.

[404] In summary, I have determined that Dr. Eirikson's view of the case was significantly coloured at an early stage by the communication about the results of the VPD investigation and his reaction to J.P.'s presentation. He was provided with an incomplete and inaccurate report of the statements made by BT.G. and K.G. to the VPD during their interviews. I have determined that this adversely affected his approach to his investigation, including his interviews of the children. It has also adversely affected his recollection of certain events and his ability to recall information provided to him by J.P. As a result, I have determined that the opinions expressed in his report and in evidence cannot be relied upon in this case.

[405] I will now address a further matter raised by counsel for J.P. that concerns Dr. Eirikson's evidence. I wish to make it clear that my determination concerning Dr. Eirikson's testimony does not turn on this point.

[406] Opinion evidence was led from a highly qualified forensic document examiner to show that Dr. Eirikson had not been truthful in his evidence concerning a key portion of the notes of his interview with J.P. concerning the alleged rape. Those notes are central to Dr. Eirikson's evidence concerning manipulation.

[407] No objection was taken by B.G. or the Director to the introduction of the expert's report into evidence as rebuttal evidence.

[408] By way of background, Dr. Eirikson, who was the second to last witness to testify in the lengthy trial, was adamant that his notes, which record J.P.'s advice to him concerning the alleged rape, which he says supports his conclusion that she was engaged in overt manipulation, were made contemporaneously as the interview progressed. He denied that there was any delay in making those notes (not even a delay of two minutes). During cross examination, Dr. Eirikson vehemently denied all suggestions that those notes were made at any subsequent time and that they did not accurately reflect the information he was given by J.P.

[409] As noted, the expert's testimony was led in rebuttal, and only because Dr. Eirikson's notes were produced as a result of him stepping into the witness box. As a result, and through no fault of counsel, Dr. Eirikson has not been afforded the opportunity to respond directly to the expert's opinion.

[410] The expert provided a detailed account of the methodology he used in his forensic investigation, including the use of specialized camera and lighting equipment. The conclusion to be drawn from the expert's testimony is that the only means by which Dr. Eirikson's evidence that he made the notes while he was interviewing J.P. could be truthful, is if he put down the pen he was writing with, picked up a different one with different ink, moved the note paper askew from the paper beneath it, wrote the impugned notes, put that pen down, picked up the pen

he had previously been writing with, moved (with exactitude) the note paper back to its prior position, and then continued writing with the original pen.

[411] In argument, I was urged to find that Dr. Eirikson's evidence should be rejected in its entirety because he gave false testimony concerning those notes. A submission was made that Dr. Eirikson added those notes (which are central to his overall assessment) at a later date, likely after J.P. telephoned him and left a message that his report about their discussion concerning the alleged rape was incorrect.

[412] For the reasons I have set out in this section, my decision to reject Dr. Eirikson's evidence does not concern or involve the outcome of this issue. I am of the opinion that the issue does not need to be decided at this time in order for me to determine the substantive issues in these proceedings.

[413] What I will say about those notes, however, is that they are capable of being read to confirm J.P.'s evidence that she raised the possibility of the rape with Dr. Eirikson, was not able to identify the victim's full name, and asked him to investigate to confirm it. It is telling that in order to support his interpretation of his notes, Dr. Eirikson read in a different tense to some of the words in his notes that do not appear on their face.

[414] I wish to conclude this section by stating that I found that Dr. Eirikson went to considerable efforts to attempt to demonstrate that J.P. was suspicious, paranoid, manipulative, and untruthful. He stuck to evidence that could malign J.P. even where it was shown to him that there was no factual basis for that evidence (in one instance, the advice he claimed to have received from J.P. about Mr. Colby simply did not accord with the chronology of events borne out in the evidence and proceedings in Court). In the circumstances, I have concluded that no weight should be given to the opinions expressed by Dr. Eirikson concerning the sexual abuse allegations and the capacity of J.P. and B.G. to parent their children. Nor do I consider the statements he obtained from the children during his brief interviews with them to be reliable.

(b) John Day

[415] Mr. Day is a licensed family clinical counsellor who specializes in strategic family therapy, which means assisting families to better function. Mr. Day was retained by the Ministry because of certain comments made by Dr. Eirikson in his report.

[416] Dr. Eirikson recommended that B.G. receive guidance concerning his discipline and inappropriate touching with his children:

I would recommend him taking a parenting course related to discipline as a preventative measure. I would recommend he use precautions in his boundaries with the children as a cautionary measure given the nature of what was alleged.

...

However [B.G.] will need to avail himself of appropriate cautions related to appearances such as style of kissing, holding the children, bathing, types of comments made in front of the children to prevent future allegations.

[417] Mr. Day was instructed by the Ministry to provide guidance to B.G. with his discipline of the children. He was not made aware of any concerns about inappropriate behaviour between B.G. and his children, nor was he instructed to assist B.G. in this area.

[418] When Mr. Day was retained by the Ministry, he understood that there were no “major concerns” with B.G. because the referral was for the lesser period of eight to twelve weeks (as opposed to six months). In that section of his report setting out the reasons for referral, Mr. Day reported his understanding that the sexual abuse allegations were unfounded:

[B.G. was referred as there had been allegations of excessive physical discipline. Previous allegations, made by [B.G.’s] ex-wife [J.P.], which have been seen to be unfounded, had left some concerns. Also of concern was the impact on the children of the very antagonistic separation between their parents. The children apparently had been exposed to adult issues over the previous year, when in their mother’s care. It was suggested that [B.G.] could use support around disciplining the children.

[419] In evidence, he admitted that he was working on the assumption that the sexual abuse allegations were incorrect based on what he was advised by the Ministry and what he knew to be the outcome of the VPD investigation.

[420] He also understood that the Ministry was in support of returning the children to B.G. and not J.P. He provided further backdrop to his understanding of the purpose of his retainer in his report:

Since I have started working with [B.G.], the main issue for the Ministry appears to have been, 'when are the children going home' and 'what is the process of getting them there.'

[421] From his interaction with B.G. and during the four occasions he observed B.G. with his children, Mr. Day concluded that B.G. did not present any risk to the children in terms of their discipline. In the summary portion of his report, he wrote:

When I have observed [B.G.], he is gentle and caring with the children. He strives to understand and to attend to what they need from him. He does not talk about being worn down by this situation but regularly picks up his children every Saturday morning and spends the weekend with them. ... He seemed to work to understand the children's emotions while being clear as to what behaviour was not acceptable. ... When we have talked about parenting the children, [B.G.] has been very willing to talk about the children's behaviour, to try to see behaviour as a form of communication and to respond to the children's needs appropriately. He has high standards and wants his children to behave appropriately...

[422] In addition, Mr. Day remarked in his testimony that he never heard B.G. speak ill of their mother to the children. Mr. Day was not aware, however, of actual evidence to the contrary, e.g., B.G.'s admission during trial that he told his children that their mother had mental problems and required medical intervention.

[423] In his report, Mr. Day demonstrated sympathy for B.G.'s position in resisting what he perceived to be unfounded allegations of sexual abuse:

[B.G.] appears to be doing all that he can do at this time. I understand that resolving this situation is made very difficult by [J.P.'s] antagonism towards [B.G.] and her continued accusations. I received a phone call on April 28th, the day after the last court appearance, from "a friend of [J.P.'s]" making very explicit accusations about [B.G.'s] alleged abuse of the children... I would be very concerned if [J.P.] were to be unable to accept that these accusations are false and to again involve the children in this version of events.

[424] I have concluded that despite his best efforts to approach his retainer objectively and to give his evidence with candour, Mr. Day was misled by B.G., whom I have previously described as a highly intelligent and extremely manipulative individual, in circumstances where B.G. was not susceptible to significant challenge. Mr. Day demonstrated in cross examination his extreme reluctance to accept the possibility that any of the damaging evidence against B.G. could be true. Some of his reluctance is understandable given the lens in which Mr. Day looked at his retainer, from the information provided to him, and given that he was never made aware of the substance of any of the sexual abuse allegations.

[425] Mr. Day is not aware, for example, that despite the concerns expressed over B.G.'s inappropriate touching and kissing of his children (of which B.G. is well aware), B.G. is adamant that he will not change his parenting style.

[426] It is clear from B.G.'s evidence that he is not willing to address any of the concerns about inappropriate behaviour raised by Dr. Eirikson. B.G.'s defiance is illustrated in the following excerpt from his cross examination, where he was directed to notes contained in a supervised access report about K.G.:

Q "Dad talks to her [K.G.] about being a massage therapist. Dad massages her head, face and neck." Do you see that?

A Yes.

Q So you're massaging [K.G.]?

A Yes.

Q Given the sexual abuse allegations against you, sir, I take it you haven't changed your -- your parenting style at all?

A Not at all. I won't -- I wouldn't, as long as I live, be the same parent. I'm not going to change based on erroneous allegations.

[427] B.G. also said that he would continue to kiss his children on their mouths until they ask him to stop. He does not consider it inappropriate. He made his views very clear when questioned at discovery (read-in):

Q ... Now Mr. [John P.], my client's father, has stated to several people that he had seen you kissing your children on the mouth -- mouth-to-mouth kissing. Is that something you occasionally do, kiss your children mouth to mouth?

- A I've kissed my children countless times on the mouth.
- Q Countless times?
- A And I still kiss them on the mouth every time I see them.
- Q You still do?
- A Kiss my children on the mouth, kiss them on the lips, absolutely.
- Q Do you think that's appropriate?
- A Absolutely.
- Q Kiss a young 7 year old girl on the mouth?
- A I kiss my children on the mouth.
- Q You don't see anything wrong that that?
- A Absolutely not. There's absolutely nothing sexual about it at all, not whatsoever.
- ...
- Q When [K.G.] is 12, 13, 14?
- A M'mm-hmm.
- Q Will it be appropriate for you to kiss her on the mouth?
- A I wouldn't see it as wholly inappropriate unless it was found inappropriate by her.

[428] Mr. Day characterized numerous supervised access reports identifying the children's sexualized conduct and aggressive physical and verbal abusive behaviour as examples of normal sibling behaviour and rivalry. He did not consider reports of: BT.G.'s pelvic thrusts in front of his sister; K.G. engaged in pulling down her pants in public; BT.G. using a carrot to simulate his penis in the course of urinating on his siblings; and K.G. lifting up her dress and pointing to her crotch with her thumb, to be abnormal so as to cause concern. Further, Mr. Day rationalized P.G.'s "blow on my pee pee" remark as normal, stating that parents will blow on the genital areas of their children to dry them off after bathing (although he conceded that P.G.'s age put her at the outer limit of an appropriate age for such parental conduct).

[429] Mr. Day would not concede that the foregoing reports revealed problematic behaviour absent greater context, including the "sexual world" that surrounded the children.

[430] It was only when the VPD's transcription of BT.G.'s statements (in summary form) made during the interviews were put to Mr. Day did he concede, and then, only reluctantly, the possibility that sexual abuse may have occurred. The extract read out to Mr. Day included the following series of questions and answers. The questioner is designated with the letter "D":

- B We talked about him being vulgar around us. He told me to touch his penis in the shower and told [K.G.] to suck his penis and told her it was a lollypop. He kicked [K.G.] out of the bathroom and that's all I remember.
- ...
- D How often do you shower with your Dad?
- B Pretty often.
- D How often does he ask you to touch him?
- B Pretty often.
- D How does he get you to do it. How does he get your [sic] to start doing it?
- B He tells us to.
- D What does he tell you?
- B He tells us to touch his penis.
- D Ok so when you say us who's all in the shower?
- B Ok what I really mean is me.
- D Ok so what would he say?
- B He would say [BT.G.] touch my penis and he?just say touch my penis.
- D Then what?
- B I touched his penis. Pretend this is my Dads penis (pull out sword toy and flicks his fingers at the toy)
- D Did he say anything when you were doing that?
- B No.
- D And what happened to the penis when you touched it?
- B It was going like (puts toy between his legs and positions it vertically)
- D What made you stop?
- B Myself.
- D Because?
- B Because I didn't think that was very great.
- D Ok it went like that, you stopped and then what happened?

- B (Motions with the toy sword again in vertical position)
- D Ok then what happened. How did it end? What did you do after that?
- B I washed myself.
- D What did your Dad do?
- B He washed himself.
- D You said it happened more than once. Tell me about another time.
- B Say again (puts fingers to his temples)
- D Tell me another time that it happened.
- B Ummm? Lots of other times.
- D Ok tell me about that. Tell me a time that was different.
- B Once on Wednesday and the other one on Friday.

[431] When asked if these remarks put the sexualized behaviour in a different context, Mr. Day responded, “possibly, possibly yes”.

[432] I accept that Mr. Day’s account of B.G.’s behaviour appears to be a correct description of what he observed. Yet, in the circumstances, I do not regard Mr. Day’s evidence to offer any assistance to me in determining the substantive issues in this case.

(c) J. T.

[433] J.T. is B.G.’s mother. She presented as a brittle and rigid individual who was highly defensive of her son regardless of his conduct. She was also easily offended during cross examination, unjustifiably so, in my view, having regard to the soft approach taken to her in questioning.

[434] J.T.’s loathing of her former daughter-in-law was palpable. For example, she described J.P.’s money as “filthy money”, implying it was derived from illicit sources, without providing any information or objective basis to support her remark. I found that she used all opportunities when giving her evidence to criticize J.P. for any reason she could find, however trivial. J.T. magnified trivial and in many instances what appeared to be neutral events. J.T. was so intent on portraying J.P. in the

worst possible light that she lost track of and could not recall the year in which her third and fourth grandchildren, BN.G. and P.G., were born.

[435] Although it is natural for J.T., as B.G.'s mother, to be defensive of what she perceives are unfounded allegations of sexual abuse levied against her son, J.T. seized upon her poor relations with her daughter-in-law to portray J.P. as mentally unstable. I am satisfied that J.T. disliked J.P. throughout her relationship with B.G. and believed she was not a partner worthy of her son's affection. J.T. interposed herself and her views of J.P. with family and friends and the older children's school education staff. I find that following B.G.'s arrest on October 5, 2009, J.T. followed her son's direction and called the Ministry to provide an unfounded report of severe mental and emotional distress and abuse on the part of J.P. (that she claimed was damaging to the children) in order to assist her son's position.

[436] I am also satisfied that on a break during her cross examination, and contrary to the caution I had provided, B.G. spoke with his mother about evidence she had given concerning a family friend who is a mental health worker for Vancouver Coastal Health Authority. This individual, who is the mother of one of B.G.'s closest friends (who participated in the public library emails), also called the Ministry to provide adverse reports about J.P.'s mental health status based upon information provided to her from J.T.

[437] As a result, I have determined that J.T.'s evidence was not credible.

Summary

[438] The starting point is to consider the source of the children's disclosures to their mother and to Dr. Edamura. I have concluded that they reflect sexualized contact by B.G. with BT.G., K.G., and BN.G.

[439] I have found that the disclosures were not the result of fabrication or coaching on the part of J.P.

[440] There was no motive for J.P. to have fabricated the disclosures. She had sole custody of the children since October 5, 2009. A restraining order was in place. B.G.'s original position in the divorce proceedings, even after vague allegations of sexual abuse were raised, supported joint custody for J.P. There would be no need for J.P. to fabricate sexual abuse because proof of the physical abuse would have sufficed to place strict limits on B.G.'s access. The adverse ramifications to J.P. resulting from fabricating sexual abuse allegations of the type that have been made would also serve as a disincentive.

[441] I am satisfied that throughout the entire investigation process, J.P. sought to have the truth determined. I reject B.G.'s submission that she wanted the allegations to be proven true as part of an overriding agenda to take custody of the children and to deny B.G. access to them. She called the Ministry and the police to investigate possible sexual abuse of P.G. She thought that interviews of the children were arranged with the VPD. After the children made their disclosures, she immediately followed up again by calling the Ministry and the VPD.

[442] This is not a case where, as B.G. suggests, J.P. has demonstrated a "hyper-awareness" of facts, showing a predilection in a bitter matrimonial dispute to assume that sexual abuse has occurred from otherwise neutral events surrounding a child's normal behaviour (e.g., when a parent climbs into the child's bed to lie with them to say good night).

[443] Nor were the children's disclosures the result of inadvertence, arising from the questions posed by J.P. to the children. The questions J.P. asked her children, including those when she made the audio and video recordings, are general in nature. Except for questions that addressed frequency of sexual contact, J.P.'s questions were open ended and not leading. J.P.'s questions did not create a "demand" situation where the children feel compelled to confirm information about sexualized matters and genitalia. Asking a child if "Daddy has ever touched you?" is innocuous; a number of answers that do not suggest sexual contact are possible.

[444] I found the words that the children used in their elaborate accounts of sexualized contact to be fitting for their age.

[445] BT.G.'s disclosure contains information about sexual touching that he would not be expected to know at age seven. His accounts are consistent and provide appropriate context. He carefully distinguished facts within his personal knowledge from those he has been told by his sister (and did not distort or amplify what she has told him).

[446] There is no means by which K.G., who was five years old at the time the disclosures were made, could have acquired the information that would allow her to concoct a complex account of sexualized contact involving ejaculations, erections, a game involving milking a cow, and partial penile penetration. The play or game aspect of K.G.'s disclosures add to their credibility. Play is the natural language of children that age. They play and act out in play. A five year old such as K.G. would have no judgment to express about the content of the disclosures except pain and discomfort associated with it.

[447] The statements made by BT.G. and K.G. to their mother and to Dr. Edamura were consistent. Their detailed narratives would be difficult if not impossible for them to recall on a consistent basis if they were the result of fabrication or inadvertence. Nor did I find any amplification by the children in their statements.

[448] The only person that has been identified by the children to have engaged in sexual conduct with them is their father. This is not a case involving confused identification.

[449] I reject B.G.'s evidence that J.P. coerced BT.G. and K.G. into making statements that were captured on videotape.

[450] I am also satisfied that the children's disclosures were not the result of exposure to inappropriate television programming at the family home. Nor can the content of those disclosures be explained by the children's exposure to B.G.'s vulgar

humour or his prolonged kisses and other inappropriate behaviour (such as the mock breast feeding).

[451] The conclusion reached by the VPD was incorrect and does not reflect the statements made by the older children during their interviews nor the context in which they were made. B.T.G.'s statements to the VPD were consistent; appropriate context and details were provided. K.G. refused to participate in any meaningful way. Her remarks do not constitute recantation. I am satisfied that by the time K.G. was interviewed by the VPD, she had made up her mind to avoid all questions concerning the disclosures because she thought they had led to disintegration of her family and her removal from her mother's care and from the family home.

[452] Dr. Eirikson's approach to the investigation, including his interviews with the children, were adversely affected by the information he was provided regarding the VPD interviews and conclusion as well as J.P.'s presentation. He failed to establish the necessary rapport with B.T.G. and K.G. in singular 30 minute interviews.

[453] Unfortunately, the integrity of the s. 15 process was adversely impacted. The s. 15 investigation carried out by Mr. Colby was structured to be independent of external influence. That was not the case. As well, B.G. was permitted significant unsupervised access to his children when they were interviewed by Mr. Colby, which was a critical point in the investigation. I am satisfied that he sought to influence his children to prevent disclosure of sexual abuse to Mr. Colby.

[454] My determination that B.G. engaged in sexual abuse is not predicated only on the children's disclosures and my adverse findings in respect of B.G.'s credibility. I have placed great weight on the children's ongoing and troubling behaviours and their sexualized remarks, which provide a significant body of objective evidence demonstrating that sexual abuse has occurred.

[455] There is also a significant body of evidence that demonstrates B.G. does not understand sexual boundaries, particularly when it comes to satisfying his own sexual desires. For example, his retention of the blotter drawings in his keepsakes

and his lack of shame in showing them to adults are highly disturbing and evidence of deviancy as well as an ongoing and perverse interest in sexualized torture of women to achieve sexual satisfaction.

[456] I have also found, from Dr. Edamura's evidence concerning the Children's Hospital records, that K.G.'s anal fissures were the result of sexual contact from B.G.

[457] Nor am I in doubt that BN.G.'s disclosures, which were captured only on audio recordings, were the result of sexual contact as opposed to his exposure to the highly sexualized words and play of his older siblings.

[458] I am satisfied on the balance of probabilities that in addition to his two older siblings, BN.G. was also the victim of sexualized contact by his father. The specific words used by BN.G. in his disclosure to his mother are in keeping with his age. Further, his ongoing behaviour is consistent with the objective *indicia* used by experts to determine if sexual abuse has occurred.

[459] Because of her age, no statement could have been taken from P.G. Her sexualized behaviour (and remarks) noted by access supervisors might be the result of her regular contact with her older siblings. As Mr. Colby explained, P.G.'s comment in September 2011 can be seen in the context of an "interwoven sexualized environment". Lastly, unlike the anal fissures, there is no medical record concerning her labial tear because she was not taken for a medical examination until several months later.

[460] I am also reluctant, given the gravity of the sexual abuse allegations, to find that sexual abuse occurred to P.G. based solely on K.G.'s statement that she witnessed her father put his penis in P.G.'s mouth.

[461] Some of the more recent access reports provide accounts of P.G.'s temper tantrums. Although this can be *indicia* of sexual abuse, I am not certain whether her tantrums are the result of aggression from her older siblings, the result of sexual contact by her father, or learned behaviour.

[462] Notwithstanding my determination concerning P.G., there is no question that she is at risk of sexual abuse if B.G. is permitted access to her.

[463] In conclusion, I am satisfied, on a balance of probabilities, that B.G. sexually abused BT.G., K.G., and BN.G.

[464] Even I had not found B.G. to have sexually abused BT.G., K.G., and BN.G., I would have denied him access to his children at this time because of his character and the physical abuse he has subjected his children to. My view of B.G.'s overall character is that the children would be at continued risk of physical and emotional harm from access. In addition, I have no doubt that B.G. would use every opportunity to malign J.P. to his children.

Physical Abuse

[465] The marriage was marred by arguments and physical assaults committed by B.G. upon J.P.

[466] Numerous incidents of physical abuse of J.P. and the three older children by B.G. were identified. I find that B.G. physically abused J.P. He kicked her and pushed her, sometimes to the ground and pinned her down. On some occasions he would grab her by the neck. The children have also witnessed some of these incidents.

[467] B.G. has yelled and screamed at J.P. and each of the children.

[468] B.G. also physically abused his three eldest children. He has kicked them, pushed them against walls, twisted their arms behind their backs, and grabbed and dragged them by their arms and necks. One of his disciplinary techniques is to cover their mouths in such a way so as to impede breathing.

[469] BT.G., K.G., and BN.G. have each made statements to social workers, access supervisors, and medical professionals about their father's physical abuse. The children have never resiled from their statements concerning their father's physical abuse.

[470] Notable specific incidents of physical abuse include:

- (a) March 17, 2001 - B.G. picked J.P. up by the neck and threw her to the ground. She attended the emergency department at Vancouver General Hospital.
- (b) July 24 - August 21, 2003 - medical records for J.P. show that she sought medical assistance for an injury that resulted from being grabbed by the neck.
- (c) Early summer of 2004 - B.G. kicked J.P. in the back while she was eight months pregnant with K.G.
- (d) February 24, 2005 - J.P. was kicked in the back while holding K.G. who was six months old . The VPD were called.
- (e) June 2007 - J.P. was hit on the head by a wooden chair. J.P. called the VPD on June 23, 2007.
- (f) February 14, 2009 - J.P. was pushed hard by B.G. so that she fell on the floor. B.G. yanked the telephone cord out of the wall to prevent J.P. from calling the police.
- (g) May 15, 2009 - B.G. pushed K.G. off of a desk onto the floor while she was trying to give him a hug.
- (h) October 4, 2009 - B.G. kicked K.G. into the hallway, causing her to slip and fall.
- (i) October 5, 2009 - B.G. assaulted J.P. in the dining room and kitchen area of their home. The VPD is called.

[471] I accept J.P.'s account of events that led to B.G.'s arrest on October 5, 2009. The couple's financial distress had deteriorated quite significantly by that time. In the midst of an ongoing discussion about whether to retain the rental property, B.G. told

J.P. that he was going to sell the house and their shares in their business venture. He told her that he was going to use the proceeds to pay off his own debts and that he was going to divorce her and take the children away from her. He told J.P. that if she tried to stop him, he would put her in a mental institution, and suggested that he knew how to do it. J.P. became upset and threw a small bag of nuts in his direction. B.G. immediately pushed himself up off the couch where he had been sitting and came towards her. J.P. grabbed a chair from the dining room and put it in front of her as a barrier. B.G. shoved the chair towards her. B.G. grabbed her and pushed J.P. into the kitchen from the dining room. She described him as “looking right through me”, as he told her, “I’m going to kill you and I’m going to bash your head through the window”. She pleaded with him not to hurt her. As she continued to plead with him not to hurt her because she would not be able to take care of their children, B.G. suddenly snapped out of his anger and let her go. J.P. ran away from him, got their daughter, P.G., and went to the front porch and called the VPD. When the police arrived, they found B.G. sitting in the living room calmly watching television.

[472] B.G. was, by his own admission, “in a very dark place” emotionally at that time. He was taking anti-depressants. He did not deny that he used recreational drugs after his children were born. He also admitted that he told J.P. that she could end up in a mental institution (but suggested that he said that during their altercation in the context of trying to get her to seek medical help).

[473] B.G. made admissions concerning his use of physical force. He admitted to grabbing his children by their necks from time to time, but only to separate them from each other. He agreed that he had, on some occasions, pushed J.P. to the floor and held her down, but only to protect her from hurting herself because she was so distraught, he was scared of her, and he wanted “to keep my marriage on track”.

[474] B.G.’s testimony that he pushed or pulled his wife to the floor and held her down (sometimes by her neck) because he was scared of her defies belief. Although she is taller than him, B.G. appears quite strong and physically fit from ongoing weight training and his past use of steroids.

[475] I reject B.G.'s evidence about the incident on October 4, 2009, that he inadvertently caused K.G. to slip and fall on her tailbone in the hallway while he was trying to restrain her with his foot across her stomach. It is another example of his attempts to minimize events adverse to his case. In looking at video images of K.G., taken by J.P. in December 2009 and then by the VPD in January 2010, she appears to be a small child of slim build. I reject B.G.'s evidence that his daughter was so strong that she could withstand her older brother's "punches ... that would render other children unconscious".

[476] As for the May 15, 2009 incident involving K.G., B.G. admitted to having a vague recollection of K.G. falling off of the desk onto the floor; he denied any intention to hurt her, however, stating, "I do not recall I have ever wantonly pushed [K.G.] into a doorjamb". He also admitted to yanking the telephone cord out of the wall during the incident on February 14, 2009. He admitted that he kicked J.P. in the bum while she was pregnant with K.G.

[477] Some entries contained in the supervised access reports show that BN.G. is frequently intimidated and bullied by his older brother and sister. I attribute this to an ongoing atmosphere created by B.G. while the parents were still living together. I accept J.P.'s evidence that B.G. demeaned her in front of the children and BN.G. in front of his older brother and sister. B.G. mocked J.P., holding his hand in the air, smacking his lips to mock her talking. He picked on BN.G., likening him to a handicapped child, and told him that he looked like his mother and "must be stupid", causing his older siblings who heard the remark to laugh.

[478] The credibility of J.P.'s allegations of physical abuse was questioned on the basis that if her account was true, she should have left her marriage. Her failure to leave the relationship was explained by Dr. Dunne to be the result of battered woman's syndrome.

[479] Other than an attack on her expertise to provide opinion evidence on the subject because she is a licensed counsellor and not a psychologist or psychiatrist –

a submission that I reject - Dr. Dunne's evidence was not challenged by any other expert.

[480] According to Dr. Dunne, a person suffering from battered woman syndrome will leave and then return:

- A Okay. Because as I said the other day, it can be many, 14, 16 times that a woman will leave but then return. So one of the things that happens within the relationship, including after a woman can leave, is that they'll be a period of desired reprosham [phonetic], wanting to heal and go back to -- to the partner who's maybe hospitalized them. The -- the harm is dissociated. The harm, the sense of wounding and hurt gets split off and then the powerful desire for healing comes back and so there's a return.

[481] Mr. Colby gave evidence in a similar vein, stating that he is frequently surprised to find one spouse will continue to remain in a relationship with an abusive spouse. In this case, he said: "I can't state that I would find this highly unusual", despite her complaints of early physical abuse and questionable moral conduct on B.G.'s part.

[482] It is easy with the benefit of hindsight to question J.P.'s rationale for remaining in the marriage in view of the ongoing physical abuse. In my opinion, Dr. Dunne's description of battered women's syndrome accurately describes the situation that J.P. found herself (and let herself remain) in.

[483] My view overall is that J.P. thought B.G.'s physical aggression towards her and the children to be the result of financial stressors and B.G.'s inability to cope with a household that could become untidy (particularly when the children's toys were strewn about). There were times that their relationship was stable, relatively calm, and not marred by violent episodes or outbursts. Through J.P.'s urging, B.G. agreed to attend counselling with her in the past, after he expressed his despondency over their financial circumstances. I accept her evidence that she sought to find ways to keep their marriage together, because she saw that as important for her children's stability.

[484] I accept J.P.'s evidence that B.G. yelled at P.G. and shook her on one occasion, but I do not view that as constituting ongoing physical abuse.

[485] In conclusion, and for the reasons I have expressed in this section, I find that B.G. physically abused J.P. and BT.G., K.G., and BN.G.

Mental Incapacity

[486] The Director's initial report to the Provincial Court, which is required by the *Act* following apprehension of a child, described the apprehension to be the result of significant concern for J.P.'s mental condition based on "credible community sources". The report sets out the Director's concerns that J.P. may flee with the children, harm them, or herself.

[487] None of the mental health concerns identified by the Director have been proven. As I have noted, the Director has decided not to call any evidence, and instead has advised during the trial that it no longer has any protection concerns regarding J.P. The Director has, through counsel, advised that it has concerns about B.G., but no specifics have been given.

[488] The names of the "community sources" referred to in the report to the Provincial Court were B.G.'s friends and family members and are mostly edited out of the Ministry's documents admitted into evidence. As I have noted, with the exception of J.T., none of the persons who provided reports to the Ministry were called to give evidence.

[489] I find there is no merit to the report that J.P. kept the children in hiding, intended to flee with the children, or that she was homicidal or suicidal.

[490] Expert testimony adduced on behalf of J.P. established that she does not suffer from any mental illness or disorder or psychiatric syndrome.

[491] J.P. displays a distinct and often relentless propensity to overstate in order to convince people she is a good mother capable of parenting and that the allegations of sexual abuse are true. I find that this is caused by the extreme emotional distress

and anxiety she suffers from the sexual abuse disclosures, from finding herself in an ongoing situation where no one in a position of authority was prepared to believe her, and as a result of being told that she fabricated and then coached her children into making the sexual abuse disclosures.

[492] Standardized objective tests were administered to J.P. by three psychologists, Michael Elterman, Paul Eirikson, and Michael Colby. The test results did not reveal any psychopathology, syndromes, mental illness, or mental disorders.

[493] Dr. Elterman was originally retained by counsel for J.P. in June 2010 to review Dr. Eirikson's report. At a later date, he was asked to provide his opinion as to whether J.P. suffered from a diagnosable mental disorder. A critical aspect of his role was to determine the answer to the following question:

[W]hether you have a diagnosable mental disorder as concerns have been raised about paranoia and suspiciousness.

[494] Dr. Elterman administered the PAI to J.P. to assist in his diagnosis. The PAI provides an assessment of an individual's functioning "across a variety of psychological and psychopathology domains" (*per* Dr. Eirikson). According to Dr. Elterman, J.P.'s test results showed a clinical profile that "is entirely within normal limits":

There is no indication clinical psychopathology in the areas measured by the clinical scales.

[495] Dr. Elterman described J.P.'s personality profile from the test results as normally optimistic and confident with a clear sense of purpose. I am satisfied that the following description provided by Dr. Elterman accurately describes J.P.'s personality in normal circumstances:

The self-concept of these individuals is generally stable and positive. She is normally a confident, optimistic person who approaches life with a clear sense of purpose. Her interpersonal style is characterized as being friendly and extrovert. She will usually present a cheerful and positive picture in the presence of others. She is able to communicate her interests in others in an open manner. She generally prefers activities that bring her into contact with others rather than solitary pursuits. She sees herself as a person with many

friends and as one who is comfortable in most social situations. ... The psychological testing results do not indicate the presence of paranoia.

[496] Dr. Elterman added, with respect to paranoia: “She does feel persecuted but this may be the result of the present case”.

[497] Dr. Eirikson also administered the PAI to J.P. Although the test results were similar to those found by Dr. Elterman, i.e., within normal limits, Dr. Eirikson interpreted them in conjunction with his own observations:

The PAI clinical profile is within normal limits. There are no indications of significant psychopathology in the areas that are tapped by the individual clinical scales excepting one consideration, the profile results, in conjunction with her observed mental status, might indicate overly suspicious ideation and mixed personality features. Individuals with this profile type can show such characteristics in creating a profile where “the entirely within normal limits” clinical scales result from this ideation.

[Emphasis added]

[498] I found Dr. Eirikson’s interpretation of the test results, set out above, to be inconsistent with his description of J.P.’s response styles (obtained from the PAI test) set out in the preceding paragraph of his report where he wrote:

The degree to which response styles may have affected or distorted the report of symptomatology on the [PAI] inventory is also assessed. The scores for these indicators fall in the normal range, suggesting that [J.P.] answered in a reasonably forthright manner and did not attempt to present an unrealistic or inaccurate impression that was either more negative or more positive than the clinical picture would warrant.

[499] Robert Colby administered a variety of standardized tests to J.P. including the PAI and the Minnesota Multiphasic Personality Inventory 2-RF (that Mr. Colby described as “a widely used personality instrument which is based on the more extensively researched Minnesota Multiphasic Personality Inventory 2”). He determined in his report dated September 13, 2010 that test results did not reveal “psychological disturbance or clinical psychopathology”. He summarized all of J.P.’s test results in his report:

In summary, [J.P.] does not present with Clinical Psychopathology. She responds defensively on personality instruments. Such response patterns are consistent with parents undergoing Custody and Access Assessments. She presents as a conventional and non-confrontational individual. Parenting

scales raise issues of concern for the children's behaviours and of [J.P.] being over-protective.

[500] Mr. Colby expressed concerns about what he perceived to be J.P.'s presentation as a highly distressed individual whose "general behavioural levels are quite effusive and not controlled". As a result of being directed during trial to evidence he had not been aware of before he wrote his reports, Mr. Colby qualified some of the opinions that he set out in his reports when giving his testimony, especially his conclusions and recommendations.

[501] Mr. Colby opined that if I determined that there was merit to any of the sexual abuse allegations, then J.P.'s behaviours should be viewed as the normal behaviour displayed by any parent confronted with the knowledge that their child had been sexually abused. He provided the following explanation at trial:

Q Yes. However, Mr. Colby, would you not agree with me that -- assume for a moment that the sexual abuse did occur, her reactions are not unreasonable.

A Yes. That's -- that was my point in item eight on page 92.

Q Right.

A And this would be woman under a great deal of stress, trying to find out how these horrific things happened to their children and looking for explanations of why neither the police, nor the Ministry, or anybody else, has -- has supported her or concerns for her children's wellbeing, and she was stretching as far as she could to find the reasons for that. That's possible.

...

Q Now, is it therefore reasonable to assume that if the trier of fact concludes that there is a substantial likelihood that sexual abuse occurred, it logically follows that [J.P.] should have custody and [B.G.] should have supervised access?

A I am very reluctant to respond in relationship to my views about what should the decision of the court be. So, if the trier of fact concludes that indeed these children were victims of sexual interference, then, firstly, issues in relationship to maternal child involvement change, but as I have outlined in my recommendations, on page 90, item one, I find that [J.P.'s] emotional/psychological status, with all the stressors that have been presented and as she has dealt with these issues, require attending to.

So as far as the first part of your question goes, in terms of re-establishing her ongoing involvement with the children, I would say

that would make sense, but there are other things that she has to deal with in conjunction with that.

...

A Even so, My Lord, for this woman to know that her children have been interfered with, that her relationship with her children has been undermined through that process, that she hasn't been able to protect them as a -- as a -- as a protective mother, all the stresses that are incorporated into that, the breakdown of her relationship with her own siblings, all are components that require intervention and -- and assistance, as well as a propensity to -- to be frantic and -- and impulsive in terms of problem solving.

[502] J.P. sought a referral from her family doctor, Dr. Arthur Edamura, to a psychiatrist. She wanted to satisfy herself that the accusations made by B.G. and others - that she suffered from mental incapacity, including paranoid and delusional thinking - were incorrect. She sought that referral even though Dr. Edamura had expressed his opinion in his letter of December 18, 2009 that J.P. "has not had any mental problems". Dr. Edamura testified that in the course of his dealings with J.P., he found that she had presented with anxiety and stress in the past, but there was no indication of any psychiatric disturbance, mental disorder, or mental illness.

[503] J.P. was referred to Dr. Abdallah Sidky, who has practised psychiatry for approximately 40 years. He opined in his report dated January 18, 2011, that J.P. does not suffer from any psychiatric illness. He also wrote:

[J.P.] drifts in her conversation and is confused about what is happening around her. However, she is slowly able to gather her thoughts especially after she got in contact with professional help.

...

There are no ideas of reference, paranoid delusions or thought disorder in any form. Her general knowledge if [sic] average and she is able to mention current affairs. ... She is not as bright as she is claiming to be.

[504] Dr. Sidky's evidence is criticized by B.G. because he relied on the earlier version of the DSM-II publication used by psychiatrists and psychologists to diagnose psychiatric disorders and syndromes. I find that it does not matter in this case that Dr. Sidky relied on the DSM-II and not the current DSM-IV (which lists additional categories of psychopathology) because Dr. Eirikson's application of the

current DSM publication (i.e., IV) did not show J.P. to suffer from any psychopathology. I am also satisfied from Dr. Sidky's evidence that he took a critical approach to assessing J.P. when conducting his clinical assessment.

[505] Dr. Deborrah Dunne is a licensed clinical counsellor who has been providing treatment for J.P. She confirmed that in her 51 hours spent in treatment sessions with J.P., she did not find any evidence suggesting psychopathology. While it appeared to me that over time, Dr. Dunne became more and more sympathetic (and began to identify) with her client's distress, I do not accept the criticism levelled against Dr. Dunne that she was an overzealous advocate for J.P. I accept Dr. Dunne's evidence that she approached J.P.'s over-effusive presentation and inability to focus as well as her version of events with appropriate skepticism.

[506] No expert witness retained by the Director or whose evidence was tendered by B.G. concluded that J.P. suffers from any psychiatric syndrome, mental illness, or mental disorder. Apart from B.G., the only evidence suggesting that J.P. suffers from paranoid and delusional thinking comes from J.T. and Dr. Eirikson (whose evidence I have rejected in this respect).

[507] Hospital records created and maintained by the Vancouver General Hospital recording J.P.'s attendance at that hospital on December 28, 2009, for marked anxiety and stress, followed the children's disclosures. The hospital records contain notations that J.P. was not suffering from "thought disorder", depression, or suicidal ideation. After being permitted time to consider the purpose for which J.P.'s counsel sought to tender these records, neither B.G. nor the Director objected to those hospital records being admitted into evidence as proof of truth of their contents.

[508] In summary, I find that J.P. has not and does not suffer from any psychiatric syndrome, mental illness, or mental disorder. B.G. has not proven that any psychopathology exists. The most that can be said is that J.P. demonstrates inappropriate effusive behaviours for which she may require medical assistance. I find that she suffers from extreme distress caused by the sexual abuse disclosures and the apprehension of and subsequent separation from her children, and from

finding herself in an ongoing situation where no one in a position of authority was prepared to believe her.

[509] I find that the mental health concerns B.G. reported to the Ministry and the VPD, and in his testimony, are without foundation. I agree with the submission made on behalf of J.P. in argument that those allegations “were maliciously and deceitfully orchestrated by [B.G.] to hide the awful truth.”

Reintegration Plan

[510] My findings do not mean that the children can be returned to J.P.’s care immediately. The children have been in foster care since December 30, 2009. The reports prepared by the access supervisors make it clear that the children continue to demonstrate inappropriate and disturbing sexualized and aggressive behaviour; they also continue to make inappropriate sexualized remarks. Those reports also demonstrate that three of the children act out with unacceptable physical aggression towards their other siblings.

[511] I am satisfied that J.P. and the children require medical assistance. I accept Mr. Colby’s opinion that the children and J.P. require medical assistance to help ameliorate the emotional trauma and distress they have suffered, not only from the sexual and physical abuse but from the apprehension on December 30, 2009 and the separation they have endured since then while the children have lived in different foster homes.

[512] In the event that B.G. was found to have committed sexual abuse, Mr. Colby envisioned the children’s return to J.P.’s full-time care on a graduated basis, progressing from unsupervised visits at J.P.’s residence, including overnight visits, to their complete return to her care within six weeks of the implementation of a reintegration plan. Mr. Colby conceived of a reintegration plan that calls for counselling and psychological and possibly psychiatric treatments that would last for two years.

[513] He opined that there should be two components to the treatment plan for the children, one dealing with the present and one with the past; both, he said, need to be integrated. Something more than play therapy, which he described as a useful intervention technique for young children to express themselves, is required. In his opinion, a therapist should provide direct, rather than passive, treatment. Mr. Colby said the children need a therapist who will work with them individually, and then together, to develop a “sibling interactive base which is not based on the sexuality that’s in the background”. As well, the therapist must work with the children in respect of their parents. He thought that the sessions with the therapist should take place weekly at first now, moving to biweekly over time.

[514] According to Mr. Colby, an appropriate treatment plan for J.P. calls for assistance from a psychiatrist in addition to counselling, because the former has greater diagnostic skills.

[515] Mr. Colby’s view of an appropriate reintegration plan was formulated as he gave his testimony, and following his review of only a sampling of the supervised access reports illustrating the children’s sexualized and unduly aggressive behaviour. His view of J.P.’s needs were refined and re-formulated while he was in the witness box and provided after he reviewed the videotapes with the children and certain supervised access reports. In the circumstances, I can only take Mr. Colby’s recommendations as preliminary. I am of the opinion that a detailed and focused reintegration plan should be developed by appropriate health care professionals who will have an opportunity to review all of the access reports and to meet with J.P., in addition to reviewing Mr. Colby’s reports and the transcripts of his *viva voce* testimony.

[516] The Director and J.P. agree that it is not in the children’s best interests to issue an order for their immediate return to their mother without appropriate medical intervention. On what basis, if any, may the children be kept in the care of the Director now that it no longer has any protection concerns regarding J.P.?

[517] The Director says that it has not filed a Form B under the *Act* - which it would normally do when it no longer has protection concerns - in order to be in a position to provide medical assistance and foster care to the children. Once it files the Form B, it says, its authority to provide such assistance (including a transition out of foster care) is gone. The Director's position is that if it files the Form B, then the only basis upon which it can provide assistance is where an agreement as to the plan of care is reached with J.P., the custodial parent at the time of the apprehension on December 30, 2009.

[518] At the same time, the Director takes the position that a Justice of the Supreme Court of British Columbia may not become involved with, interfere, or provide oversight of apprehensions effected under the *Act* pursuant to its *parens patriae* jurisdiction. The Director argues that apprehension proceedings can only be dealt with by Judges of the Provincial Court in first instance, and then by higher courts where appeals are taken. Yet, the Director points out, Provincial Court Judges are not afforded *parens patriae* jurisdiction by that Court's enabling legislation.

[519] If the Director's position concerning the Court's *parens patriae* jurisdiction is correct, then absent the opinion provided by Mr. Colby, the children should have been returned to J.P. immediately after the Director advised that it no longer had protection concerns.

[520] In the present circumstances, however, the Director agrees that the children require assistance. It submits that my jurisdiction to order a reintegration plan resides solely with the Provincial Court. The Director argues that sitting as a Provincial Court Judge on the apprehension proceedings, I can make orders concerning the reintegration plan pursuant to the *Act*.

[521] J.P.'s position is that the Supreme Court should approve an appropriate reintegration plan based on its *parens patriae* jurisdiction. Otherwise, a Provincial Court Judge's authority to extend the Director's temporary custody or to order its continuing custody of a child is predicated on protection concerns being found, and if none existed, the children should be returned to her.

[522] My determination of the jurisdictional issues raised by the Director and J.P. will follow in subsequent reasons for judgment.

[523] Regardless of my ultimate determination of this particular legal issue, however, I find that the children are presently in need of protection from the damage they have suffered as a result of their father's sexual and physical abuse and from their apprehension on December 30, 2009, such that my jurisdiction to oversee a reintegration plan is engaged under the *Act* or pursuant to the Court's *parens patriae* jurisdiction. I am gravely concerned that an immediate return of the children to their mother's care would pose great risk to them (the origin of which cannot be blamed on J.P.). I accept Mr. Colby's evidence that the children require medical assistance with their reintegration.

[524] I understand that counsel for the Director and J.P. are in the midst of working up a reintegration plan on behalf of their clients that incorporates medical intervention. Counsel should arrange a further appearance before me to approve a reintegration plan as soon as possible. The school year for the three older children is close to an end. The reintegration plan should get underway as soon as possible so that the children are settled in their home with J.P. and ready to attend school in early September.

Restraining Order and Police Protection Clause

[525] I agree with the remarks of Scarth J. in *W.J.T. v. P.J.T.*, [1999] B.C.J. No 2048 (S.C.) at para. 7, upon the serious nature of allegations of sexual abuse:

I am unable to think of an allegation more serious than one involving the sexual or physical abuse of a child or conduct which might tend to corrupt or deprave the moral well-being of a child.

[526] In view of my findings that B.G. sexually abused three of his children, exposed his children to inappropriate sexualized knowledge, and physically assaulted them and their mother, a restraining order is required. B.G. should not have any direct or indirect contact with J.P. and the children (except through her

counsel). He shall not harass or take any steps to intimidate, directly or indirectly, J.P. and the children.

[527] J.P. shall have sole guardianship and custody of the children.

[528] B.G. has shown overt and unwarranted displays of hostility, belligerence, and an ongoing disregard for appropriate boundaries (including court orders) throughout the trial.

[529] B.G. is quick to anger, and has openly bragged that he can easily kill young children and women if his temper is unchecked. He has also made threatening remarks towards counsel.

[530] There is also evidence suggesting that B.G. has a problem controlling his temper when he consumes alcohol.

[531] B.G.'s two (unlicensed) rifles are missing. His evidence that J.P. may have taken them lacks credibility. Furthermore, B.G.'s testimony about when he lost sight of them is inconsistent. I am satisfied that B.G. has not provided an honest account of the circumstances leading to the missing firearms.

[532] I am also satisfied that he knowingly breached the Restraining Order by attending at the children's school.

[533] In the circumstances, I am of the opinion that a police protection clause, drafted to facilitate immediate enforcement of the restraining, guardianship, and custody orders that I have made, is required.

Costs

[534] Subject to a request by any party to make submissions at this juncture, I am of the view that all issues surrounding costs should be deferred to a later date, once my reasons for judgment regarding the remaining issues are issued.

“P. Walker J.”

The Honourable Mr. Justice Paul Walker