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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***M.J.T. v. D.M.D.,***
2012 BCSC 863

Date: 20120612
Docket: E092409
Registry: Vancouver

Between:

M.J.T.

Claimant

And

D.M.D.

Respondent

Before: The Honourable Madam Justice Wedge

Reasons for Judgment

Appearing on his own behalf:	M.J.T.
Appearing on her own behalf:	D.M.D.
Place and Date of Trial:	Vancouver, B.C. February 20-24, 27-29, 2012 March 1,2,5, and 6, 2012
Place and Date of Judgment:	Vancouver, B.C. June 12, 2012

I. INTRODUCTION

[1] Mr. T. and Ms. D. separated in 2008 after a three-year marriage. They have a son, V., who was two years of age at the time of separation. The parties' widely divergent views concerning the parenting of V. contributed significantly to the conflict that characterized their brief marriage.

[2] The custody and guardianship of V. is the central issue. Mr. T. sought joint custody and guardianship with equal parenting time and shared decision-making authority. Ms. D. sought sole custody (or, alternatively, joint custody with primary residency) and joint guardianship with final decision-making authority concerning V.'s health care and other significant issues.

[3] A central matter of contention between the parties is whether V. should be vaccinated against common childhood infectious diseases. V., now 5 years of age, has not received any vaccinations. Ms. D. has had authority on an interim basis since separation to decide all matters concerning V.'s health care, and she has refused to permit him to have any vaccinations. Mr. T. believes that V. should receive the series of vaccinations recommended by provincial health care authorities for children, and asks to be granted the requisite decision-making authority concerning this issue.

[4] The remaining issues were child and spousal support and the division of family assets and debts.

II. FACTS

The parties

[5] Mr. T. is 55 years of age. He was born in Richmond, B.C. and was raised there. He obtained a degree in graphic design from Kwantlen College after completing a two-year program. Mr. T. worked on commercial fishing boats to fund post-graduate education, and attended the Art Centre College of Design in Los

Angeles from 1978 to 1982. Thereafter, he worked in Los Angeles for about 18 months. He then returned to Vancouver where he worked as a graphic design artist. He also became involved in theatre productions, first as a backdrop designer and then as an actor.

[6] In 1995, Mr. T. lived in New York for two years to study figurative painting at the National Academy of Design. He continued to work as a freelance graphic artist when he returned to Vancouver, supplementing his income with work as an actor in theatre and television productions. He pursued visual art and carpentry as other interests.

[7] Ms. D. is 41 years of age. She was born in southern Ontario and was raised there. She attended Carleton University in Ottawa, graduating from the School of Architecture with great distinction at the age of 22. Following graduation, she worked in Turin, Italy for six months. She then accepted a position with a firm of architects in Barrie, Ontario, where she worked for four years. In 1994, Ms. D. moved to Toronto and worked for an architectural firm there for three years.

[8] In 1997, Ms. D. moved to Vancouver with her common law partner with whom she had lived for several years. She had been in Vancouver only a few days when her brother, who was living and working in Victoria, became very ill as a result of a brain aneurysm. Over the next four years, he suffered periodic seizures. Ms. D. took care of her brother during these episodes. At the same time, Ms. D. was hired by a Vancouver exhibit design firm to assist with their marketing in Europe.

[9] After a year or so with the firm, Ms. D. began performing exhibit design work for the firm. She was involved in the design of a number of large projects in British Columbia and abroad. Ms. D.’s work included the design of interactive and multi-media exhibits as well as overseeing the construction and project management of the exhibits.

Background to the relationship

[10] Mr. T. and Ms. D. were introduced to each other in 2003 by a mutual acquaintance. Mr. T. was living in a small rental apartment on West 3rd Avenue in the Kitsilano area of Vancouver. Ms. D. lived in an apartment on East 8th Avenue, which she owned. They began a relationship, but did not cohabit until after their marriage.

[11] The parties married in September 2005. Ms. D. had renovated and sold her apartment shortly before the marriage. She moved into Mr. T.'s apartment following the marriage.

[12] The marriage was the first for both parties. When they married, Mr. T. was 49 years of age; Ms. D. was 35. Ms. D. had been in a common law relationship previously. Mr. T. led no evidence concerning any prior relationships.

[13] From the outset of their marriage, Mr. T. and Ms. D. kept their finances entirely separate. They did not establish a joint bank account or obtain any joint credit cards. Throughout the marriage, they did not discuss their respective financial circumstances.

[14] At the time of the marriage, Ms. D. had approximately $90,000 in savings from her exhibit design work and the profit from the sale of her apartment. She kept those savings in her own bank account. She also had two credit cards, one with CIBC and the other with RBC. At some point during the marriage, Ms. D. obtained several more credit cards. She did not discuss her finances with Mr. T., nor did she show him her banking statements or credit card statements.

[15] Ms. D.'s income prior to the marriage fluctuated with the projects she obtained and the number of hours she worked on individual projects. She had worked on a contract basis with the Vancouver exhibit design firm. One year she earned a net income in the range of $55,000 as a result of the long hours of work she performed on an exhibit design project in Dubai. Other years her gross income was in the $40,000 to $45,000 range (Ms. D. described her income in terms of net

income, which she said was $30,000 on average). Ms. D. could bill up to $100 per hour, depending on the nature and scope of the project, but projects were usually based on contracts with fixed prices which meant that the actual hourly rate was often much less.

[16] Mr. T.'s income several years before the marriage was derived primarily from his work as a graphic artist. He had obtained some work as an actor in the 1990s, but very little acting work was available in Vancouver after that time. Mr. T. earned a gross income in the range of $40,000 to $50,000. He worked from his apartment, but from time to time he rented modest office space to work on his freelance projects.

[17] Mr. T. had accumulated significant credit card debt in the mid-1990s when studying in New York. As a result of the ensuing financial difficulties and poor credit rating, he went without a credit card for several years. At the time of the marriage, he had one credit card with a $500 limit. He used that credit card throughout the marriage.

[18] Mr. T.'s one-bedroom Kitsilano apartment was 590 square feet in size. His rent was $875 per month. Ms. D.'s understanding was that the couple would look for a more spacious apartment following their marriage and that each would obtain a small office outside the home for their work. Mr. T. was willing to explore the possibility of moving to larger accommodation, but was concerned that the cost would put a strain on the couple's financial resources.

The relationship following V.'s birth

[19] Ms. D. became pregnant soon after the parties married. It was apparent from the evidence of both Ms. D. and Mr. T. that the pregnancy occurred before they had an opportunity to establish their relationship. What little foundation there was in the relationship began to erode soon after Ms. D. became pregnant.

[20] V. was born July 27, 2006. He was posterior prior to birth, and Ms. D. experienced a prolonged and very difficult labour as a result. Ms. D.'s mother, who

had worked for many years as a registered nurse, was present for the home birth and assisted the midwife.

[21] V. was the first child for both Mr. T. and Ms. D.

[22] Conflict between the parties began almost immediately. Mr. T. was of the view that Ms. D. and her mother took over the care of V. without regard to his role as V.'s father and his ability to parent his son. Ms. D.'s perspective was that Mr. T. was not capable of providing safe and proper care for V.

[23] Unfortunately, the initial disagreement concerning V.'s care intensified as time went on.

[24] Both parties advanced a great deal of evidence at trial concerning the conflicts that developed between them in the ensuing two years. Much of it had little bearing on the issues in the litigation. Suffice to say the parties' marital relationship quickly deteriorated. Ms. D.'s focus was V. She established herself as V.'s primary caregiver and arbiter of all decisions concerning V.'s day-to-day care.

[25] Mr. T. was resentful of the fact that V. was now Ms. D.'s focus. He felt that Ms. D. left little room for their relationship, and even less room for his participation as a parent. In his words, he was "sidelined" as V.'s father. Ms. D.'s view was that Mr. T. simply abdicated any responsibility for V.'s care.

[26] The resulting dynamic became more complicated over time. Ms. D. began looking to Mr. T. for assistance in V.'s care as he progressed from infant to toddler, but on her terms. She had specific views concerning V.'s nutrition, clothing and safety. Ms. D. believed that V.'s daily routine required structure and stability. She insisted on a sugar-free diet for V. Mr. T. wanted to be involved in V.'s care, but disagreed with Ms. D.'s views as to what was best for V. He resented the control that Ms. D. insisted on exerting over every aspect of their son's care. Mr. T. wanted to be spontaneous about his time and activities with V., and tended to ignore the routines and dietary restrictions established by Ms. D.

[27] In short, the parties found as little common ground in their parenting of V. as they did in the other aspects of their relationship.

[28] Mr. T. rented small temporary office space in Kitsilano a few blocks from the family's apartment and worked from there on his graphic design projects. He obtained most of his work from land development companies, who retained him to design logos, brochures and websites for their real estate developments.

[29] From time to time for approximately two years before the marriage, Mr. T. performed graphic design work for a company involved in a real estate development on the Sunshine Coast near Pender Harbour. In the first four or five months after the marriage, Mr. T. did more work on the project and completed it. The developer did not have the funds available at the time to pay Mr. T. for his work. Instead, Mr. T. agreed to accept one of the Pender Harbour lots in the development as payment of $100,000 for the work. Title to the lot was transferred to Mr. T. in 2007, approximately a year after he had finished the work. The lot was bare at the time, and remains bare; no improvements of any kind have been made. The parties visited the lot a few times. During one visit, Ms. D. drew a few sketches of a building structure that might suit the lot.

[30] Mr. T. placed all of his income in his account, but paid the rent on the apartment and bore the cost of the utilities. All of his income went toward the cost of living expenses and purchases of household items for the family.

[31] During the first year after V.'s birth, Ms. D. devoted her time to the infant's care. She had gained a great deal of weight during the pregnancy, and began a workout regimen at a local gym a few months after V. was born. Ms. D. would routinely go to the gym in the morning. Mr. T.'s work schedule was flexible, which permitted him to take care of V. in the mornings until about 10 a.m. when Ms. D. returned from the gym. According to Mr. T., he routinely cared for V. in the mornings while Ms. D. was at the gym. According to Ms. D., Mr. T. did care for V. some of the time. However, she said that her sister assumed responsibility of V. on many of those mornings.

[32] At some point in 2007, Ms. D. was asked by a former colleague to take on an exhibit design project for a residential development called Rivergreen in Richmond, B.C. She accepted the project work, which involved an intensive six-week work schedule. According to Ms. D., Mr. T. was not willing to take over V.'s care during the project. Instead, Ms. D. paid for her mother to travel to Vancouver to assist with child care. Ms. D.'s sister also helped with the care of V.

[33] Ms. D. received approximately $20,000 for her work on the Rivergreen project. She also received payments from time to time from a client who owed her $17,000 for work she had performed for him in 2005 and early 2006.

[34] Ms. D. placed the money she received from her projects in her personal accounts. However, she paid for groceries, clothing and necessities for V. and other household expenses. She also contributed to the rent when necessary.

The condominium purchase

[35] Ms. D. was not comfortable with the cramped living space in Mr. T.'s apartment, and she began looking for a two-bedroom apartment in the area. She could find nothing suitable within the family's budget. She decided to buy an apartment with a view to renovating it. She had enjoyed renovating her apartment on East 8th Avenue before the marriage, and had made a profit on its sale. Ms. D.'s father had made his living as a building contractor and was willing to come to Vancouver to help with renovations on a new place. Ms. D. knew that Mr. T. was a talented carpenter who was capable of performing some of the finishing work. In the fall of 2007, she found a small two-bedroom condominium for sale just a few blocks from the family's apartment which she thought would be suitable to buy.

[36] Property values in Vancouver had peaked at that time. Ms. D. was one of several buyers interested in the condominium, and paid over the asking price to obtain it. Mr. T. was of the view that they could not afford the expense, but Ms. D. proceeded with the purchase on her own. She made a small down payment from her

savings. The mortgage, together with strata fees, totalled approximately $2,900 per month.

[37] At the outset, Ms. D.'s plan was to renovate the condominium and then live in it. She was concerned about the toxic nature of the paints and various building materials required to renovate the place, and wanted the renovations completed before the family moved in. The purchase of the apartment completed in November 2007. Ms. D. and Mr. T. continued to live in the family apartment in the meantime. As a result, they continued to pay $875 per month in rent as well as mortgage payments on the condominium.

[38] Ms. D. designed the interior improvements to the condominium. Her father and brother travelled to Vancouver from Ontario to help with the renovations. Mr. T. did some painting and carpentry work. However, the renovation was much more costly and time-consuming than Ms. D. had anticipated.

[39] The renovations were not completed by the spring of 2008. The cost of the mortgage and rental payments placed a significant strain on the parties' finances. Mr. T. took a $50,000 mortgage on the Pender Harbour property; from those funds he paid the mortgage and strata fees for approximately six months. The balance of the money was used for other family expenses. In May 2008, Mr. T. stopped doing graphic design work and spent six weeks working full-time on the renovations in an effort to move the project along.

[40] When Mr. T. returned to his graphic design work, he discovered there were very few projects available. Most of his clients had been affected by the downturn in the real estate market and did not require Mr. T.'s services. Mr. T. decided to start doing carpentry work instead. He has earned his living primarily as a carpenter since that time.

[41] In June or July 2008 Mr. T. told Ms. D. he would not continue to pay the mortgage and other expenses on the condominium. As a result, Ms. D. used her personal savings to meet the monthly expenses for the condominium and to pay for

the renovations. She stopped contributing to the rent and utilities for the family apartment, but continued to pay for food.

[42] One of Ms. D.'s sisters lived in the condominium for a few months in 2008, but the place otherwise remained unoccupied for most of the year. The financial burden created by the project placed increasing strain on an already troubled marriage.

The breakdown of the marriage

[43] A constant source of conflict between the parties was the parenting of their son. Ms. D. became increasingly inflexible in matters concerning V. Mr. T. responded with impulsive and immature behavior. During one of their arguments, Mr. T. tore up the couple's marriage certificate and V.'s birth certificate. On another occasion, he punched a hole in the apartment wall. He upended the living room furniture on a third occasion. On a few occasions Mr. T. left the apartment for a day or two.

[44] One of the fundamental disagreements that developed between Mr. T. and Ms. D. concerned the matter of whether to immunize V. Ms. D. was fundamentally opposed to all childhood vaccinations recommended by the provincial health authorities. Ms. D.'s opposition to the vaccination program was deep-rooted. As a child, she suffered from a number of medical conditions, including seizures, which occurred immediately after receiving routine childhood vaccinations. Her more recent experience dealing with her brother's seizure disorder magnified her fear of the possible consequences for V. should he receive the routine childhood vaccinations.

[45] Initially, Mr. T. acquiesced to Ms. D.'s wishes on the issue of vaccinations. However, as Mr. T. discussed the matter with others and did some reading on the issue, he became convinced that V. should receive the government-recommended vaccinations. Ms. D. remained steadfast in her refusal to consider immunization.

[46] Toward the end of 2008, the parties sought marriage counselling but after three or four sessions Ms. D. decided to take some time away from the relationship. In December 2008 she moved into the condominium with V. Mr. T., who was very unhappy with Ms. D.'s move, remained in the apartment.

V.'s care following separation

[47] During the early months of the separation, Mr. T. saw V. for an hour or two each day. V. attended toddler play classes at the Dunbar Community Centre, and Mr. T. was working on a home renovation project in the area. Mr. T. met Ms. D. and V. at the Centre during his lunch break in order to play with V. Mr. T. also had V. for six hours each Sunday while Ms. D. attended an acting seminar, a continuation of the parenting arrangement in place before their separation.

[48] Ms. D. would not permit V. to stay overnight with Mr. T. Her rationale for denying overnight visits included V.'s breastfeeding regimen. V. was 2 ½ years of age at the time of the couple's separation. He was still breastfeeding and, according to Ms. D., fed several times during the night.

[49] After living apart from Mr. T. for a few months, Ms. D. decided she wanted a divorce. She told Mr. T. of her decision in late March 2009. The animosity between the parties intensified. Ms. D.'s refusal to permit V. overnight visits with Mr. T. became a flashpoint. On two occasions, Mr. T. resisted bringing V. back to Ms. D.'s apartment at the agreed time. On both occasions, he told Ms. D. that V. wanted to sleep at his apartment. On the first occasion, Ms. D. went to Mr. T.'s apartment and took V. On the second occasion, Ms. D. phoned Mr. T.'s mother to advise her of the situation. Mr. T.'s mother called Mr. T. and persuaded him to return V. to Ms. D.

[50] In early April 2009 Ms. D. applied to the Provincial Court for sole custody of V. The parties attended a Judicial Case Conference on April 15, 2009. A consent order was reached on the following terms (among others):

- the completion of a Custody and Access Report;

- pending the completion of the Custody and Access Report, interim sole custody of V. by Ms. D. on a without prejudice basis;

- joint guardianship (Joyce Model) of V., with Ms. D. having final decision-making authority, until further court order;

- child support payable by Mr. T. in the amount of $388 per month (based on a Guideline Income of $42,000) commencing April 1, 2009 until further court order, with the issue of retroactive support deferred to the trial of the matter.

[51] On April 18, 2009, Mr. T. and Ms. D. agreed on an interim access schedule which gave Mr. T. approximately three hours of parenting time six days each week. During his access times on weekdays, Mr. T. took V. to toddler classes offered by community centres in the area.

[52] Mr. T. soon came to regret that he had consented to Ms. D. having interim sole custody of V.

[53] After a few months, Ms. D. decided that V.'s transition from one parent to the other six days per week was too much for him. She believed that the transitions were tiring V. and causing him stress. She asked Mr. T. to reduce the days of access, but Mr. T. refused. Ms. D. then unilaterally reduced Mr. T.'s access to three days per week.

[54] Mr. T. and Ms. D. participated in mediation with the Hon. Ross Collver between June and August 2009. The central issue was the parenting arrangements for V.

The sale of the condominium

[55] In June 2009 Ms. D. told Mr. T. that she could no longer afford to keep the condominium in which she and V. were living unless Mr. T. contributed to the monthly expenses. Mr. T. told Ms. D. that he could not afford to help her with the

expenses. Ms. D.'s response was that she would be forced to sell the condominium unless he gave her some financial assistance with it. Mr. T. told Ms. D. that he did not agree to the sale of the condominium because he believed he was entitled to an interest in it, but said she was "on her own" and should "do whatever she needed to do".

[56] Ms. D. then listed the condominium for sale. It was not an optimal time in the Vancouver real estate market to list a property, and Ms. D. did not receive any offers that came even close to the listing price.

[57] In August 2009, while the parties were still in mediation, Mr. T. retained legal counsel and filed proceedings in this Court seeking divorce, joint custody and guardianship and property division. At the same time, he filed a Certificate of Pending Litigation on the condominium which was as yet unsold.

[58] In late August, 2009 Ms. D. received an offer on the condominium (after reducing the listing price three times) with a closing date of September 30. She advised Mr. T. of the offer, but he refused to have the lien removed at that time. Ms. D. found an apartment in the Kerrisdale area of Vancouver. She told Mr. T. that she would be moving once the condominium was sold, but would not agree to provide Mr. T. with her new address because she felt that he had been harassing her at the condominium.

The ex parte order

[59] According to Mr. T., Ms. D. had, on several occasions, expressed her desire to return to Ontario so that she and V. could live in close proximity to her family. Mr. T.'s counsel wrote to then counsel for Ms. D. seeking assurances that Ms. D. would not leave the jurisdiction with V. unless she obtained Mr. T.'s consent. Ms. D.'s counsel provided those assurances but sought Mr. T.'s consent to V.'s travel with Ms. D. to Ontario for a family visit.

[60] Mr. T. proceeded with his *ex parte* application and, on September 21, 2009 succeeded in obtaining an order for interim joint custody and terms restricting Ms. D.

from travelling outside the province or choosing a residence that was not within the boundaries of the City of Vancouver. The order also gave Mr. T. the additional access time he was seeking, but it did not address overnight access.

[61] Mr. T.'s evidence was that he decided to seek the order without notice to Ms. D. because he believed she was a flight risk. I heard a great deal of evidence from both parties about the circumstances surrounding the *ex parte* application. While I am satisfied Ms. D. was not a flight risk, it is not possible to determine whether Mr. T. lacked *bona fides* when making the *ex parte* application. The relationship of the parties was extremely volatile and the distrust was high. Ms. D.'s refusal to permit Mr. T. overnight access to V. was at the root of much of the conflict. The more Mr. T.'s attempts to gain overnight access were met with refusal, the more Mr. T. acted impulsively and aggressively. His behavior in turn prompted Ms. D. to conceal the address of her new residence from Mr. T., which created suspicion on his part that Ms. D. would go to even greater lengths to prevent his access to V. The judge hearing the *ex parte* application heard only Mr. T.'s suspicions and lacked the benefit of Ms. D.'s perspective on the issues between the parties. That, of course, is the danger of hearing applications and granting orders concerning custody and access without notice to one of the parties to the dispute.

[62] In any event, the order remained in place until September 2, 2011 when Ms. D. successfully applied to have it removed. Mr. Justice Crawford set the order aside and ordered that Mr. T. pay Ms. D.'s costs. Ms. D. sought special and punitive damages but no damages were awarded.

[63] In the two years between September 2009 and September 2011, while the *ex parte* order was in effect, the parties shared custody of V.

[64] Once he obtained the *ex parte* order, Mr. T. removed the CPL from the condominium. That occurred a few days before the sale of the condo closed. Ms. D. lost approximately $100,000 on the purchase, renovation and sale of the property.

V.'s dental care

[65] The *ex parte* order gave Mr. T. interim joint custody and additional access time to V., but it did not provide for overnight access or give Mr. T. authority to make decisions about V.'s medical care. Ms. D. continued to refuse overnight access on the basis that V. continued to breastfeed at night, and needed to breastfeed in order to maintain his health and emotional stability.

[66] When V. was 3 ½ years of age, his teeth began to show signs of serious decay. He had not yet had his first visit to a dentist. Mr. T. sought the opinion of Dr. Robert Patton, a dentist who performs extensive pediatric dentistry. Dr. Patton recommended that V. have his teeth capped. Mr. T. told Ms. D. that he would like Dr. Patton to perform the dental work. Ms. D. obtained opinions from two other dentists specializing in pediatric dentistry, both of whom were of the view that V. must undergo extensive and invasive dental surgery. Dr. Patton's recommended treatment was much less invasive. Ms. D. eventually authorized Dr. Patton to provide dental treatment to V.

[67] Mr. T. believed that breastfeeding was the cause of V.'s extensive tooth decay. Ms. D. blamed other factors. Neither party led evidence from Dr. Patton or expert opinion evidence concerning the likely cause of the problem. In any event, Dr. Patton provided extensive dental care to V. and the problem has been effectively addressed.

The Custody and Access Reports

[68] In late 2009, in accordance with the April 2009 order of Ehrcke P.C.J. concerning the Custody and Access Report, a Family Justice Counsellor with the Custody and Access Team, Nancy Jean Mussellam, began interviewing the parties. She observed V. with each of his parents in their respective homes, and interviewed third parties to obtain collateral information. Ms. Mussellam completed her first Custody and Access Report on February 15, 2010.

[69] In the section of her report entitled “Summary and Recommendations”, Ms. Mussellam wrote the following:

> [Mr. T.] and [Ms. D.] are both very committed to V. and each provides enriching experiences for him. V. is an articulate and bright toddler who is benefitting from the influence of both parents’ nurturing and involvement. [Mr. T.] wants to be a caregiver to V. and to have a more significant parental role. [Ms. D.] has trepidation about V. being overnight with [Mr. T.] due to her perception that [Mr. T.] will not be able to adequately nurture V. Further, it is her belief [Mr. T.] does not keep V.’s best interests in focus. She acknowledged, however, that overnights are soon likely to occur.
>
> [Mr. T.] and [Ms. D.]’s different parenting beliefs and styles have caused a great deal of tension between them. [Mr. T.] appears spontaneous and provides balance to [Ms. D.]’s well-motivated yet more protective ways. [Ms. D.] is resistant to let go of V.’s care, however with time and gradual change, hopefully [Mr. T.] can take a larger role and more responsibility for V. For [Mr. T.] to become a caregiver, he needs the opportunity to participate in V.’s overall care, including how to nurture him overnight. V. clearly has strong connections to both parents and he needs to feel that both parents are unified in his presence. With the support and commitment of both parents through this transition, the potential exists for trust to be established.

[70] At the time the report was written, Mr. T. had access visits with V. for two to three hours most weekdays, and from 10:30 to 6:00 on Sundays. Ms. D did not yet agree to overnight access, which continued to be a matter of significant contention.

[71] Among other things, the writer recommended that V. have two overnight visits per week with Mr. T. The recommendation was as follows:

> The current arrangement has frequent transitions and V. would be better served with more stability. I recommend that [Ms. D.] retain primary residence of V. and that V. begin a transition to overnight visits with [Mr. T.]. I recommend that [Mr. T.] have V. on Sunday at 10:00 a.m. until Monday at 12:00 noon and on Thursdays at 10:00 a.m. until Friday at noon. This plan could be expanded as V. grows and feels secure with staying for longer periods at his dad’s.

[72] Ms. D. did not accept the recommendations. She was of the view that V. would have difficulty coping with overnights, and the Mr. T. could not properly care for V. A hearing date was set to determine the access schedule.

[73] On the day of the hearing, Ms. D. agreed to the recommendations. V. had his first overnight visit with his father in April 2010. Although Ms. D. was of the view that

V. was usually exhausted after his overnights with Mr. T. and arrived home in a hyperactive state, the evidence as a whole supports the conclusion that V. settled in well to the overnight access regimen.

[74] In accordance with the recommendations of Ms. Mussellam, Mr. T. attended several workshops on parenting.

[75] In July 2010 Mr. T. asked for more extended overnight access. Ms. D. refused. In August, the parties agreed to ask Ms. Mussellam for an updated Custody and Access Report. Ms. Mussellam once again conducted meetings and interviews, and published the updated report on February 22, 2011.

[76] In her report, Ms. Mussellam observed that while V. had adjusted well to the new access regimen, the parents continued to struggle with their co-parenting relationship. Mr. T. told Ms. Mussellam that he wanted more time with V. and better opportunities to be fully involved as a parent. It was his perspective that Ms. D. was attempting to preclude any sort of equitable parenting arrangement. Ms. D.'s perspective, as she reported it, was that V. had only recently adjusted to the current access regimen. It was her belief that Mr. T. did not focus sufficiently on V.'s physical, emotional and psychological well-being.

[77] Ms. Mussellam reported the following with respect to the parties' different parenting styles:

> In home visits and observations at each home, it was clear each parent has a different parenting style and communication style with V. [Ms. D.]'s role was clearly a parenting role where she set clear boundaries and expectations about V.'s behavior. [Mr. T.] focussed more on play and spontaneity, creating an environment where V. was making choices about what would happen next.
>
> ... During my time there, there was spontaneous affection between V. and [Mr. T.], with V. often climbing into his dad's arms and hugging him. It was a close and loving relationship.

[78] The differing strengths and weaknesses of each parent was summarized in the report as follows:

> [Mr. T.] is a nurturing and capable parent to V. [Mr. T.] is spontaneous and creative in his behavior with V. and he is able to take care of V.'s needs. ... [Mr. T.] could use some education around developmental stages and the importance of routines. To have more parenting time would necessitate that [Mr. T.] be cognizant of regular mealtimes and bedtime. This will only develop if [Mr. T.] is given more of an extended opportunity to be a parent.
>
> [Ms. D.] is a responsible and loving parent who strives to protect V.'s well-being. She provides structure and boundaries for V. effectively. She tends to be hyper-vigilant as a response to what she sees as [Mr. T.]'s inability to adequately care for V. and respond to his needs.

[79] Ms. Mussellam summarized her observations as follows:

> [Mr. T.] and [Ms. D.] are well-intentioned and loving parents. Both want the best for V. as demonstrated by their strong commitment and unwavering desire to do what is best. V. is a bright and healthy little boy. He needs to be freed of the anxiety that arises from his parents' ongoing power struggle. V. needs to feel the freedom to love and spend time with both parents, including extended family on both sides.
>
> V. can benefit from two styles of parenting, as long as both parents support the other in V.'s presence and allow V. to value both. [Ms. D.] and [Mr. T.] provide balance because of [Ms. D.]'s structured and consistent routine for V. and [Mr. T.]'s creative and spontaneous style. It would help V. if [Ms. D.] could focus [on] the positive aspects of V.'s time with his father and with gradual steps, expanding and allowing [Mr. T.] more time with V. With support, [Mr. T.] can develop a consistent and appropriate routine in his home related to meals and bedtime, especially as V. prepares for the [consistency] and routine of attending school.
>
> It would be helpful if [Mr. T.] could expand his knowledge and parenting skills through parenting courses and child development education. This will assist him to understand important aspects of child development related to consistency and routine. [Ms. D.] needs to recognize the positive aspects of V.'s exposure to different experiences through his father, and the potential for V. to be enriched by increased involvement with him.

[80] In the result, Ms. Mussellam recommended an expansion of Mr. T.'s parenting time to an alternating two-week schedule of three days one week and four days the next. Specifically, she recommended that Mr. T. have V. from Thursday after school to Sunday at 4 p.m. the first week, and from Thursday after school until Saturday at noon the second week.

[81] The report also included recommendations that summer vacations, spring break and Christmas holidays be shared. Further, the report recommended that travel to Ontario (where Ms. D.'s extended family resides) and Vancouver Island

(where Mr. T.'s extended family resides) be encouraged "to allow V. the involvement of his extended family". Finally, Ms. Mussellam recommended the following:

> If the parents remain in nearby geographical locations, and as V. gets further along in elementary school, consideration of a schedule where each parent has a greater stretch of the week and alternate weekends could be explored.

[82] By the time the updated Custody and Access Report was issued, V. was approaching his fifth birthday.

[83] Ms. D. did not accept Ms. Mussellam's recommendations and refused to permit any changes to the access schedule.

[84] Access was not the only matter of contention. The parties continued to disagree on the issue of immunization for V. Mr. T. arranged a meeting for himself and Ms. D. with Dr. Simon Dobson, a pediatrician at B.C. Children's Hospital with extensive experience in pediatric immunization. Ms. D. asked Dr. Dobson whether he could guarantee that V. would not suffer any adverse reaction to the pediatric vaccinations given as part of the immunization program at the hospital. Dr. Dobson advised that no physician could give such a guarantee. Accordingly, Ms. D. refused to consider having V. vaccinated against any of the common childhood infectious diseases.

[85] In May 2011, Mr. T. filed an application in this Court seeking, among other things, implementation of the access recommendations of Ms. Mussellam and authority to make decisions concerning V.'s health care. The application was heard in June 2011 by Madam Justice Holmes who ordered, among other things, that the access recommendations be implemented forthwith on an interim basis pending trial, and that all other issues concerning custody and guardianship be addressed at trial. She also ordered that the parties seek a medical opinion concerning the issue of V.'s immunization and, if necessary, address that issue at trial as well.

[86] The access schedule recommended by Ms. Mussellam has been in place since the June 2011 order. Mr. T. has routinely had the care of V. from Thursday

after school to Sunday at 4 p.m. the first week, and from Thursday after school until Saturday at noon the second week.

[87] Although there was an initial disagreement between the parties concerning the choice of kindergarten/elementary school for V., they eventually agreed that V. should be enrolled in French Immersion at Trafalgar Elementary School. The school is located approximately half way between the residences of Ms. D. and Mr. T.

The Evidence concerning the Question of Immunization

[88] Mr. T. sought the opinion of Dr. David Scheifele, a Professor of Pediatric Medicine at the University of British Columbia and practicing physician at B.C. Children's Hospital. Dr. Scheifele is recognized as a leading expert in pediatric infectious diseases and immunization. He was appointed to the Sauder Family Chair in Pediatric Infectious Diseases (UBC) in 1995. He was the founding chair of the Canadian Association for Immunization Research and Evaluation in 2000.

[89] Dr. Scheifele has had a career-long special interest in vaccines and immunization. He chaired the Infectious Diseases and Immunization Committee of the Canadian Paediatric Society from 1981 to 1988. He chaired the National Advisory Committee on Immunization from 1993 to 1997, having previously served for 10 years as a committee member. He was the principal author of the 1998 edition of the Canadian Immunization Guide. Since 1988 he has been the director of the Vaccine Evaluation Center (VEC) at B.C. Children's Hospital. The VEC was the first academic vaccine testing centre in Canada and remains one of the country's largest and most active centres. He has been involved in over 200 vaccine-related studies and publications.

[90] Dr. Scheifele has a particular interest in vaccine safety. In 1992 he helped establish a nationwide surveillance network among twelve pediatric centres known as the Canadian Immunization Monitoring Program, Active (IMPACT). This program is federally funded and managed by the Canadian Paediatric Society. The purpose of the program is to identify children hospitalized with adverse events following

immunization or with potentially vaccine-preventable infections. He has overseen the data centre for this program for the past 20 years and has co-authored a number of reports on vaccine safety. He has given dozens of lectures on childhood immunization at local and national conferences. He served as the Distinguished Lecturer at the 2010 Canadian Immunization Conference.

[91] A familiar task for Dr. Scheifele is the evaluation of children prior to vaccination. He is frequently asked to advise about vaccinations for children with unusual conditions such as possible allergies or previous adverse reactions following vaccination.

[92] Dr. Scheifele examined V. at B.C. Children's Hospital on September 22, 2011. He reviewed V.'s medical history along with that of Mr. T., who accompanied V. at the appointment.

[93] Dr. Scheifele met separately with Ms. D. on October 21, 2011, to obtain from her a detailed personal and family medical history and to conduct an additional review of V.'s medical history. Ms. D. told Dr. Scheifele of her opposition to V.'s immunization, which has two bases. First, Ms. D. suffered significant adverse reactions after receiving several vaccinations as a child, including high fevers and seizures, and other members of her family have suffered similar reactions. Second, she has great concern that the aluminum adjuvant present in some childhood vaccines is unsafe for children. She has read, for example, that aluminum adjuvants can cause neurological disorders such as autism.

[94] Dr. Scheifele prepared a written opinion for the Court concerning the question of the risks and benefits of V.'s immunization. He also addressed the question of the benefits and risks of childhood immunization generally, and the risks facing an unvaccinated child in Vancouver. Dr. Scheifele was called as a witness by Mr. T. to speak to his qualifications and opinion, and to answer questions in cross-examination by Ms. D.

[95] In response to Ms. D.'s questioning, Dr. Scheifele explained that aluminum adjuvants are important components of some vaccines because they enhance the immune response to the vaccine. He noted that researchers at the United States Food and Drug Administration recently modelled carefully the amounts of aluminum in infants after infant vaccinations using the best available human data. They found that the amount of aluminum in infants' bodies from vaccines and diet was significantly less than the levels determined to be safe. The researchers concluded that episodic exposures to vaccines containing aluminum adjuvants continue to present an extremely low risk to infants, and that the benefits of using those vaccines outweighed any theoretical risks.

[96] Ms. D. asked Dr. Scheifele whether he could guarantee that V. would not suffer any adverse reaction to any of the vaccinations recommended for children. Dr. Scheifele was clear in his response: medical science can never offer such a guarantee. He reiterated his opinion that the risk of V. suffering an adverse reaction is extremely low, and the benefits to V. of receiving the vaccinations significantly outweighed the theoretical risks.

[97] Addressing Ms. D.'s concern that vaccinations may cause autism, Dr. Scheifele said that studies have convincingly shown that autism does not result from immunization. In any event, autism becomes evident during early childhood; this is no longer a concern for V., who is developmentally normal.

[98] Dr. Scheifele also addressed Ms. D.'s concerns about the fevers and seizures she and her siblings suffered following vaccinations as children. He said the following:

> The "baby shot" formulation used at that time contained the first generation pertussis vaccine which consisted of whole, killed organisms. About 50% of children had fever shortly after this vaccination so such a history is not surprising. Since 1992 Canada has used a second generation (acellular) pertussis vaccine as part of the "baby shot," which causes fever in fewer children (15%), with less likelihood of high fever [less than 5%]. Thus V. is unlikely to react to the modern vaccine as his mother and her siblings did to the older vaccine.

> ... [T]he first generation pertussis vaccine sometimes caused high fever, sufficient to trigger convulsions in seizure-prone individuals. Children can be seizure-prone from a variety of causes but the most common is “benign familial febrile convulsions.” This condition occurs in about 5% of the population and is expressed only during early childhood, triggered by fever. The condition is outgrown by mid-childhood and does not progress to epilepsy or result in neuro-developmental impairment ... Parent to child inheritance of this trait does occur but is expressed in a minority of offspring.

[99] Dr. Scheifele pointed out that at the age of 5, V. has passed beyond the peak risk period for benign febrile convulsions without showing any indication of proneness to seizures. The colds, ear infections and cough illnesses he had already experienced did not trigger seizures, thus it was unlikely that vaccination-related fevers would do so. Dr. Scheifele went on to say that in the largest study to date (Huang WT *et al*., Pediatrics 2010), no increased risk of febrile seizures was detected after immunization with modern pertussis vaccines administered to young children. Further:

> The increased risk of febrile seizures after measles-mumps-rubella vaccine given during the second year of life was estimated to be between 2.5 and 3.4 per 10,000 children ... The risk with first doses of measles-containing vaccine given at 5 years of age has not been measured but will be lower than in infancy because of 90% of children have outgrown their proneness to febrile convulsions by this age ...

[100] After reviewing all of the information provided to him by Ms. D. and Mr. T., Dr. Scheifele stated that he would not hesitate to immunize V., who is a normal, healthy child. According to Dr. Scheifele, nothing in V.’s personal or family history poses a contraindication to routine childhood immunizations or presents any greater risk than that faced by other healthy children. In fact, the risk of giving vaccines at V.’s age -- 5 years -- is lower than with vaccinations in the first two years of life.

[101] Dr. Scheifele is of the opinion that there are certain risks facing an unvaccinated child in Vancouver. On that issue, he stated the following:

> Unimmunized children, as with V., typically avoid vaccine-preventable infections like measles and whooping cough because most children around them in school or in the community are immune following immunization. With high levels of population protection, contagious diseases cannot readily circulate. However, this so-called herd immunity or indirect protection has limits. A study in Colorado, where childhood immunization rates resembled

> those in BC, showed that unimmunized children were 22 times more likely than immunized children to develop measles and 6 times more likely to develop pertussis/whooping cough ... Such observations reflect the highly contagious nature of common childhood infections. If overall vaccination rates slip, infections previously held at bay can return to cause outbreaks among susceptible children and adults. Given that childhood vaccination rates in BC are suboptimal (70%-80%), one can predict that periodic outbreaks of some vaccine-preventable infections will occur and could involve V. If he is an adolescent at the time, the course of measles or chickenpox illness is likely to be more severe than in infancy, with greater risk of complications and hospitalization. Travel can also increase risk of exposure. V.'s mother spoke of possibly travelling with him to California, likely unaware that the state is experiencing the largest epidemic of pertussis since 1958, with over 9,000 cases in 2010 and over 2,000 cases in 2011. Under-immunized children were contributors to the situation.

[102] Dr. Scheifele addressed in his opinion the risks of each vaccine-preventable infectious disease against which children in British Columbia are routinely vaccinated. There are 14 such diseases. Six of them -- tetanus, diphtheria, pertussis (commonly known as whooping cough), polio, *haemophilus influenzae b* invasive infections (such as meningitis) and hepatitis B -- are included in a "six-in-one" vaccine given to infants. Meningococcal C and pneumococcal 13-valent vaccines are also given to infants. Measles, mumps, rubella and chickenpox vaccines are given in the second year of life. Apart from booster doses, adolescents are offered hepatitis B vaccine (if not previously given), human papillomavirus vaccine (administered to girls only) and 4-valent meningococcal vaccine. Young children are also offered influenza vaccine.

[103] It is Dr. Scheifele's opinion than none of the vaccinations given for these 14 infectious diseases poses any greater risk of significant adverse effects to V. than to any other child his age. All of the vaccines are well-tolerated by children. Most importantly, it is his view that the benefits of securing V.'s protection from each of the 14 diseases far outweigh the limited risks of vaccine side effects.

[104] Dr. Scheifele observed that the actual immunization schedule for children starting at V.'s age is shorter than the early childhood schedule because of maturation of immune responsiveness. Waiting until a local outbreak occurs to immunize him is not ideal because protective responses take weeks (as with

measles) or months (as with pertussis) to develop, during which time risk of exposure continues. Further, as V. lives in Vancouver, some thought must be given to earthquake preparedness. An unimmunized person who is injured in such circumstances is at serious risk because tetanus prevention may not be available during disruptions of health care and transportation.

[105] Ms. D. sought the opinion of Christopher Shaw, Ph.D., a neurobiology researcher and Professor in the Department of Ophthalmology at UBC. Mr. Shaw is not a medical doctor and has no expertise in pediatric infectious diseases or pediatric immunization. His research area is neurological disorders such as ALS and Parkinson's.

[106] Mr. Shaw has recently become interested in examining the question of whether adverse reactions, including possible neurological disabilities, can be caused by aluminum adjuvants in vaccines. He has published articles in which he advances the hypothesis that aluminum adjuvants contained in vaccines are neurotoxins which possibly contribute to autism in children.

[107] Ms. D. called Mr. Shaw as a witness and sought to file two reports authored by him. The first was a one-page report in which he expressed certain views concerning the question of whether V. should be vaccinated. The second was advanced as a rebuttal to Dr. Scheifele's report. Upon an initial review of Mr. Shaw's *curriculum vitae* and after hearing his evidence on the *voir dire* concerning his educational background and work experience, I advised Ms. D. that I had significant doubts as to Mr. Shaw's qualifications to express an opinion on issues concerning pediatric infectious diseases and immunization. I was also doubtful, even if Mr. Shaw was properly qualified, that the second report was proper rebuttal. I allowed Ms. D. to file the reports with the proviso that after reviewing Mr. Shaw's *curriculum vitae* in detail, I may ultimately rule either that he was not qualified to express the opinions advanced or that his qualifications were such that I could give only limited weight to his opinions.

[108] I have now had an opportunity to carefully review Mr. Shaw's *curriculum vitae*, including the publications he listed in, and appended to, his *curriculum vitae.* On the basis of my review, I have concluded that Mr. Shaw is a distinguished basic research scientist in the field of neurobiology but he is not qualified to express an opinion concerning the risks and benefits of immunization from infectious diseases of children generally or V. specifically.

[109] In any event, the opinion advanced by Mr. Shaw was that "the possibility of negative consequences for V. from some combination of pediatric vaccines cannot be discounted". Dr. Scheifele's opinion, although expressed slightly differently, was similar in effect. Medical science can never rule out the *possibility* of an adverse reaction. However, the risk of adverse reaction is very low, and the benefits of immunization greatly outweigh the risks to children should they contract any of the infectious diseases against which the vaccinations protect.

The Parties' Parenting Abilities

[110] The s. 15 reports were filed at trial by agreement. Neither called the author of the reports.

[111] Both parties testified at length about their parenting of V. and about the challenges of shared parenting. Mr. T. was considerably more optimistic than Ms. D. about the prospects of successfully sharing the parenting of V. on an equal basis. Mr. T. pointed to the fact that the parties have managed to agree on fundamental issues such as V.'s education. While acknowledging that he is not quite as exacting as Ms. D. about V.'s dietary needs, Mr. T. said he is quite fastidious about providing V. with the healthiest of foods. Although the parties disagree on the issue of immunization, they have otherwise agreed on V.'s dental and medical care. Mr. T. is of the view that, overall, V. benefits greatly from the differing interests and parenting styles of the parties.

[112] Ms. D. does not believe the parties are capable of having equal parenting authority or that V. should spend equal time with each parent. She described the

parties' relationship generally as one of high conflict. She agreed that Mr. T.'s approach to V.'s diet has improved significantly over time, but believes that he still allows V. to eat too many sugary foods. She is concerned about V.'s safety, and about his ability to obtain the necessary rest, while in Mr. T.'s care.

[113] The parties testified at length about the conflicts that arose about V.'s care during the marriage and immediately after separation. I have no doubt the conflicts were numerous and intense during those times, particularly during the time after separation when the parties were struggling with the question of Mr. T.'s overnight access to V. As time went by, Mr. T. gradually gained more access, and that access gave him the opportunity to experience parenting of V. and learn from that experience. Unfortunately, Ms. D. continued to hold the firm belief that Mr. T. was not capable of properly parenting V., and the conflict continued.

[114] The parties required s. 15 reports and numerous applications to court in order to achieve a more equitable parenting arrangement. However, I infer from the evidence as a whole that once the shared parenting regime was finally settled, and Ms. D. came to realize that V.'s health and safety was not threatened (or even compromised), the conflict lessened significantly.

[115] Both parties led evidence from third parties, who testified to their observations of the parties' parenting of V.

[116] The evidence advanced by Ms. D. focussed, in the main, on the period of time during and shortly after the marriage. She led evidence from her sister, who helped care for V. during the marriage and immediately following the parties' separation. She testified that during the marriage, Mr. T. was resentful of her participation in V.'s care and her presence in the family residence generally. She described Mr. T. as short-tempered, impulsive and self-indulgent. Ms. D.'s sister was critical of Mr. T.'s parenting abilities as she observed them during the marriage and immediately after the parties separated, but gave no evidence about Mr. T.'s current parenting.

[117] Ms. D. also led evidence from V.'s preschool teacher, an employee at Dunbar Community Centre, who attested to Ms. D.'s devotion to V. and her outstanding qualities as a parent. She observed that immediately following the parties' separation, V. appeared to be having a difficult time adjusting. He seemed more unsettled and excitable when he arrived at preschool after having spent an overnight with Mr. T. She thought V. played more roughly and engaged in imaginary gun play after being with Mr. T.

[118] The preschool teacher testified that she was uncomfortable with Mr. T.'s behavior on several occasions when he dropped V. off at the community centre. She said that Mr. T., instead of leaving or simply observing, would get down on the floor and climb around with the children in their play house. She found this disruptive and upsetting to some of the other parents. The preschool teacher also testified to two incidents shortly after the parties' separation where Mr. T. displayed angry behavior toward Ms. D. in the presence of V. and others in the community centre lobby.

[119] Despite her misgivings about Mr. T.'s play with the children, the preschool teacher at no time addressed those misgivings with Mr. T. She acknowledged that Mr. T. routinely asked about V.'s progress and well-being, and that although they spoke at the beginning of every class she did not tell Mr. T. that he should not play with the children. She said she was not comfortable raising her concerns with Mr. T.

[120] The preschool teacher did not make any observations about Mr. T.'s interactions with V.

[121] In response to a question from the Court about V.'s current functioning, the preschool teacher said that V. now appeared to be a "fairly typical five-year-old boy".

[122] Mr. T. called evidence from four witnesses who have spent time with him and V. All attested to Mr. T.'s devotion to V. and his strong parenting abilities. One witness, the father of a girl who is approximately the same age as V., testified that he and Mr. T. often took their children on outings together. He observed that Mr. T. was always meticulous about matters such as the children's safety and nutrition. He

never hesitates to send his daughter with Mr. T. and V. on boating, hiking and camping trips, often for quite extensive periods of time.

[123] Another witness, to whom I will refer as Ms. M., is the mother of two boys, one of whom was slightly older than V. and the other somewhat younger. She has known both Ms. D. and Mr. T. for many years. Ms. M. testified that during the parties' marriage, her friendship was primarily with Ms. D. She observed that before the parties separated, Mr. T. habitually deferred to Ms. D. in matters concerning V., and abdicated most parenting responsibilities to her. However, over the past three years she has observed -- with some surprise -- a remarkable evolution in Mr. T.'s parenting. She said she considered herself to be a thoughtful and attentive parent, but that Mr. T. has gradually become an even better parent. Ms. M. described Mr. T. as vigilant about V.'s safety in his sports activities. She said Mr. T. ensures that V. eats healthy foods and encourages him to make healthy choices. According to Ms. M., Mr. T. displays patience with his son which exceeds that of most parents she knows (including herself).

[124] Ms. M. described both parties as exceptional parents who are equally capable of providing excellent care to V.

[125] A third witness called by Mr. T. has known Mr. T. for many years through the theatre community and has spent significant amounts of time in the company of Mr. T. and V. He testified that Mr. T. fostered V.'s interest and participation in the arts. Mr. T. takes V. to art classes, plays, museums and galleries. He engages in art projects with V. This witness, too, said that he had observed Mr. T. evolve over time into a parent who is engaged in every aspect of his son's life and is dedicated to his well-being.

[126] The witnesses called by Mr. T. attested to the fact that while in their presence, Mr. T. spoke to V. about his mother only in positive terms and appeared to respect and encourage V.'s relationship with Ms. D.

Family Assets and Debts

[127] As noted earlier, the parties kept their finances separate throughout their brief marriage. They had no shared bank accounts or common credit cards. As Mr. T. put it, the parties “lived like islands” during the marriage. Any income the parties earned, they placed in their respective bank accounts. They did not exchange any information about their respective finances.

[128] One of the few significant assets of Mr. T. was the bare lot located near Pender Harbour on the Sunshine Coast as payment for work he performed for a developer over a period of about three years. He performed a considerable amount of the work in the first five months of the marriage. Mr. T. and the developer agreed the lot was worth $100,000 at the time. The parties visited the lot briefly two or three times during the marriage, but did not use the property of make improvements to it.

[129] Both parties filed reports concerning the value of the lot. The lot has recently been assessed by the municipality at $140,000 for municipal tax purposes. The report filed by Mr. T. indicated a value of $95,000 in 2011 but a slight reduction in vale by 2012. The report filed by Ms. D. set the value at $125,000. Mr. T. obtained a $50,000 mortgage on the property during the marriage to pay family expenses and contribute for several months to the mortgage on the condominium. He obtained another $10,000 loan against the property following the parties’ separation in order to pay lawyers’ fees related to this litigation.

[130] Mr. T. has owned a cabin on Cypress (Hollyburn) Mountain for approximately twenty years. He purchased it for $14,000. The cabin, which is very rustic, is situated on leased land. For municipal property tax purposes, the cabin was recently valued at approximately $39,000. The parties did not use it for recreational purposes or make any improvements to it. Ms. D. visited the property about a half dozen times during the marriage.

[131] The only other asset acquired during the marriage was the condominium. As noted earlier, the condominium was sold in 2009 after the parties separated. The net

proceeds of sale were in the amount of $17,500. Ms. D. received $7,000 by court order following separation. The remaining funds are in a solicitor's trust account.

[132] The parties went into the marriage only with their respective savings. Ms. D. had approximately $90,000 in savings as a result of the sale at the time of the marriage of her apartment on East 8th. Mr. T. received a $25,000 payment from a client for some graphic art work he completed at about the time the parties married. He gave the cheque to Ms. D., who cashed it and put the funds in a safe in the apartment; she disbursed the money over time to meet family expenses. Ms. D. had credit cards with several financial institutions and used them extensively. Mr. T. paid for family items with cash he earned from his projects.

[133] During the marriage, Mr. T. received a monthly draw from a family trust fund in the amount of $390 per month. The trust was established from the estate of Mr. T.'s grandfather for several members of the family, including Mr. T.'s father and sister. The monthly payments received by the various family members consist of both interest and capital from the trust fund; accordingly, the payments are diminishing over time and will cease within a few years. Mr. T. currently receives $275 per month from the trust.

[134] Ms. D. was the designated recipient of the monthly allowance cheque to which the family was entitled after V.'s birth. Mr. T. acknowledged that for the first six months after the family began receiving the payments, he took the cheques from the family mailbox without Ms. D.'s knowledge. He opened a Registered Education Savings Plan in V.'s name and placed the monthly allowance funds, which totalled about $600, in the RESP. Ms. D. was not aware of the RESP. Mr. T. placed an additional $1,500 in the RESP which he obtained by selling company shares that he had purchased at Ms. D.'s request. Ms. D. was not aware of the sale of the shares.

[135] Ms. D.'s position at trial was that Mr. T. had fraudulently appropriated the funds, which belonged to her, and that she was entitled to repayment of the $2,100. She argued in the alternative that she should be given signing authority over the RESP.

[136] The parties were involved in two small ventures during the marriage. The first involved the harvesting of kelp from beaches on the west coast of Vancouver Island to sell as garden fertilizer. In the summer of 2007, Mr. T. spent five weeks near Sooke, B.C. trying to develop a method for the collection and sale of kelp. He had received $15,000 for a carpentry job, which he used to take the time off from work and continue to pay family expenses. Ms. D. contributed approximately $3,200 to the venture, which she viewed as a loan to Mr. T. Mr. T. agreed that he understood the money advanced by Ms. D. to be a loan. He used $2,200 to purchase a truck and camper for living accommodations and $1,000 to purchase a skiff to collect the kelp.

[137] Mr. T. paid two graphic artists a total of $5,000 to help him market the kelp once it was a product capable of sale as fertilizer. However, nothing came of the venture.

[138] Ms. D. sought repayment of the $3,200. She also argued that she was entitled to half the current value of the skiff and the truck and camper unit. Mr. T. testified that the skiff and the camper are both sitting in a field exposed to the elements. He described them as rusted and useless. The evidence concerning the truck was not clear. It seems that the truck was over twenty years old when purchased and was, even then, of nominal value. It is no longer operational.

[139] The second venture involved the making of lip balm with a view to marketing it commercially. The idea grew from a recipe Ms. D. used to make homemade lip balm for the family. A significant ingredient of the lip balm was beeswax. As part of the venture, the parties purchased a large quantity of beeswax for $15,000. The lip balm was never made, but the beeswax is in storage with Mr. T. The parties agree the beeswax has retained its value and could be easily sold.

[140] Mr. T. owned a Volkswagen van at the time of the marriage. The parties used the van during the marriage for transportation and camping. After the parties separated, Mr. T. sold the van for $8,900 and kept the proceeds of the sale.

[141] Ms. D. incurred significant credit card debt during the marriage. She provided the statements of account for each of the credit cards. The total debt is approximately $75,000, which Ms. D. says was incurred on behalf of the family. Accordingly, she seeks reimbursement from Mr. T. for half the indebtedness.

[142] I have reviewed the voluminous credit card statements produced by Ms. D., who filed them as exhibits at trial. She provided very little evidence concerning the hundreds of transactions reflected in the statements. It is apparent that a significant portion of the credit card debt relates to costs incurred during the renovation of the condominium described earlier in these reasons. Ms. D. also used the credit cards to fund projects unrelated to the family, such as her sister's attendance at acting classes. It is evident that Ms. D. was spending far more money each month than the parties were earning. It was not unusual for Ms. D. to make purchases of $8,000 to $10,000 per month on credit.

[143] Mr. T. did not receive copies of the credit card statements during the marriage. Ms. D. did not dispute Mr. T.'s assertion that he was not consulted about the expenditures and was unaware of the majority of them. I accept that Mr. T. was not aware of the extent to which Ms. D. was spending beyond the parties' means. As I noted earlier, the parties had an informal arrangement whereby Mr. T. paid the rent and utility costs while Ms. D. paid for groceries and day-to-day household supplies, but they did not otherwise pool their resources or share information about their finances.

III. DECISION AND ORDERS

A. Custody/Residency of V.

[144] The *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) directs the Court to consider only the best interests of the child when determining the issue of custody. Section 16(8) stipulates the following:

> 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.

[145] The Court cannot take past conduct of a person into consideration when making a custody order unless the conduct is relevant to the person's ability to act as a parent of a child: s. 16(9).

[146] Further, when making a custody order, the Court must give effect to the principle that a child should have as much contact with each parent as is consistent with the child's best interests, and must take into consideration the willingness of each parent to facilitate contact with the child: s. 16(10).

[147] Section 24 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 echoes these principles. It describes additional factors the Court ought to consider when determining the child's best interests, including (i) the health and emotional well-being of the child; (ii) the love, affection and other ties that exist between the child and other persons; and (iii) the child's education and training.

[148] I do not accept Ms. D.'s argument that the previous conflict between the parties precludes an order for joint custody of V. and shared access on an equitable basis. Both parties contributed to the conflict. Ms. D. refused to accept the reality that V. has two parents. She mistakenly assumed that because Mr. T. abdicated parenting responsibility during the marriage (which I conclude he did at least in part because Ms. D. would not allow him to be involved in V.'s care in a significant way) that he would accept a minor role in V.'s life once the parties separated. Mr. T. often acted in an immature and impulsive way. On some of those occasions, he was reacting to Ms. D.'s need to control every aspect of V.'s care.

[149] Each of the parties gave evidence over several days. I am satisfied, having listened to their evidence, that neither understood the eccentricities of the other when they decided to marry. Their differences were only accentuated once V. was born and they attempted to parent him. They shared little common ground concerning V.'s care. Mr. T. reacted to Ms. D.'s cautious and structured approach to V.'s activities and care by being more adventurous and unstructured. Ms. D. viewed Mr. T. as reckless; Mr. T. viewed Ms. D. as smothering.

[150] Ms. D.'s refusal to give Mr. T. overnight access to V. was shortsighted and ill-advised, as was Mr. T.'s decision to bring the *ex parte* application against Ms. D. Their actions set up a recurring cycle of unfortunate reactions which continued well into the second year of the parties' separation.

[151] And yet, despite their differences, it is clear that both parties are devoted, loving and considered parents. Ms. Mussellam accurately described the parenting dialectic in her reports. As noted earlier in these reasons, she reported that both Mr. T. and Ms. D. were well-intentioned and loving parents who were strongly committed to do what was best for V. She also reported that V. would benefit from both of their styles of parenting, so long as the parents supported each other and allowed V. to value both.

[152] I am satisfied the evidence overwhelmingly supports the conclusion that V.'s best interests require the equal participation of both parents in his life. Both Ms. D. and Mr. T. are excellent parents. They bring different strengths to his parenting and diverse interests to his life, and for that very reason his best interests require the involvement of both.

[153] I do not share Ms. D.'s lack of optimism about the ability of the parties to share parenting of V. Her outlook has been influenced by the parties' obvious incompatibility as life partners and the corrosive effect on their relationship of the events that occurred immediately after separation. Mr. T.'s behavior toward Ms. D. has been greatly attenuated over the past year by his increased access to V. I have no doubt that Mr. T. can safely and effectively parent V., and that V.'s life would be much the poorer without his equal involvement in it.

[154] The parties, for all their differences, share a deep commitment to V.'s well-being. That commitment will enable them to share his parenting. I conclude the parties should have joint custody of V.

[155] I turn now to the access regime.

[156] V. has spent extensive periods of time with both parents. Under the current parenting regime, he spends more than half his time with his mother. As noted earlier in these reasons, he spends four days one week and three days the next with his father, and the balance of each week with his mother. There is no evidence to suggest that the increased amount of time he has spent with his father since the order of Holmes J. in June 2011 has posed a problem for him.

[157] Mr. T. now seeks to have his access to V. increased to alternating weeks. Ms. D. asks to have the current access regime maintained for a few more years.

[158] V. is approaching six years of age. He is established in elementary school. He has thrived on the access regime to date. Ms. Mussellam, the author of the s. 15 report, recognized the benefits to V. of having as much contact as possible with each parent. In my view, there is no reason to maintain an unequal access regime.

[159] V. is entitled to uninterrupted weekend time with both parents, as both Ms. D. and Mr. T. work during the week and V. attends school Monday through Friday. Not surprisingly, both parents desire the opportunity to have full weekends with their son. Further, both agree that it is in V.'s best interests to have fewer transitions between his parents' homes.

[160] For all of these reasons, I have concluded that V. should spend alternating weeks with each parent.

[161] Specifically, V. should spend the first week of every month with Ms. D., commencing Tuesday of each week. Designating Tuesday as the exchange day will preclude arguments about access during long weekends and weeks in which school is in recess due to teachers' Professional Development Days. V. will be taken to school by the parent whose access week is ending and taken home at the end of the school day by the parent whose access week is commencing.

[162] With the same considerations in mind, V. will spend an equal amount of time with his parents during summer holidays, as well as during the school spring break and Christmas break. The weekly access schedule will continue for the summer

holidays, with the exception that V. is entitled to spend two uninterrupted weeks with each parent in order to accommodate his parents' vacation plans that might include travel.

[163] Neither parent will restrict the other parent from travelling outside of the Lower Mainland during their respective parenting times so long as a travel itinerary and contact information is provided. Each parent will provide the necessary written permission for travel with the other.

[164] On family occasions involving weddings, birthdays, memorial services or other such special events, V. is entitled to attend with the parent involved in the event notwithstanding the regular access schedule.

[165] The parent having access will facilitate reasonable telephone contact between V. and the other parent.

[166] I will leave to the parties the responsibility to specify pick up and drop off times when the exchange is other than during the school week, and to reach agreement on access during other special days such as Mother's and Father's Day. In the unlikely event that the parties cannot agree on such matters, they may contact me through the Registry by letter or email of no more than three paragraphs (less than one page) in length, and I will make the determination based on the written information provided by the parties. I encourage the parties to reach a consensus on these matters; I do not intend to entertain lengthy submissions on any of these issues, and will be making my decisions on a summary basis.

B. Guardianship of V.

[167] The current guardianship regime is that contained in the interim order issued by the Provincial Court in April 2009. Under that order, which is based on the "Joyce" guardianship model, the ultimate decision-making authority concerning significant matters such as V.'s heath care (except decisions that must be made on an emergent basis), education, and religious instruction have been granted to Ms. D.

The parties are obligated to discuss these matters fully and reach agreement if at all possible.

[168] In fact, the parties have managed to reach agreement on most significant matters concerning V.'s welfare. The exception is health care, and, in particular, the question of V.'s immunization.

[169] I have concluded that it is in V.'s best interests to grant equal decision-making authority to both Ms. D. and Mr. T. on all significant matters concerning V.'s welfare. In the particular circumstances of this case, which I have already addressed, I am satisfied that both parents should be equally involved in these decisions. Each parent brings a particular perspective and life experience that is necessary to ensure V.'s best interests are served. If the parties cannot reach agreement on a significant issue concerning V.'s welfare, then a third party in possession of all the necessary information should make the decision.

[170] Once again, as I am familiar with the background and circumstances, I will remain seized in order to provide assistance to the parties on an expeditious basis. However, should the parties prefer, they may retain a parenting coordinator to assist them.

[171] The existing terms of the guardianship order will otherwise remain the same. To be clear (as there was some argument about this matter), there will be a term in the order to the effect that in the event of the death of either parent, the remaining parent will be the sole guardian of V.

[172] I will turn now to the contentious issue of whether V. should be immunized in accordance with the recommendations of the provincial heath authorities.

[173] I have summarized in some detail the evidence provided at trial by Dr. Scheifele, both oral and written, because the issue is one of such fundamental importance to the parties. As noted earlier in these reasons, Dr. Scheifele gave evidence pursuant to the order of Madam Justice Holmes. The Court was fortunate to receive the opinion of an independent expert such as Dr. Scheifele, who is

acknowledged to be one of the most knowledgeable physicians in the field of child immunology. I am satisfied that Dr. Scheifele testified as a truly independent witness with a view to providing the Court with the information necessary to make an important medical decision on V.'s behalf because his parents cannot reach agreement on the issue.

[174] Dr. Scheifele's view, based on the evidence I summarized earlier, is that the benefits of immunization to V. far outweigh any risk that may be associated with possible side effects from the immunization. While there is a risk of side effects, it is minimal. Further, most known side effects are short-lived and clinically minimal in nature. It is Dr. Scheifele's opinion that V., like all children of his age in this province, is at risk of contracting a number of the infectious diseases covered by the vaccinations particularly if he travels to other countries with his parents.

[175] Dr. Scheifele's opinion is based not only on his own clinical experience and research, as well as his review and analysis of the medical research literature worldwide, but also on his specific knowledge of the medical histories of V.'s parents (based on interviews with them) and his medical examination of V.

[176] In short, no stone has been left unturned on this issue. I accept Dr. Scheifele's opinion that the benefits of immunization to V. significantly outweigh any risk of side effects. For that reason, I conclude that Mr. T. is entitled to make the decision concerning V.'s immunization.

C. Division of Family Assets and Debts

[177] This was a three-year marriage, during which the parties accumulated little in the way of assets.

[178] Both parties have expended much of their time, energy and resources over the past three years engaged in this litigation.

[179] The assets the parties accumulated during the marriage include the condominium, the Pender Harbour property, the skiff, boat and trailer and the truck

and camper. Mr. T. came into the marriage with his cabin on Cypress and a share in his family trust. There are also debts. Ms. D. left the marriage with $75,000 in credit card debt. Mr. T. obtained a $50,000 mortgage on the Pender Harbour property in order to obtain additional funds for use within the family. He also obtained an additional $10,000 to pay a small fraction of the legal bills he accumulated in the course of this litigation.

Legal principles governing apportionment

[180] The apportionment of family assets is governed by s. 65 of the *Family Relations Act.* Section 65 does not require the Court to award each spouse a share directly proportionate to the contribution of each spouse to the asset: *Elsom v. Elsom*, [1989] 1 S.C.R. 1367. The *Family Relations Act* calls for division of family assets on a presumptively equal basis. However, s. 65(1) describes a number of factors the presence of which may render an equal division *unfair:*

a) the duration of the marriage;

b) the duration of time since separation of the parties;

c) the date when property was acquired or disposed of;

d) the extent to which the property was acquired by one spouse by inheritance or gift;

e) the needs of each spouse to become or remain economically independent and self-sufficient; and

f) any other circumstances relating to the acquisition, preservation, improvement or use of the property, or the capacity or liabilities of a spouse.

[181] Where a debt has been incurred by one spouse for use within the family unit, it is appropriate to reapportion assets to account for that debt. However, the

presence of debt is only one factor to consider under s. 65: *Stein v. Stein*, 2008 SCC 35.

Application of the legal principles

(a) The condominium

[182] Ms. D. sought total reapportionment of the proceeds of sale from the condominium. In the event that the proceeds are divided equally, she seeks to have Mr. T. pay a proportionate amount of the debt she incurred to renovate the property.

[183] Ms. D. initially purchased the condominium for the family home. She used some of the funds she brought into the marriage to finance the down payment and pay for renovations. From my review of her credit card statements, I conclude that a significant portion of the credit card debt she was left with at the time of the parties' separation was the result of using credit to complete the renovations.

[184] Mr. T. contributed several months of mortgage and strata fees, which were $3,000 per month. Ms. D. otherwise made those payments for over a year. Ms. D.'s sister lived in the condominium for a few months while it was being renovated. By the time the renovations were completed, the marriage had broken down. Ms. D. lived there for some months with V. after the parties separated, and then put the property on the market. Ms. D. received $7,000 from the net proceeds of sale by court order during the litigation. The remaining $10,500 of the net proceeds was placed in counsel's trust account and has remained there.

[185] On the basis of considerations relevant to decisions concerning apportionment of the assets and debts as a whole (which decisions follow), I have concluded that the proceeds of sale from the condominium -- that is, the $17,500 -- should be reapportioned entirely to Ms. D.

[186] Accordingly, Ms. D. is entitled to receive the funds currently held in trust. As a result however (and as Ms. D. acknowledged in argument), she is also responsible

for the debt incurred to renovate the condominium. I will address the matter of the family's indebtedness in more detail in due course.

(b) The Pender Harbour property

[187] Mr. T. obtained the Pender Harbour property a few months after the parties were married, as payment for work he had over a period of approximately two years before the marriage and, more intensively, for five or six months after the marriage. The most recent property assessment, for municipal taxation purposes, valued the property at $140,000. Neither valuation obtained by the parties was that high. The assessment filed by an assessor retained by Mr. T. placed the property at a value of $95,000 in 2011, with a decrease in value to $85,000 in early 2012. Ms. D. obtained a Comparative Market Analysis which indicated a range of $97,000 to $150,000, and recommended a sale price of $125,000.

[188] Based on the municipal assessment and the information contained in the valuations obtained by the parties, I have concluded that the property should be valued for purposes of this action at $110,000. The property is currently encumbered by the $50,000 mortgage taken by Mr. T. during the marriage and the $10,000 mortgage taken subsequently to pay for legal bills.

[189] The parties visited the property on a couple of occasions to view it during the marriage, but did not use it or improve it. However, it was acquired during the marriage and at least in part as payment for Mr. T.'s work during the marriage. In my view, it is a family asset.

[190] For purposes of division of property under the *Family Relations Act,* the $50,000 is properly taken into account when determining the net value of the property for apportionment purposes but the $10,000 encumbrance is not. For purposes of apportionment, the property's equity is in the amount of $60,000.

[191] When determining apportionment of the property, I have taken into account the factors enumerated in s. 65(1) of the *Family Relations Act,* including the length of the marriage, and the date on which the property was acquired and the

circumstances underlying its acquisition. I have also taken into account apportionment of the remaining assets, which I will address in due course. Finally, I have taken into account the family debt, which I will address in due course. On those bases, I conclude that the parties are entitled to an equal division of the property.

[192] Mr. T. may elect to buy out Ms. D.'s 50% interest for $30,000 and retain responsibility for the mortgages. Should he elect not to buy out Ms. D.'s interest, he will take all necessary steps to place the property in both the parties' names as tenants in common. In that case, the parties will bear equally the cost of the $50,000 mortgage, and Mr. T. will bear entirely the cost of the $10,000 mortgage.

(c) Mr. T.'s entitlement under the family trust

[193] Mr. T. inherited his share in the family trust. In light of the brief duration of the marriage, and the fact of inheritance, as well as the reapportionments described above, I have concluded that Mr. T. is entitled to reapportionment of his entire share in the family trust.

(d) The Beeswax

[194] The parties purchased a large amount of beeswax during the marriage for their lip balm venture at a cost of $15,000. The beeswax was never used. Mr. T. is currently storing the product. The parties agreed that it has likely maintained its value and that it is a marketable commodity. I conclude that the parties ought to share equally the proceeds of the sale of the beeswax. Ms. D. has the option of conducting the sale. In the event that she does not wish to do so, Mr. T. will be responsible for the sale.

(e) The Volkswagen Van

[195] Mr. T. owned the Volkswagen van for several years before the parties married. It was used by the family during the marriage. Mr. T. sold it for $8,900 following the parties' separation. While the evidence was not clear, it appears Mr. T. then purchased a truck which is now valued at $3,000.

[196] Ms. D. has retained the Ford Taurus she used during the marriage.

[197] In my view, fairness dictates that the parties retain their respective vehicles. Mr. T. is entitled to retain the proceeds of sale from the Volkswagen van.

(f) The Cypress Cabin

[198] The cabin sits on leased land. It is very rustic. Mr. T. purchased it for $14,000 in 1994. Recently the cabin was assessed at $39,000 for municipal tax purposes, but there was no evidence concerning its resale value, if any. The parties visited the cabin four or five times during the marriage. They did not make any improvements to it or otherwise expend any funds on it. I conclude that the cabin should be reapportioned entirely to Mr. T.

(g) The Skiff and Truck/Camper

[199] There was no evidence concerning the present value of these assets, which were purchased for $3,200 in 2007. They were purchased, already used, to advance the failed kelp venture. The truck was over twenty years old at the time. Mr. T.'s evidence, which I accept, is that the truck is not functional and the camper and skiff are rusting in a field. I attribute no value to these assets.

(h) Ms. D.'s Credit Card Debt

[200] At the time of separation, Ms. D. had accumulated $75,000 in credit card debt. As noted earlier, much of that debt is attributable to the renovation of the condominium. Other expenditures, such as the tuition for her sister's enrolment in acting classes, were not properly included as family debt. Ms. D. made no submissions concerning any of the expenditures.

[201] I have reviewed all of the credit card statements. On the basis of that review, I conclude that $25,000 is attributable to family-related expenditures such as food, clothing and household necessities. Accordingly, Mr. T.'s share of the family debt is $12,500.

[202] However, I have taken the $12,500 owed by Mr. T. for the family debt into account when concluding that Ms. D. is entitled to a 50% interest in the Pender Harbour Property. Accordingly, Mr. T. is not required to remit payment of any of this amount to Ms. D.

D. Child Support

[203] This was a marriage of three years' duration. Both parties were well into their adult lives when they married. Both had established careers and have continued to work in their chosen fields of work. Each brought some minimal assets and/or cash into the marriage.

[204] Ms. D. has a degree in architecture and has become a highly-regarded exhibit designer. Currently, she has chosen to establish a small private practice with a few other architects/exhibit designers. She earned no income for approximately a year following V.'s birth; thereafter, she earned approximately $20,000 by completing a couple of projects on a part-time basis. Ms. D.'s income remained in the $21,000 range after separation as a result of her decision to set up a private practice instead of working for a large established firm. The firm is gradually building a clientele, and Ms. D. can expect to earn much more than her current income as the firm grows. With her education, background and experience, she is capable of earning at least in the $45,000 to $50,000 range.

[205] Mr. T. is a graphic designer and talented carpenter. He is currently working as a carpenter but has the choice of returning to work as a graphic designer. Mr. T.'s income over the past few years had been in the $42,000 range. I conclude based on his evidence that he is capable of earning in at least the $45,000 to $50,000 range as well.

[206] Mr. T. has been paying child support since April 2009 in the amount of $388 per month based on a Guideline income of $42,000 per year. He continues to pay that amount.

[207] Ms. D. sought retroactive child support on the basis that Mr. T. ought to have been paying at least $388 per month commencing in December 2008 when the parties separated. I accept that Mr. T. owes Ms. D. four months of retroactive child support. Based on a monthly payment of $388, Mr. T. must pay Ms. D. $1,552.

[208] I have reviewed Mr. T.'s income tax returns for the past three years. I am satisfied that his Guideline income remains, on average, $42,000 per year. Mr. T. will continue to pay child support based on a Guideline income of $42,000.

[209] Going forward, V. will be living with each parent 50% of the time. Accordingly, Mr. T.'s ongoing child support obligations will be adjusted to take into account Ms. D.'s Guideline income. Based on the financial information Ms. D. filed at trial, I am prepared to accept that she has been earning, on average, $21,000 per annum (excluding the approximate amount of $4,800 she is currently receiving from Mr. T. for child support). A person earning that annual income is required under the Guidelines to pay $190 per month for child support. The difference between Mr. T.'s amount of $399 and Ms. D.'s amount of $190 is $209.

[210] Accordingly, going forward, Mr. T. will pay to Ms. D. $209 for basic child support. However, Ms. D. is capable of earning a significantly greater income than she earns at present. Her income is currently low because she is in the process of building a small private business. That level of income should not continue. If it does, Ms. D. will in all likelihood be required to seek employment elsewhere or have a higher income imputed to her. I am prepared to accept that for the next year, her income will remain at $21,000 for child support purposes (bearing in mind that she will receive, in addition, approximately $2,400 per annum in child support payments from Mr. T.). Thereafter, Ms. D. runs the risk of having a higher income imputed to her if her income remains at its current level.

[211] The parties will exchange income tax returns and assessments by June 30 of next year (and each year thereafter), and child support for V. may be adjusted in accordance with that information by agreement or by application by either party to vary the amount.

[212] The parties will bear equally all expenses relating to V.'s medical and dental care and all other health care expenses. They will also bear equally all expenses for ongoing activities such as swimming and soccer.

[213] Each party will bear the expense of any other extracurricular programs in which he or she chooses to enrol V. unless the parties otherwise agree.

E. Spousal Support

[214] Ms. D. sought retroactive spousal support, and spousal support going forward.

[215] I am not persuaded that this is an appropriate case for spousal support either retroactive or prospective.

[216] Under the federal *Spousal Support Advisory Guidelines,* a spouse earning $42,000 per year and paying $388 in child support may be obligated to pay $0 to $50 per month to a spouse earning $21,000 per year and receiving $388 in child support.

[217] Ms. D. was a mature adult with a degree in architecture and considerable work experience when she met Mr. T. She suffered no economic disadvantage from the marriage as that term is used in the case law. Ms. D. is as capable now, and was capable during the marriage, of pursuing work in her chosen field. She did so in fact. With her education and work experience, she is capable prospectively of enjoying an income level comparable to that of Mr. T. Further, Ms. D. can expect to earn income for a significantly longer period of time than Mr. T. Ms. D. is 41; Mr. T. is 55.

[218] Any economic hardship suffered as a result of the breakdown of the marriage is one suffered by Ms. D. and Mr. T. equally. The proceeds of the sale of the condominium have been reapportioned entirely to Ms. D. She has received an equal interest in the only other significant asset of the parties, the Pender Harbour property.

[219] Ms. D.'s claim for spousal support is dismissed.

F. Miscellaneous Claims

[220] Ms. D. made two additional claims. The first is for damages she alleges she suffered as a direct result of the *ex parte* order Mr. T. obtained in September 2009. The second is for the return of $2,100 in family funds taken surreptitiously by Mr. T. to start an RESP account for V. I will deal with these claims in turn.

[221] I have already recounted the circumstances which culminated in Mr. T.'s *ex parte* application in 2009. The parties had reached a stand-off concerning Mr. T.'s desire to have V. for overnight access. V. was three years of age. Ms. D. refused overnight access on the basis that V. was still breastfeeding and, for various other reasons, would not cope well. Mr. T.'s frustration level was high, and, as a result, he began acting in impulsive and immature ways. Ms. D. moved residences and, due to Mr. T.'s behaviour, refused to disclose her new address. It appears that Mr. T. convinced himself that Ms. D. was about to flee the province with V.

[222] Having heard all of the evidence concerning the circumstances existing at the time, I have little doubt that the *ex parte* application was ill-advised. In retrospect, it is evident that Mr. T. and his counsel showed poor judgment. However, I cannot conclude that Mr. T. acted in bad faith or misled the judge who issued the *ex parte* order.

[223] More importantly, Ms. D. advanced her arguments for damages to Crawford J. when she successfully applied to have the *ex parte* order set aside. Mr. Justice Crawford awarded her costs but did not see fit to make an award of damages.

[224] Ms. D. is not entitled to an award of damages with respect to the *ex parte* order.

[225] I will now address the matter of the RESP. I do not accept Ms. D.'s argument that Mr. T. acted fraudulently when he took family funds and applied them to an RESP for V. Both parents were entitled to the funds. Mr. T. misled Ms. D. but his conduct was not fraudulent.

[226] The RESP has been in place now for approximately four years. Under the plan, the federal government contributes an amount equal to 20% of the parents' contribution. It is in V.'s best interests that the fund continue to exist. Mr. T. receives the annual statements concerning the fund and has signing authority over it.

[227] I am prepared to accede to Ms. D.'s request to this extent: Ms. D. and Mr. T., as joint guardians of V., are both entitled to receive the annual statements and both are entitled to make contributions to the RESP if they so wish. The RESP will otherwise remain unchanged.

IV. SUMMARY OF ORDERS

[228] The following is a summary of the orders resulting from these reasons:

1) The parties shall have joint custody of V., including a shared parenting arrangement under which V. will spent alternating weeks with each party commencing the Tuesday of each week, and equal time with each parent during school vacation and significant holidays;

2) The parties shall have joint guardianship of V. with equal decision-making authority concerning all significant matters involving V.'s heath, education and general welfare;

3) Mr. T. shall have ultimate decision-making authority on the issue of V.'s immunization;

4) Child support for V. shall be payable on the basis of the following Guideline incomes: Mr. T.: $42,000; Ms. D.: $21,000. The parties are at liberty to apply for a variance of child support after exchanging the requisite financial information on June 30, 2013 and at the same time each year thereafter;

5) The application by Ms. D. for spousal support is dismissed.

[229] As the parties are self-represented, they are at liberty to request clarification and directions from me concerning these reasons for judgment. The parties may reach me by email correspondence through the Registry.

[230] I will remain seized of this matter for the time being.

[231] As success has been divided, the parties will bear their own costs.

The Honourable Madam Justice C.A. Wedge

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vincent v. Roche-Vincent,*
2012 BCSC 1233

Date: 20120816
Docket: E093215
Registry: Vancouver

Between:

Michael Sean Vincent

Plaintiff

And

Gráinne Roche-Vincent

Defendant

Before: The Honourable Mr. Justice Affleck

Reasons for Judgment

Counsel for the Plaintiff:	C. Linde
Counsel for the Defendant:	M. J. Cochrane
Place and Date of Trial:	Vancouver, B.C. July 3 - 6 and 9 - 13, 2012
Place and Date of Judgment:	Vancouver, B.C. August 16, 2012

The Issue Addressed in these Reasons

[1] This proceeding was commenced on October 9, 2009, which was a few days after the parties separated. The relief sought included an equal division of family assets, but the issue which featured most prominently in the statement of claim was the custody and guardianship of the child of the marriage, A, who was then four years old.

[2] The plaintiff, who I will refer to as the claimant, sought an order for joint custody and guardianship and an order that the child "remain resident on the lower mainland of British Columbia". The claimant did not seek a divorce.

[3] The defendant, who I will refer to as the respondent, filed a counterclaim in which she sought:

a) a divorce;

b) "a declaration under section 57 [sic: section 67 of the *Family Relations Act*, R.S.B.C. 1996, c. 128] that neither party shall dispose of any assets within their control without the express permission of the other party" and

c) "an order that, if the defendant [sic: the plaintiff now the claimant] fails to return the child to the custody of the defendant following access" the child may be apprehended by a peace officer.

[4] In his trial brief filed in March 2012 the claimant continued to seek an equal division of family assets, but the dominant theme remained the equal parenting of A and joint custody. The claimant specifically proposed A attend a Waldorf school in Courtenay known as Salt Water School.

[5] The respondent, in her trial brief, agrees to joint custody. She proposes A reside primarily with her and that he continue to attend Airport Elementary School in Comox. The respondent seeks spousal support and an unequal division of family assets in her favour.

[6] The trial reflected the dominant theme found in the pleadings, and in the trial briefs, which has been parenting of A.

[7] After several days of trial, and with constraints on the time available for argument of the financial issues, and the concern of both parties that the arrangements in respect of A be known as soon as possible, they agreed that only issues relating to A would be addressed now, with argument on financial issues left to a later date. At the end of these reasons I grant a divorce order.

The Marriage

[8] Notwithstanding the only issues to be addressed now are the custody, access and guardianship arrangements for A, the relationship between the parties must be addressed because it has had, and continues to have, a profound impact on A.

[9] The claimant is 49 years old and was born and brought up in Ontario. He has lived in British Columbia since 1990. The respondent, who is 48, was born and brought up in Ireland. Neither has family members living in British Columbia.

[10] The claimant worked in the film industry in British Columbia. In 2001 he went to Ireland to work for several months. In Ireland, the parties met and were immediately attracted to each other and began living together. After a few weeks the claimant returned to British Columbia and the respondent followed shortly thereafter. They lived in North Vancouver. In 2003 they returned to Ireland for a "Celtic wedding" and this was followed by a further wedding ceremony in North Vancouver on June 28, 2003.

[11] The respondent had a previous brief marriage, which ended in a divorce. This was distressing for her. She also learned that she was infertile, which added to her distress. The claimant was aware of the respondent's infertility before their marriage in 2003.

[12] When the parties met, neither had expectations of children. However, this changed shortly after their wedding, particularly for the respondent. They decided to

seek medical advice and undergo the necessary procedures to achieve in vitro fertilization.

[13] The parties attended a clinic in Seattle and had early success. Their child, A, was born in July 2005. I have no doubt that the birth of A was a joyous event for both parents. This is true for most parents, but for the parties the significance was beyond the ordinary. The claimant, as he moved into his 40s unmarried and childless, seems to have been reasonably content and busy with his work. On the other hand, the respondent had long attempted in vain to overcome her infertility and felt the absence of a child very keenly. For the respondent, who had not expected to be a mother, the birth of A brought great pleasure and satisfaction into her life. Her love for him, and her pleasure in watching him grow, brought a dimension to her life which has had immense effects, not all of which have been desirable.

[14] These remarks are not intended to deprecate the claimant's pleasure in having a son. I am satisfied both parents love their child and have his best interests at heart. However, their differing approaches to child rearing have unfortunately been a source of friction between them and this has contributed to the collapse of the marriage.

[15] The marriage effectively ended in October 2009 when the claimant left the matrimonial home at the request of the respondent. The respondent testified that over several years she had become increasingly concerned about the claimant. She described him as controlling, abusive and manipulative. She characterized the marriage as "coercive".

[16] Her evidence is that the claimant sought to control her during her pregnancy by, for example, monitoring her diet. While he remained aloof to a considerable extent from both her and A, he tried to control the timing and extent of her breastfeeding of A, who was not weaned until he was about four years old.

[17] The respondent describes the claimant as a man who is somewhat obsessed with his own health but avoids conventional medical care. This latter characteristic,

the respondent says, is revealed by the claimant's refusal to have A immunized against the usual childhood diseases. Furthermore, the respondent testifies that the claimant has instilled in A an anxiety about food to such an extent that A reads labels on food containers when they go shopping in grocery stores.

[18] The claimant denies this characterization of him by the respondent. He, for example, denies that he avoids medical care and says that he attends a dentist regularly and is presently undergoing physiotherapy. I accept that the respondent has reason to believe the claimant's views on some medical topics, particularly those involving immunization, are unconventional, but there is no reason to believe he avoids medical care altogether. I accept that he may seem more scrupulous than most with what he eats, but I do not believe he has been irresponsible with A.

[19] The respondent testified the claimant is an angry man who, as the marriage began to deteriorate, was increasingly abusive to her. She was not able to describe in any detail the nature of the abuse but gave the example that when she came into a room the claimant would immediately leave. The claimant denies any such event. The parties have different temperaments. The claimant is a restrained man of controlled emotions. The respondent has intense emotions that she longs to express. I believe these differences explain, at least in part, the respondent's very adverse reaction to the claimant in the time leading up to the separation.

[20] The respondent also asserts she was abused by what she describes as the excessive involvement of Robert Mitchell in the life of her family. Mr. Mitchell is a somewhat eccentric man who gave evidence at the trial. There were extended periods of time when Mr. Mitchell, and a woman with whom Mr. Mitchell has some form of relationship not fully described in the evidence, lived with the parties after A's birth.

[21] Mr. Mitchell is undoubtedly an unusual man but he gave his evidence at the trial in a straightforward and honest fashion. It is apparent that he has a large store of wisdom which he wishes to impart to those willing to listen. The respondent was

not one of the willing. It is not difficult to understand how the presence of Mr. Mitchell in the matrimonial home became annoying for the respondent.

[22] Mr. Mitchell's eccentricity notwithstanding, he was even handed when giving his evidence. He considers himself to be a friend of the claimant and, while he is critical of the way the respondent deals with A, he was measured and restrained in his evidence. His criticism of the respondent is, in part, that she tends to treat situations in which she is involved as "dramas". I accept this as a reasonable observation. As I have already remarked, the respondent is a person of intense emotions. This was at times reflected in her testimony at the trial. During her evidence in chief, she had a number of episodes of almost uncontrollable sobbing as she recounted the events of her marriage and her perceived difficulties with the claimant.

[23] It is not irrelevant that during her cross-examination she refrained from any tears or sobbing. There is truth in Mr. Mitchell's observation that the respondent sees her role in life as a drama. She is no doubt not alone in doing so, but I believe it has caused her to react to some events in a way that is more extreme than has been justified. I am also satisfied that her reactions have caused damage to her relationship with the claimant and with A.

The Separation

[24] The respondent went to Ireland to see her family on a number of occasions throughout the marriage. Some of these visits did not involve the claimant. She would take A. Her evidence is that on those occasions when the claimant had not accompanied her to Ireland, when she returned to British Columbia, she did so with reluctance because of her concerns about the claimant's behaviour towards her and towards A on their return. The claimant commented on the change in the respondent's behaviour when she had been to Ireland.

[25] In mid-September 2009 the respondent returned to British Columbia from one of her periodic visits to Ireland. She testified that A had been more relaxed in Ireland

and was less aggressive towards her than when they were living in British Columbia. I will comment later on A's aggressive behaviour towards his mother.

[26] The respondent was concerned about A's welfare when she returned from Ireland in September 2009 because "[the claimant] was cruel and aggressive towards me". She testified that by that time there was "nothing between us" and that the claimant was drinking heavily and taking drugs. The respondent expressed her fears to her family doctor and was given the telephone number of a women's shelter. She contacted the shelter. On October 2, 2009 the respondent told the claimant that she wanted him to leave the matrimonial home.

[27] The respondent testified that she did not ask the claimant to leave but told him only that she needed some "space". The respondent testified that she did not actually want the claimant to leave. I accept that the respondent requested the claimant to leave, which he did the next day.

[28] The respondent testified that after the claimant left the matrimonial home she heard nothing from him for about six or seven days until he texted her to say that he was coming home. In cross-examination the respondent retracted this evidence and accepted that the claimant had texted her on October 7, 2009 with a request to be able to speak with A. The messages were polite and benign.

[29] In the few days after the claimant left the matrimonial home, the respondent booked tickets for her and A to fly to Ireland. The claimant learned of this, sought legal advice and commenced these proceedings to seek an order preventing the respondent from traveling to Ireland. When the respondent was served with the statement of claim she cancelled the tickets.

[30] The respondent testified that when the claimant advised that he intended to return to the matrimonial home, she was too afraid to stay there herself and went to the women's shelter in Comox with A for a week. This fear contrasts with her response to a message from the claimant on October 7 2009 requesting an

opportunity for a "video chat" with A. The respondent's reply was "sure what time would you like. He's asking for you".

[31] The respondent's sisters came from Ireland and they stayed in a hotel for a further two weeks until she moved with A into a basement suite. They now live in a rented apartment in Comox.

[32] The respondent testified that she believed the claimant intended to take A away from her unless she "learned to please him". She further testified that before she asked him to leave their home, he had already been planning to do so. There is no evidence of this. She gave evidence that A had on occasion witnessed the claimant's abuse of the respondent, and she described the marriage as a "dictatorship". As a result of her view that A has witnessed abuse, she arranged for him to attend counselling. In an affidavit sworn November 9, 2009, which was put to the respondent on cross-examination, she deposed that the claimant was angry "all the time" and that the "slightest thing would set off a torrent of rage". She also deposed that the claimant's actions made her very fearful of leaving A with him alone. There was no rational basis on the evidence for this fear.

[33] In an affidavit sworn August 23, 2010, also put to the respondent in cross-examination, she gave evidence that when the claimant texted her in October 2009, stating that he intended to return home, her "terror began to build ... I didn't know what the claimant would be like or what he would do to punish me for telling the truth about our relationship and the way he had treated me". Further, she deposed that when she stayed with a friend after the claimant said he was coming home, she was "terrified for myself and the ... family" with whom she was living temporarily. She called the police to "tell them where I was and that I was afraid for my safety...".

[34] In the same affidavit, the respondent's evidence was that A "has been witness to psychological battery of his mother since he was born, and he has been subjected to his own psychological battery and physical intimidation [by] the claimant". She believes that when A, returns from a visit with the claimant, he becomes angry with her "because, I believe, that he sees me as not protecting him from the claimant".

[35] In the affidavit of August 23, 2010 the respondent observed that she "knew immediately" when the claimant left in October 2009 that he would go to be with Mr. Mitchell and Mr. Mitchell's companion because "they work as a threesome". She further deposed that "the fact he didn't stay in Courtenay or make one single attempt to talk to me means to me that he was plotting all this beforehand". She does not refer to the text messages from the claimant. Later in the affidavit the respondent deposes that "I always had the feeling that this was planned from way back. I imagine he had retained his lawyer long ago and was waiting for his chance". She goes on to say "the claimant was not a good husband or father. I was abused and battered by him emotionally until I was afraid for my life. The claimant is a violent man". In my opinion, this language reveals a paranoia to which the respondent is prone or at worst was a fabrication. I do not accept it accurately describes the claimant or his conduct.

The Respondents' Diary/Journals

[36] This very disturbing picture of the marriage, and of the respondent's relationship with the claimant generally, and with A, must be contrasted with the journals kept by the respondent. I note that Dr. Larry Waterman, who had in 2009 prepared a report pursuant to s. 15 of the *Family Relations Act*, opined that when considering A's best interests, too much emphasis has been placed on the journals. I agree with Dr. Waterman that the journals are only one of several sources of information that are relevant to the determination of the appropriate custody, access and guardianship arrangements for A. Nevertheless, the journals are important, in my opinion, because I am satisfied they accurately reveal the respondent's view of the marriage, and of the claimant at the time of writing.

[37] The documents which were variously described as a journal, a diary or, in part, a "baby book", were written by the respondent over several years. They are not carefully dated nor is the exhibit (16), which contains those that can be described as a journal, in consecutive order. They are not all of a single style, nor do they appear to have a single purpose. The "baby book" is a record of A's development. I have largely ignored it. The respondent sometimes described all these writings as a "baby

book". In part they were a "baby book", but in part they are more accurately described as a journal or diary. I will refer to them as journals.

[38] The respondent's evidence was that the journals were not meant entirely to be a record of events; rather, at least part of them came from a creative writing course. Other portions, and these are extensive, the respondent testified were written with the intention the claimant would read, and be influenced by, them. She hoped the claimant would see the idealized portrait of the marriage, and of their relationship to each other, and to A, and would absorb that idealism and ameliorate his otherwise obnoxious behaviour. The journals were left in the kitchen so that the claimant would be able to find them easily.

[39] One entry from August 23, 2007 will suffice to demonstrate the portrayal of the relationships in this small family in the journals:

> Our marriage will keep growing stronger. Our love deeper. We will grow in maturity and respect for each other. Our passion for one another will grow in intensity and will remain vital and exciting. We will be good parents to our beautiful [A] and we will burst with joy and pride watching him grow and learn. He will know how loved he is. We will be patient calm with him and each other.
>
> ... create a peace and harmony ...
>
> We will become increasingly self-sustaining, grow our own vegetables and be more kind to the earth.
>
> ...

[40] The respondent used rather equivocal language when challenged about the meaning of the journals. She vacillated between accepting that they were true, at least in some sense not described, and asserting they were the creation of a fantasy she expected the claimant to read.

[41] Dr. Waterman was asked his opinion of their meaning. He acknowledged he has no expertise in deciphering the meaning of diaries or journals, in the context presented at this trial, but disagreed with the suggestion put to him by the respondent that they are representative of someone "coming out of a coercive

dynamic". Dr. Waterman agreed the journals could suggest the respondent when she wrote them "was in denial".

[42] There is no evidence that the claimant actually read the journals until after the separation in October 2009. He then found them and they were eventually given to Dr. Waterman. The respondent's evidence was that she had not seen the claimant read the journals.

[43] The importance of the journals is that, if they are a true reflection of the respondent's thoughts about her marriage, and of the relationships between herself, the claimant and A, then the picture she painted at the trial of a coercive, dictatorial husband and father who was in a constant rage and who she feared may at any time resort to violence, is itself a fantasy. I do not accept that the respondent was likely to have kept a journal over several years sustaining a fictional view of her idyllic marriage, if in reality it was filled with coercion and abuse. No other witness who was in a position to observe the parties testified to such coercion or abuse.

[44] Both Robert Mitchell, who knows both parties well, and Karen Alexandre, who lives in Courtenay and knows the claimant well and has seen him with the respondent, have a high regard for him. Mrs. Alexandre impressed me as an intelligent, thoughtful and observant woman who would have been alert to abusive conduct. I believe also that Mr. Mitchell would have been very critical of abuse if he had observed it in any of its possible forms.

The Respondent's Concerns about the Claimant's Propensity to Violence

[45] The respondent gave evidence that the claimant was often a heavy drinker of alcohol and that he used illegal drugs, principally marihuana. The claimant denies drinking anything more than two beers on a single occasion and denies any marihuana use. Mr. Mitchell, who was in a position to know, denied ever seeing the claimant smoke marihuana. Mrs. Alexandre has praise for the claimant's qualities as a parent. She describes him treating A with respect but imposing what she believed was appropriate discipline. She characterized the claimant as a "very engaged" parent. I do not accept that the claimant has been a heavy drinker nor that he has

the habit of using illegal drugs. Nor do I accept that he is in a "constant rage" or is prone to violence.

[46] There are nevertheless three events involving the claimant which entailed violence. Two surrounded serious difficulties with a neighbour when the parties lived in Deep Cove prior to moving to Vancouver Island. The respondent described an altercation between the claimant and the neighbour in which the respondent says the claimant threw a stone at the neighbour. This event appeared to dismay the respondent and may have influenced her increasing concerns about the claimant. However, in cross-examination she agreed her evidence that the claimant had thrown a stone was wrong. It was the neighbour who threw the stone hitting the claimant in the chest. The respondent also referred to an incident in which the claimant was placed in the back of a police car and proceeded to kick out the window. This incident is acknowledged by the claimant. It no doubt shocked the respondent. It is not surprising it would have caused her some anxiety about him.

[47] The claimant's explanation for this second incident is that it happened just after one of several serious arguments with the very difficult neighbour who then called the police. The police arrived and took no immediate steps to intervene but moments later a further dispute with the neighbour led the police to confine the claimant in the back of a police van. He kicked the window out.

[48] The third incident was from a time well before the parties were married which led to the claimant being convicted of mischief. The respondent characterized the event at the trial as an assault. She was not present at the event. The claimant testified that it happened when he had returned home to find his then girlfriend in bed with another man. The claimant became angry and on leaving the room broke some picture frames. The claimant may have minimized his conduct which led to a criminal conviction but I doubt it had any influence on the respondent's opinion of the claimant. Nevertheless, it has been used as a further means to attempt to impugn his character.

[49] The only one of these incidents I treat with any seriousness in the context of these reasons is the one involving the police car. The claimant says he suffers from claustrophobia. He testified that when he was placed in the back of the police car he had no recollection of kicking out the window. It was only when one of the policeman remarked "now we have something to arrest you for" that he realized what had happened. I have no reason to disbelieve the claimant about this event.

[50] The claimant is a restrained and somewhat conservative man who normally keeps his emotions under control. His answers at the trial were often brief, and even laconic, denials of misconduct with little attempt at elaboration. The description of him by Mr. Mitchell and Mrs. Alexandre is of a thoughtful and measured man who treats others with respect. I accept that characterization.

[51] An episode involving both parties and A should be related. The claimant described the respondent returning from Ireland with A and shortly thereafter they all went to a restaurant. This was in the autumn of 2009, shortly before their separation. At the restaurant A behaved badly and the claimant told him he could not have any dessert from the buffet. The respondent nevertheless gave A a plate of chocolate and the claimant objected. The next day they went to another restaurant and A again misbehaved. The claimant told A he could not have ice cream. They left shortly afterwards and began to drive home. The respondent told the claimant to stop the car and when he did she got out, taking A with her, and began to walk away. The claimant says he did not know what to do but decided to drive home. Soon the respondent arrived with A who had chocolate on his face.

[52] The claimant viewed this event as a complete departure from the way in which both he and the respondent had been dealing with the discipline of A until then. I accept the claimant's evidence about what happened. It tends to show the marked inconsistency in discipline and the respondent's indulgence of A.

Dr. Waterman's Section 15 Report of November 2009

[53] Dr. Waterman conducted extensive interviews with the parties, and with others who knew them. He also administered psychological tests. Dr. Waterman had

the following comments on the Minnesota multiphasic personality inventory-2 administered to the respondent:

> An evaluation of the validity and reliability scales indicated that [the respondent] made an extreme effort to present herself as being free of any psychological or emotional problems. Individuals who receive such scores are usually consciously distorting their responses to the test items to create the impression that they are extremely moral, virtuous and have no personal difficulties. It is very important to such individuals that they appear to be responsible and in control of their lives. While some distortion of the test results is not uncommon in evaluations involving the custody and access of children, the results obtained by [the respondent] are much more extreme than would normally be expected.
>
> ...
>
> Individuals with this profile typically as being spontaneous and make a good first impression. While she may appear warm and charming, her relationships are probably somewhat superficial and she may be somewhat manipulative in those relationships. Such individuals have a strong need to be around others and are quite outgoing and sociable. She enjoys the attention she receives from others and her social behaviour is not likely to change over time.
>
> In evaluating these results, it must be remembered that [the respondent] made an extremely strong effort to present herself in as positive manner as possible. If she had answered in a more open and forthright way, some of her scores including her score on Scale Nine may have been considerable higher than was obtained. If this had happened, there would be more concern raised about mood fluctuations and self-centered behaviour based on a need for personal gratification ...

[54] The corresponding test for the claimant led Dr. Waterman to comment:

> An evaluation of the validity and reliability scales indicate that [the claimant] produced a valid clinical profile. His results suggest that he cooperated with the assessment enough to provide useful interpretive information. The resulting clinical profile is probably a reasonable indication of his current personality functioning. While he was somewhat inconsistent in some of his responses to the test items, this was not enough to invalidate his profile.
>
> [The claimant] obtained significance on one of the clinical scales which was Scale Six and two of his other scores approached significance. This pattern of scores is typically obtained by individuals who are overly sensitive and easily hurt. As a result, they tend to remain somewhat detached and aloof in their relationships as a way of protecting themselves. Such individuals can be concerned that others might take advantage of them. Because he has a low level of trust, he may present occasionally as being touchy and argumentative and somewhat moralistic and rigid in how he approaches his life. ...
>
> ... Under stress, he may become oppositional and may carry grudges for a considerable time. His difficulty in committing to a relationship may make

> marital situations difficult. At times, he may tend to be argumentative and find it difficult to forgive and forget.

[55] On the Millon Clinical Multiaxial Inventory III administered to the respondent Dr. Waterman observed:

> ... [The respondent] again tried to present herself in a socially acceptable manner which could indicate a need for social approval and to be seen in as favorable a light as possible. It can also indicate a general naïveté about emotional matters.
>
> The pattern of results obtained by [the respondent] on this test indicates that she will actively seek out attention and praise to fulfill her need for affection and security. She probably has a fairly high fear of abandonment which results in her seeking support and nurturance from others by being very obliging and perhaps even seductive at times. ...
>
> ...
>
> ... In terms of impacting on her ability to parent, [the respondent] will probably do quite well as long as [A] is young and dependent upon her for support and for meeting his needs. However, as he gets older and more independent, conflict could arise between [A] and his mother particularly in his adolescent years when children tend to be more self-focused and less concerned about meeting the needs of their parents.

[56] With the same test administered to the claimant, Dr. Waterman commented:

> ... His need for public recognition and approval may constantly contrast with his low sense of self-esteem and dependency which he represses to the best of his ability. Over time, he may come to resent those people to whom he conforms and submits which may result in periodic eruptions of negative comments and less than desirable behaviours.
>
> In terms of parenting, such individuals can become more concerned about their own needs than the needs of their child. It is important to them that they receive the positive feedback that they crave from others, particularly under periods of prolonged stress which can lead to conflicts between their needs and the best decisions as far as their child is concerned. When the child is younger, this does not present a significant problem. However, as the child grows older and more independent, significant differences of opinion can surface which can result in problematic situations developing.

[57] Dr. Waterman undertook an assessment at the respondent's home in Comox in November 2009 over approximately two hours. A was then about four and a half years old. There has been no follow-up report.

[58] Perhaps the most striking feature of Dr. Waterman's report from that assessment is the aggressive conduct of A towards his mother. Others gave evidence of the same conduct. It included kicking, punching and biting. Dr. Waterman observed that it was associated with the respondent's attempts "to get close to her son and cuddle him for a period of time". The respondent acknowledges this behaviour but said it has diminished over time although it continues to happen on occasion.

[59] Dr. Waterman found A's behaviour surprising. A was at times loving towards his mother and then became angry, "wanting to hurt her". The respondent would coax A into cooperation but he offered no sign of an apology for his aggressive behaviour towards his mother.

[60] A home assessment was also undertaken when A was with his father in Courtenay. Dr. Waterman noted one very brief example of "defiance" which lasted a couple of seconds. Despite that moment of defiance "A appeared to be quite responsive to being held by his father". However, when A was asked to put his books away he "curled up in a ball" and tried to kick his father. Dr. Waterman commented that the claimant used appropriate discipline in response to A's behaviour and the defiance ended.

[61] Dr. Waterman's final paragraph in describing his observations of the claimant with A during the home assessment begins with the following sentences:

> Overall, [A] and his father appeared to have a very close and loving relationship. During the course of the two-hour home assessment there were no signs of the rigidity and controlling behaviour that [the respondent] had described about [the claimant] during her clinical interview. [The claimant] did follow through with a couple of consequences but these were done in a very gentle and caring manner. ...

[62] Later in his report Dr. Waterman made these remarks about the respondent:

> During her interviews, [the respondent] described [the claimant] as being "full of conspiracy theories" and being "quite paranoid". She reported that [the claimant] kept moving them around from place to place which resulted in their remaining "quite isolated". As was seen when [the claimant]'s psychological

> test results were presented, [the respondent]'s observations were not confirmed by the results that were obtained from [the claimant].

[63] When asked about these observations during the course of his evidence, Dr. Waterman agreed that the respondent was reacting to the claimant's "sensitivities", and that she was prone to exaggeration. Dr. Waterman contrasted the respondent's criticisms of the claimant during the course of her interview with Dr. Waterman, and what she had written in her journals. I reproduce Dr. Waterman's paragraph as follows:

> Further on in her fi[r]st interview, [the respondent] talked about how [the claimant] was not physically violent with her although he would push her around sometimes. She states however, that he was very manipulative psychologically and could systematically break her down. She states that there was a lot of verbal and emotional abuse that took place within their relationship but no love or affection between them. She reported that if she said anything, she was always afraid that [the claimant] would explode. Once again, this is very much at odds with what [the respondent] was writing in her diary/journal. Until the last few months in her diary/journal, [the respondent] made numerous comments about how happy she was with [the claimant], what a wonderful husband and father he was, how he went out of his way to do things for her and how lucky she felt to be with him. Once again, one has to question why [the respondent] was writing such remarks in her diary/journal, over the course of a number of years but is now making very different remarks during the assessment process.

[64] Neither the respondent, nor any other witness, gave evidence of the claimant's physical abuse of her or of A.

[65] In cross-examination, over the objections of Mr. Cochrane, Mr. Linde asked Dr. Waterman to assume the accuracy of eight "factors" and to give his opinion on the custody, access and guardianship arrangements for A if the factors were true. The factors put to Dr. Waterman were:

1) the child/mother relationship is dysfunctional;

2) the mother puts her emotional needs ahead of the child;

3) the mother has a distorted view of the father;

4) the mother is using abuse counselling for the child as a means of getting her own way;

5) the child has too much control over the mother;

6) the mother's failure to discipline the child;

7) the child receives more discipline from the father; and

8) the child needs consistent discipline.

[66] Dr. Waterman's answer was that, on the assumption those factors were true, he would recommend the father have sole custody and a parenting coordinator be appointed.

[67] I do not find the relationship between the respondent and her son is "dysfunctional". That has become a fashionable "buzz word" that may convey meaning or may simply be a term of abuse. I accept that there is much in the relationship between the respondent and her son which is satisfactory. She is a loving mother attempting to deal with an active and intelligent boy when both the parents and the child find themselves in difficult circumstances. However, I believe the other assumptions put to Dr. Waterman have at least some substance.

[68] First, I find A is used by the respondent on occasion as an emotional support rather than providing emotional support and the effect on him appears to be damaging. Second, I accept the respondent has a distorted view of the claimant. The intensity of her feelings for him has turned from measureless love to irrational hostility. Her examination for discovery transcript was put to her in which she was pressed to think of any positive quality possessed by the claimant. She could think of nothing. This is blind hostility. Third, A does not receive consistent discipline from his parents and I accept the submission of the claimant that the respondent often fails to provide appropriate discipline for A. The claimant has been more effective in doing so. Fourth, the characterization of the marriage as "coercive", and "a dictatorship" is

false. It follows that I accept the claimant's submission that the abuse counselling A attends is not only unnecessary it is damaging to A.

[69] Dr. Waterman made the following extensive recommendations in 2009:

> i) It is recommended that [the respondent] and [the claimant] share Joint Custody of [A] based on a "week on - week off" rotation
>
> ii) It is recommended that [A] be exchanged between his parents at approximately 3:00 p.m. on Sunday afternoons at a mutually acceptable place. Hopefully in the future, [A] will be able to be brought to each of his parents' homes by the parent in whose care he is in but at this time that is not seen as being reasonable.
>
> iii) It is recommended that [the respondent] and [the claimant] share Joint Guardianship of [A]. This includes all the rights and responsibilities typically included in such an Order. Since the Court has several such models available to use, I will not outline what that encompasses but am willing to do so if necessary.
>
> iv) It is recommended that [the respondent] and [the claimant] attend a parenting therapist and develop an acceptable, cooperative parenting strategy for [A]. It is very important for young children in particular to have clear boundaries, consistent expectations, well-defined consequences and to be brought up in as cooperative situation as possible when the child's parents have separated and divorced. If [the respondent] and [the claimant] are unable to come up with appropriate procedures and consequences, then they should be ordered to accept the recommendations of the parenting therapist.
>
> v) If [the respondent] and [the claimant] are unable or unwilling to make a Joint Custodial parenting arrangement work, then it is recommended that a Parenting Coordinator be appointed by the Court to assist them in making decisions that are in [A]'s best interest.
>
> vi) It is recommended that [the respondent] be allowed back into the family home under supervision to gather her personal belongings and some of the belongings for [A]. This could be done through a mutually acceptable friend, acquaintance or an off-duty police officer. If there is any cost associated with the supervision, it is to be shared equally between both parents.
>
> vii) It is recommended that either parent be allowed to take [A] out of the province or country for trips to visit family and elsewhere for a period not to exceed fourteen days. Any attempt on either parent's part not to return [A] to the home of the other parents at the end of the fourteen days, would be considered grounds for that parent to apply for sole custody of [A].
>
> viii) It is recommended that if possible, a Worldwide Police Enforcement clause be included in any Court Order to ensure that each parent complies with the Court's decisions as expected.
>
> ix) It is recommended that [A] spend his birthday with whichever parent he is scheduled to be with at the time. Over the years, this will work out approximately equally for each parent.

x) It is recommended that [A] spend the afternoon and overnight with each of his parents on that parent's birthday whether that birthday lands on a weekend or during the week. [A] would be returned to school the next morning by the parent whose birthday it is or if it happens on a weekend, he would be returned to the other parent's home no later than 10:00 a.m.

xi) It is recommended that each parent cooperate in allowing [A] to take part in family celebrations such as relatives coming to visit or other such celebratory occasions. These visits could last up to two full days but they must be made up for at other times in order to compensate the parent who is giving up [A] for that time.

xii) It is recommended that Christmas, March break and summer holidays be divided approximately equally. At Christmas, [A] could spend Christmas Eve day and Christmas Day until 1:30 p.m. with one parent and then be taken to the home of the other parent. He would then spend the rest of Christmas Day and all of Boxing Day with the second parent. The rest of the holiday would be divided approximately equally between the two parents. March break can either be divided in half with the parents rotating who gets [A] for the first half of each March break and who gets him the second half. The other alternative is for one parent to have [A] for the whole March break one year and the other parent to have him the whole March break the next year. Summer holidays can be divided approximately equally in periods of two weeks with each parent. This will provide time for each parent to do various vacation activities with [A] but for him not to be away from the other parent for an extensive period of time. Once [A] reaches ten years of age, this would change and he could spend one month with one parent and the other month with the other parent on an alternating basis.

xiii) It is recommended that each parent choose one activity for [A] to be involved in so that he always has involvement in two activities. Each parent would be responsible for any costs involved for whatever activity is chosen.

xiv) It is strongly recommended that before returning to Court to settle any differences between them, [the respondent] and [the claimant] consider mediation as an alternative dispute resolution process.

[70] The last recommendation has been overtaken by events.

[71] The claimant submits the court ought to order the following:

1) joint guardianship on the Master Horne Model;

2) the claimant have sole custody of A;

3) the abuse counselling A attends cease forthwith;

4) The claimant have authority to take A to a professional counsellor, with notice to the respondent. The counselling sessions would be privileged occasions so that A will understand they are to remain confidential;

5) A attend Salt Water School beginning in September 2012;

6) The respondent have access to A during the school year every other weekend after school on Friday until school resumes on Monday. If either Friday or Monday, or both, are not school days the respondent have access from Thursday at the end of the school day until the beginning of the school day on Monday or Tuesday, as the case may be;

7) Christmas holidays be spent by A with each parent in alternate years and the same apply to his school spring break;

8) the claimant hold A's Canadian and Irish passports;

9) the respondent be restrained from taking A out of British Columbia without the claimant's written consent, not to be unreasonably withheld.

[72] The respondent requests the following order:

a) joint guardianship and custody with A residing primarily with her on a nine day/five day access schedule. She prefers the Master Joyce model;

b) A continue to attend Airport Elementary School in Comox; and

c) the respondent have primary responsibility for A's medical care, including decisions about his immunization.

Conclusions

[73] The only consideration this Court may have is A's best interests. While the *Family Relations Act* provides that the best interests of the child are paramount, the *Divorce Act* requires the Court to take into consideration only the best interests of the child.

[74] The claimant will have primary custody of A, at least for the immediate future. This is in the best interest of A to permit consistent parenting to the extent possible. The claimant is in a better position at present to provide consistency.

[75] There will be joint guardianship of A and the order will provide as follows.

1) in the event of the death of either of the parties the remaining parent will be the sole guardian of A;

2) the claimant will inform the respondent of any significant matter affecting A's well being. This provision is necessarily vague and its efficacy relies on the good sense of the claimant;

3) the claimant will discuss with the respondent in advance any significant decision about A including medical attention. This provision does not apply to emergencies;

4) if the parties cannot agree on a major decision concerning A the claimant has the right to make the decision. The respondent will have liberty to apply to the court if the claimant makes a major decision concerning A's general welfare without consultation with the respondent or with which the respondent disagrees;

5) both the claimant and the respondent will have the right to obtain information about A from others including teachers, counsellors and medical professionals. The claimant will facilitate this part of the order if necessary.

[76] The respondent will have access to A from 4:00 p.m. on Friday until 4:00 p.m. on Sunday on alternative weekends. If it becomes necessary a neutral person should be engaged to allow A to move between his parents without acrimony. If that fails either party may apply.

[77] The respondent will have access for three weeks in either July or August each year. The dates are to be agreed between the parties. The claimant will make arrangements to make A available to accommodate the desire of the respondent to take A to Ireland.

[78] A will forthwith cease attending an abuse counsellor.

[79] The claimant, on written notice to the respondent, is entitled to have A attend counselling and those sessions will be privileged and confidential. If the respondent objects to the choice of counsellor she will have liberty to apply.

[80] The claimant is entitled to enrol A in Salt Water School beginning in September 2012. The claimant will be responsible for all costs associated with that enrolment. I make this order because, while the claimant has primary custody, it will be convenient for A to attend Salt Water School in Courtenay. The respondent's objections to Salt Water School I find do not have substance, and are largely driven by her unjustified animosity towards the claimant.

[81] A's passports will be held by the claimant. If the respondent advises the claimant that she intends to travel to Ireland with A the claimant will provide the passports to the respondent forthwith when requested. Either party may apply if there are difficulties in agreeing on A's travel out of British Columbia. I make no worldwide police order.

[82] As soon as reasonably practicable the claimant and the respondent will attend a parenting therapist for the purpose of developing a cooperative and responsible strategy. The cost of that therapy will be borne equally. If either parent declines to attend, or there is no agreement on a parenting therapist, either party will have liberty to apply and the court will make the appropriate order.

[83] A will spend alternative birthdays, including overnight after a birthday party, with one or other of the parties beginning in 2013 with the respondent.

[84] Christmas and New Year's holidays from the end of school in December until the resumption of school in January will alternate annually beginning in 2012 with the respondent.

[85] Spring breaks will alternate from the end of school at 4:00 p.m. at the beginning of that break until 4:00 p.m. on the last day of the break. This will begin in 2013 with the respondent.

Immunization

[86] A source of disagreement between the parties has been A's immunization. The claimant believes, at least in some instances, the risks are excessive. The respondent takes the more orthodox view that the benefits outweigh the risks.

[87] In *M.J.T. v. D.M.D.*, 2012 BCSC 863, Wedge J. considered whether the best interests of the child in that case would be better obtained if the court directed immunization on medical advice. Evidence was given by a leading expert on pediatric infectious diseases and immunization. The expert gave his opinion on the risks and benefits of immunization for the child in that case, and on the risks and benefits of immunization generally for children. The expert concluded the risks were extremely low and the benefits "significantly outweighed the theoretical risks." The learned trial judge accepted that opinion.

[88] I am not bound by the decision of Wedge J. in the case before her, that immunization was appropriate. However, nor should I ignore the judge's finding. I take into account the concern of the respondent, which I accept is reasonable, that, like all children, A is at risk from childhood diseases. Further, I take into account the evidence of the claimant that he is not adamantly opposed to immunization in all circumstances.

[89] The claimant will consult A's family doctor and will accept the medical advice of that doctor on the question of immunization.

[90] The order in the above conclusions found in paragraphs 74 and following will remain in force for 18 months from the date of these reasons at which time it will be subject to review if requested by either party.

[91] The parties will be divorced effective 31 days from the date of these reasons.

"Affleck J."

Citation: ☼D.R.B. v. D.A.T.
2019 BCPC 334

Date: ☼20191231
File No: 17182
Registry: Salmon Arm

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE MATTER OF
THE *FAMILY LAW ACT*, S.B.C. 2011 c. 25

BETWEEN:

D.R.B.

APPLICANT

AND:

D.A.T.

RESPONDENT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE S.D. FRAME

Counsel for the Applicant:	C. Ferguson
Appearing on her own behalf:	D.A.T.
Place of Hearing:	Salmon Arm, B.C.
Date of Hearing:	November 18, 2019
Date of Judgment:	December 31, 2019

[1] This is an application by D.R.B. for an order that the children of the relationship be vaccinated; and an order to compel the children to attend periodic medical and dental appointments and to comply with all reasonable medical and dental recommendations.

[2] D.A.T. is not entirely opposed to the children being vaccinated or to having the children comply with reasonable medical and dental recommendations. Her issue is that she does not want unnecessary inoculations from medical and dental treatments.

[3] D.R.B. and D.A.T. met in 2012 and were in a relationship for just over five years. From that relationship, they have two children. Those children are A.J.B., born [omitted for publication] and C.D.B., born [omitted for publication]. Both of the boys are healthy, have no immunity problems and no ailments that would otherwise make them ineligible for live vaccines. In other words, there are no health presentations in either child that would cause their doctor to recommend against vaccinations.

[4] D.R.B. has requested on numerous occasions that D.A.T. consent to the children being vaccinated. He said this was from the time she was first pregnant with the first child until as recently as a week before the hearing.

[5] In addition, D.A.T. is also opposed to having x-rays done at the dentist office. The dentist recommends the x-rays to ensure cavities are not worse than they appear. In C.D.B.'s case, he had to have a root canal, a cavity filled and teeth pulled because D.A.T. did not consent to the x-rays which may have prevented these additional and dramatic steps. D.R.B. said that multiple dentists at the dentist office had recommended that they do those x-rays.

[6] C.D.B. is now in Grade 1 and A.J.B. is in daycare. They both play soccer, are in swimming lessons and take karate. They are very social children. D.R.B. himself travels for work, coming in contact with people throughout Canada and the United States. He wants the children vaccinated in accordance with the immunization schedules issued by Immunize BC.

[7] D.A.T. does not want the children vaccinated for diseases that no longer exist in Canada, saying they have been eradicated. She also does not want the children to be vaccinated if they already carry immunity to the specific illness targeted. She wants to have them tested for these immunities before any determination is made about vaccinations.

[8] The concern is more imminent now for D.R.B. not only because of the recent measles outbreaks in this country and the United States, where he travels, but also because of a notice issued by the school district. That notice is with respect to vaccination status reporting pursuant to a regulation passed by the Province of British Columbia. If a child has not been vaccinated, the school sends home a notice that the child may not be permitted to attend school in the event of an outbreak of any one of the listed illnesses.

[9] D.R.B. has also received a letter from Interior Health advising that D.A.T. has a documented refusal on file, confirming there are no medical contraindications to vaccinations noted in C.D.B.'s medical records, and recommending that C.D.B. be given age-appropriate immunizations according to the BC Centre for Disease Control Schedule.

[10] The letter concludes with the following:

> Immunizations play a central role in the prevention of infectious diseases in children and the severe complications that can result. In addition, immunized children contribute to a herd immunity effect that protects the community as a whole. In particular, children who travel abroad should be up to date with the immunization schedule.

[11] Because of D.A.T.'s refusal, the medical health officer requires that D.R.B. obtain a letter with D.A.T.'s agreement to vaccinate, a copy of a custody order showing he has the sole authority to make medical decisions for the child, or an order from a judge giving him the right to have the children immunized.

[12] The immunization schedules specified which immunization should occur at each of two months, four months, six months, 12 months, 18 months, four years, Grade 6 and

Grade 9. Those immunizations include the Chickenpox or Varicella vaccine; Diphtheria; Tetanus; Pertussis; Hepatitis B; Polio; and Haemophilus influenza Type B (DTaP-HB-IPV-Hib); Hepatitis A; Inactivated influenza vaccine; Measles, Mumps or Rubella (MMR vaccine); Meningococcal C Conjugate (Men-C) vaccine; Pneumococcal (PCV 13); Rotavirus vaccine; Human Papillomavirus (HPV) vaccine; Quadrivalent vaccine; and the variations of them, both for boosters and initial vaccinations. There is specific information provided in the Immunize BC schedule which advises parents when their children need not only to have the vaccine but whether or not it is necessary in each circumstance.

[13] D.R.B. said that he has spoken to Dr. Grieve, being the children's general physician, in D.A.T.'s presence. However, he said D.A.T. never wanted to talk about the vaccinations with the doctor because she felt pressured.

[14] D.A.T. said that she has never been a "fan" of the flu vaccine. She worked at a health centre and was having discussions with various people about what was happening around these flu vaccines. She acknowledged that Dr. Grieve felt it was "tragic" that people did not vaccinate. She also went to see a naturopathic doctor, Dr. Spooner, who was not opposed to vaccines but did speak with her about adverse reactions. That practitioner recommended a protocol one week prior to the vaccinations. The children's Vitamin A and iodine levels needed to be up in order to withstand the vaccine. D.A.T. wondered why the medical profession did not tell people this before their children were vaccinated. D.A.T. asked Dr. Spooner whether there was a test for adverse reactions and Dr. Spooner said there was, but it cost money. D.A.T. said this is when she became uncomfortable with vaccinations.

[15] D.A.T. said she has been doing research and has determined that there are adverse reactions to vaccinations. She said there are tests that can be done and steps that can be taken to prevent adverse reactions. She seeks titer tests to show if her sons already have antibodies for the childhood diseases. She would like this done before the children are vaccinated. However, she does not have the money for it and would like D.R.B. to pay. D.R.B. is not prepared to pay for it.

[16] D.A.T. would also like to have both of the boys gene tested for the MTHFR gene. She wants allergy and food sensitivity testing done as well. This will ostensibly remove harm from the children being vaccinated. There is no reliable evidence before me that supports any connection between the MTHFR gene, vaccines and autoimmune diseases. There is no clear path linking the benefits of allergy and food sensitivity to vaccines either.

[17] D.A.T. would also like A.J.B. tested for Giardia because he contracted it at his daycare. He was successfully treated with an antibiotic successfully but she would like him tested for any residual infection. She wants to ensure that he is in his best possible health before he is immunized.

[18] D.R.B. is not only opposed to paying for the testing but feels it is unnecessary as well. He has refused outright to have this testing done.

[19] D.A.T. purported to offer the expert report of Dr. Toni Lynn Bark. This report, while delivered to D.R.B. at a pre-trial conference, was not properly proffered as an expert report. Not only is the report with respect to an entirely different child (the report was offered by the mother to assist D.A.T. in this litigation), but the attachments referred to in the report are not attached to the copy provided. In other words, all of the supporting documentation that Dr. Bark refers to and relies upon is not available for review by D.R.B. or his counsel. Nor is Dr. Bark present for cross examination. Finally, there are considerable concerns about the foundation of the contents of this report.

[20] In her qualifications and expertise, Dr. Bark says that she has no conflict of interest but has co-produced a documentary and appeared in others which highlight the conflicts of interest in vaccine policies. She believes there is no conflict for her because she has received no pay for her work and has received no money directly or indirectly from the sale for distribution of the films. That is not determinative of her expertise, though. What Dr. Bark’s involvement in this industry lacks is balance. There is no evidence of any expertise or clinical review that meets this challenge of evident conflict.

[21] Dr. Bark also said that she provided expert testimony in relation to vaccinations in numerous family law cases in several countries and for the National Vaccine Injury Compensation Program. However, there is nothing identifying these cases or whether her expert testimony was accepted in the judgments that followed.

[22] Dr. Bark bases her opinion on her expertise in vaccination and vaccine targeted infectious diseases from both her formal medical training and from her experience in pediatric emergency as well as her private medical practice. She links to these anecdotal experiences of unexpectedly high numbers of patients who have been vaccinated and then suffered serious reactions, as well as patients she has found to be suffering chronic disorders such as autoimmune and neurological damage with a strong temporal link to vaccination. There is no supporting documentation in the copy of the report. It is difficult to tell whether this is purely anecdotal or whether there is a proper testing environment done to reach these conclusions. It lacks the proper foundations of an expert opinion.

[23] Dr. Bark maintains that her fields of expertise include vaccine adversomics, which she acknowledges is a new, emerging research field. It is the study of vaccine adverse reactions including their frequencies and mechanisms of causality. She acknowledges at paragraph 6 of her report:

> Vaccine adversomics is not yet covered in any formal medical training. Hence qualifying in such fields as immunology, epidemiology, pediatrics or genetics (or gaining membership of any associated societies) does not involve or require any study of risks of vaccines relative to their benefits, in relation to determining either population averages or any individual variations in susceptibilities. Formal medical education is supported by funding from the vaccine industry, which has no beneficial interest in sponsoring any field of study that might lead to a reduction in vaccine uptake.

[24] In other words, Dr. Bark purports to be an expert in a field that has not been recognized by her industry, and for which she has received no training. Dr. Bark continues at paragraph 7:

> The development of expertise in vaccine adversomics requires extensive study of relevant medical research. Some of that study I have demonstrated by way of the Notes and References in my report. It is augmented by my substantial clinical experience in this area, as stated in paragraph 4.b above.

[25] The difficulty with this is that vaccine adversomics is not a recognized field, none of the references she referred to are attached to the report, and it is difficult to know whether or not this is junk science or a recognized emerging field. Presented as it is in her report, her theory or opinion sounds like a conspiracy theory.

[26] Perhaps what is most damaging to the reliability of this report is that Dr. Bark does not have any stated expertise in immunology, virology, epidemiology, genetics or any other field that might lend strength to her stated opinions. Indeed, she appears to lack any expertise other than anecdotal experiences. Anecdotal experiences cannot form the foundation for an expert opinion since such anecdotes could be obtained from any parent, teacher, medical office assistant, or indeed any other member of the community where immunizations and illness have been experienced. There are none of the usual clinical controls or trials expected in reports with solid foundations.

[27] Dr. Bark proceeds to premise her report not on anything specific to the child she was preparing the report for but on what appears to be her position that targeted infectious diseases pose very low risk to the population; there are very high rates of adverse effects reported from vaccine clinical trials; clinical trials indicate higher true rates of adverse effects; and very high rates of adverse effects are evident from government surveillance, among others.

[28] One of the diseases that she claimed is very low risk to contract is measles. That is simply not the case. She also identifies tuberculosis which is also not eradicated in some parts of Canadian communities. She believes these vaccinations are unnecessary because the identified or targeted diseases have essentially disappeared from developed countries. She overlooks the higher risk of contacts derived from traveling in foreign countries.

[29] In short, without a proper examination of the veracity of Dr. Bark's findings subjected to cross examination, the report cannot provide the assistance D.A.T. believes it provides.

[30] In contrast, D.R.B. has produced two binding Supreme Court decisions, excerpts from UN Foundations Measles Initiative, excerpts from World Health Organization Measles Key Facts, excerpts from Health Link BC, and excerpts from the Centre for Disease Control, BC Centre. D.R.B. also provided an article from the Telegraph purporting to be an opinion from England's top doctor blaming social media fake news for the low MMR vaccine take uptake. For the same reasons that I do not find Dr. Bark's report reliable, I must disregard this news article. It does not indicate to me what Dr. Sally Davies' qualifications are, what clinical studies or evidence she has relied upon or otherwise. While it would appear that she certainly comes from a more likely background for reliability, none of that evidence is before me for consideration.

[31] However, I can and do accept the facts laid out in the balance of the materials provided by D.R.B. I find them reliable resources upon which we as a community rely in order to make important medical decisions not only for ourselves but for our community as a whole.

[32] The BC Centre for Disease Control in its Measles Vaccine circular says that serology testing to establish immunity to measles is not routinely recommended before or after vaccination. It then goes on to discuss how adults may have acquired immunity to measles from natural infection if born before January 1, 1970. Born thereafter, individuals require laboratory evidence of immunity or documentation to that effect. In other words, both C.D.B. and A.J.B. must either be able to establish immunity through serology or by documentation. At this point, they can do neither.

[33] Not everyone is recommended to get the immunizations. The correspondence provided to the parents in this case specifies certain people who should not receive the vaccine. These boys do not fall into that category. In addition, the US Department of Health and Human Services Centre for Disease Control and Prevention also recommend against vaccination for those who have had a prior life threatening allergic

reaction to a dose of MMR or any part of the vaccine. The vaccine components are available on request. It recommends against vaccinating pregnant women, vaccinating people with weakened immune systems due to disease such as cancer or HIV/Aids or who are undergoing such treatments as radiation, immunotherapy, steroids or chemotherapy. It also recommends against vaccinating people with parents, brothers or sisters with a history of immune system problems or people who have a condition that make them bruise or bleed easily. In other words, not everyone should be vaccinated. These are the people protected by herd immunity rather than vaccine. These boys do not fall in those categories.

[34] In a 2012 decision of Wedge J. in *M.J.T. v. D.M.D.*, 2012 B.C.S.C. 863, Justice Wedge was tasked with assessing the question of immunization and had this to say:

> [88] Mr. T. sought the opinion of Dr. David Scheifele, a Professor of Pediatric Medicine at the University of British Columbia and practicing physician at B.C. Children's Hospital. Dr. Scheifele is recognized as a leading expert in pediatric infectious diseases and immunization. He was appointed to the Sauder Family Chair in Pediatric Infectious Diseases (UBC) in 1995. He was the founding chair of the Canadian Association for Immunization Research and Evaluation in 2000.
>
> [89] Dr. Scheifele has had a career-long special interest in vaccines and immunization. He chaired the Infectious Diseases and Immunization Committee of the Canadian Paediatric Society from 1981 to 1988. He chaired the National Advisory Committee on Immunization from 1993 to 1997, having previously served for 10 years as a committee member. He was the principal author of the 1998 edition of the Canadian Immunization Guide. Since 1988 he has been the director of the Vaccine Evaluation Center (VEC) at B.C. Children's Hospital. The VEC was the first academic vaccine testing centre in Canada and remains one of the country's largest and most active centres. He has been involved in over 200 vaccine-related studies and publications.
>
> [90] Dr. Scheifele has a particular interest in vaccine safety. In 1992 he helped establish a nationwide surveillance network among twelve pediatric centres known as the Canadian Immunization Monitoring Program, Active (IMPACT). This program is federally funded and managed by the Canadian Paediatric Society. The purpose of the program is to identify children hospitalized with adverse events following immunization or with potentially vaccine-preventable infections. He has overseen the data centre for this program for the past 20 years and has co-authored a number of reports on vaccine safety. He has given dozens

of lectures on childhood immunization at local and national conferences. He served as the Distinguished Lecturer at the 2010 Canadian Immunization Conference.

[91] A familiar task for Dr. Scheifele is the evaluation of children prior to vaccination. He is frequently asked to advise about vaccinations for children with unusual conditions such as possible allergies or previous adverse reactions following vaccination …

[94] Dr. Scheifele prepared a written opinion for the Court concerning the question of the risks and benefits of V.'s immunization. He also addressed the question of the benefits and risks of childhood immunization generally, and the risks facing an unvaccinated child in Vancouver. Dr. Scheifele was called as a witness by Mr. T. to speak to his qualifications and opinion, and to answer questions in cross-examination by Ms. D.

[95] In response to Ms. D.'s questioning, Dr. Scheifele explained that aluminum adjuvants are important components of some vaccines because they enhance the immune response to the vaccine. He noted that researchers at the United States Food and Drug Administration recently modelled carefully the amounts of aluminum in infants after infant vaccinations using the best available human data. They found that the amount of aluminum in infants' bodies from vaccines and diet was significantly less than the levels determined to be safe. The researchers concluded that episodic exposures to vaccines containing aluminum adjuvants continue to present an extremely low risk to infants, and that the benefits of using those vaccines outweighed any theoretical risks.

[96] Ms. D. asked Dr. Scheifele whether he could guarantee that V. would not suffer any adverse reaction to any of the vaccinations recommended for children. Dr. Scheifele was clear in his response: medical science can never offer such a guarantee. He reiterated his opinion that the risk of V. suffering an adverse reaction is extremely low, and the benefits to V. of receiving the vaccinations significantly outweighed the theoretical risks.

[97] Addressing Ms. D.'s concern that vaccinations may cause autism, Dr. Scheifele said that studies have convincingly shown that autism does not result from immunization. In any event, autism becomes evident during early childhood; this is no longer a concern for V., who is developmentally normal.

[98] Dr. Scheifele also addressed Ms. D.'s concerns about the fevers and seizures she and her siblings suffered following vaccinations as children. He said the following:

> The "baby shot" formulation used at that time contained the first generation pertussis vaccine which consisted of whole, killed organisms. About 50% of children had fever shortly after this

> vaccination so such a history is not surprising. Since 1992 Canada has used a second generation (acellular) pertussis vaccine as part of the "baby shot," which causes fever in fewer children (15%), with less likelihood of high fever [less than 5%]. Thus V. is unlikely to react to the modern vaccine as his mother and her siblings did to the older vaccine.
>
> ... [T]he first generation pertussis vaccine sometimes caused high fever, sufficient to trigger convulsions in seizure-prone individuals. Children can be seizure-prone from a variety of causes but the most common is "benign familial febrile convulsions." This condition occurs in about 5% of the population and is expressed only during early childhood, triggered by fever. The condition is outgrown by mid-childhood and does not progress to epilepsy or result in neuro-developmental impairment ... Parent to child inheritance of this trait does occur but is expressed in a minority of offspring.

[35] Dr. Scheifele also pointed out that since the child in question in his case had never had seizures resulting from colds, ear infections and cough illnesses, it was unlikely that vaccine related fevers would do so either. Such is the case here before me.

[36] Wedge, J. also considered Dr. Scheifele's opinion with respect to risks facing unvaccinated children:

> [101] Dr. Scheifele is of the opinion that there are certain risks facing an unvaccinated child in Vancouver. On that issue, he stated the following:
>
> > Unimmunized children, as with V., typically avoid vaccine-preventable infections like measles and whooping cough because most children around them in school or in the community are immune following immunization. With high levels of population protection, contagious diseases cannot readily circulate. However, this so-called herd immunity or indirect protection has limits. A study in Colorado, where childhood immunization rates resembled those in BC, showed that unimmunized children were 22 times more likely than immunized children to develop measles and 6 times more likely to develop pertussis/whooping cough ... Such observations reflect the highly contagious nature of common childhood infections. If overall vaccination rates slip, infections previously held at bay can return to cause outbreaks among susceptible children and adults. Given that childhood vaccination rates in BC are suboptimal (70%-80%), one can predict that periodic outbreaks of some vaccine-preventable infections will occur and could involve V. If he is an adolescent at the time, the course of measles or chickenpox illness is likely to be more severe than in infancy, with greater risk of complications and

> hospitalization. Travel can also increase risk of exposure. V.'s mother spoke of possibly travelling with him to California, likely unaware that the state is experiencing the largest epidemic of pertussis since 1958, with over 9,000 cases in 2010 and over 2,000 cases in 2011. Under-immunized children were contributors to the situation.
>
> [102] Dr. Scheifele addressed in his opinion the risks of each vaccine-preventable infectious disease against which children in British Columbia are routinely vaccinated. There are 14 such diseases. Six of them -- tetanus, diphtheria, pertussis (commonly known as whooping cough), polio, *haemophilus influenzae b* invasive infections (such as meningitis) and hepatitis B -- are included in a "six-in-one" vaccine given to infants. Meningococcal C and pneumococcal 13-valent vaccines are also given to infants. Measles, mumps, rubella and chickenpox vaccines are given in the second year of life. Apart from booster doses, adolescents are offered hepatitis B vaccine (if not previously given), human papillomavirus vaccine (administered to girls only) and 4-valent meningococcal vaccine. Young children are also offered influenza vaccine.
>
> [103] It is Dr. Scheifele's opinion than none of the vaccinations given for these 14 infectious diseases poses any greater risk of significant adverse effects to V. than to any other child his age. All of the vaccines are well-tolerated by children. Most importantly, it is his view that the benefits of securing V.'s protection from each of the 14 diseases far outweigh the limited risks of vaccine side effects.

[37] Wedge, J. contrasted this to the evidence of Dr. Christopher Shaw, a neurobiologist researcher and professor at the Department of Ophthalmology at UBC. He was not a medical doctor and had no expertise in pediatric infectious diseases or pediatric immunization. He had become interested in examining the question of whether adverse reactions, including possible neurological disabilities, could be caused by aluminium adjuvants in vaccines. As in the case before me, Dr. Shaw had no expertise to provide the opinions he presented to Wedge, J. She rejected Dr. Shaw's qualifications and opinion.

[38] This decision was considered by Affleck, J. in another 2012 Supreme Court decision *Vincent v. Roche-Vincent*, 2012 B.C.S.C. 1233. Affleck, J. relied upon Wedge, J.'s findings in *M.J.T. v. D.M.D.* and reached the same conclusion that the risks with a vaccination were extremely low and the benefits significantly outweighed them. I reach the same conclusion absent any properly qualified expert evidence to the contrary subsequent to 2012. There is no such evidence before me.

[39] That does not mean to say that parents should blindly follow whatever medical advice they are given. Errors - sometimes catastrophic ones - can be made by the pharmaceutical and medical industries. It remains the responsibility of the parents to hear the advice, ask the questions, do the research and reach the appropriate decision for their children.

[40] It may well be that vaccine adversomics will gain some traction and some credibility over time, just as diseases and illnesses such as depression, fibromyalgia, and lupus are now recognized, and are no longer dismissed - sometimes derisively. The reliability and credibility of such a field of study must derive from thorough study, balanced expertise and objectivity.

[41] The current best evidence is that vaccination is preferable to non-vaccination, that it is required in order to protect those who cannot be vaccinated as well as to protect ourselves, and that any adverse reaction the person may have from the vaccine is largely outweighed by the risk of contracting the targeted disease. Both boys are considered to be in good health and have no contraindications in their medical records that would suggest they should not be vaccinated. They are active, social and connected children. They are exposed in their home and social environment to the risk of these diseases and should be vaccinated to be protected against them.

[42] I am also concerned that D.A.T.'s unsupported concerns regarding x-rays have led to unnecessary and painful dental procedures for at least one of these boys. This is not in their best interests.

[43] I am satisfied on the evidence that the parental responsibility for the medical and dental treatments for both boys should lie solely with D.R.B. I order that C.D.B. and A.J.B. be vaccinated in accordance with Immunization BC's immunization schedule and the recommendations of their family doctor. I further order that D.R.B. have full parental responsibility for the medical and dental treatment of C.D.B. and A.J.B. going forward. However, D.R.B. is required to advise D.A.T. of any medical appointments, recommended treatment, and course of action with respect to the medical or dental treatment of these boys.

[44] I make two exceptions. If either child presents with a medical emergency and D.A.T. is unable to contact D.R.B. in a timely manner, then she may authorize such emergency treatment as may be necessary. Secondly, if D.A.T. wishes to proceed at her own cost with no contribution from D.R.B. with having gene testing and titer testing done of her sons, then she has liberty to make those arrangements. She must provide D.R.B. with any appointments for such testing, provide the results to D.R.B., and copy him with any reports from any practitioners performing those tests. To be clear, only D.R.B. may decide after reviewing those reports and in consultation with his own medical practitioner whether any further vaccination should take place. This is solely for D.A.T.'s peace of mind and I make the exception only because it is not contrary to the best interests of the children – even though the testing is not specifically and positively in their best interests. There is to be no delay in obtaining vaccinations while D.A.T. makes those arrangements.

[45] Mr. Ferguson shall prepare the order. D.A.T.'s signature is not required.

_____

S.D. Frame
Provincial Court Judge