

In the Provincial Court of Alberta

Citation: V.N. v. P.S. (P.B.), 2014 ABPC 86

Date: 20140410

Docket: 121309041F101001

Registry: Calgary

Between:

V.N.

Applicant

- and -

P.S. (P.B.)

Respondent

Corrected judgment: A corrigendum was issued on October 1, 2014; the corrections have been made to the text and the corrigendum is appended to this judgment.

Judgment of the Honourable Judge V.T. Tousignant

INTRODUCTION

[1] The Court has been asked to interfere with the rights of a sole guardian to the extent necessary to order contact by a grandmother to her grandchild.

[2] The Applicant is the paternal grandmother (Grandmother or Mother-in-law) of M.B. (M.S., the Child) born June 2009. The Respondent is the Child's mother (Mother or Daughter-in-law or Wife) and the Child's only guardian, the father (Father or Husband) having passed away on August 7, 2012. The Mother and Father are referred to collectively as the Parents.

[3] The Father resided with his mother (the Grandmother) essentially all of his life. After the Parents' marriage in May 2008, the Mother immediately came to reside with the Father and Grandmother in the Grandmother's home.

[4] Tensions developed amongst the adults, culminating in May 2012, the significance of which will be discussed later in these Reasons. The Mother says that she, the Father and Child moved out of the Grandmother's home permanently on May 28, 2012 because of the Grandmother's interference in their lives. The Child was two years of age at that time.

[5] The Grandmother denies that the Parents permanently left her home on that date. She believes that they simply went on a vacation to British Columbia.

[6] What is clear is that the Father significantly distanced himself from his mother (the Grandmother) on May 28, 2012. The Mother, Father and Child never returned to live in the Grandmother's home after that date.

[7] The Father died on August 7, 2012. On October 31, 2012, the Grandmother filed a Claim seeking contact with the Child.

[8] For the Reasons which follow, the Grandmother's application is dismissed.

ISSUES

[9] The following issues are to be determined:

- (a) Does the Grandmother require leave of the Court to make a contact application?
- (b) If the Grandmother requires leave of the Court to make a contact application, should the Court grant that leave?
- (c) Whether or not leave is required or granted, is it in the best interests of the child to grant a Contact Order in favour of the Grandmother?

THE LEGISLATION

Guardianship

[10] Section 21(6) of the *Family Law Act*, S.A. 2003 *as amended* (*FLA*) lists the powers of guardians, including the following:

- (a) to make day-to-day decisions affecting the child, including having the day-to-day care and control of the child and supervising the child's daily activities;
- (c) to make decision about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities;
- (e) to decide with whom the child is to live and with whom the child is to associate; and
- (m) to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.

[11] Section 21(5) of the *FLA* sets out a guardian's responsibilities in respect of a child. It states that:

Except where otherwise limited by law, including a parenting order, each guardian has the following responsibilities in respect of the child:

- (a) to nurture the child's physical, psychological and emotional development and to guide the child towards independent adulthood;
- (b) to ensure the child has the necessities of life, including medical care, food, clothing and shelter.

[12] Section 21(6) of the *FLA* lists the powers each guardian has. It reads as follows:

Except where otherwise limited by law, including a parenting order, each guardian may exercise the following powers:

- (a) to make day-to-day decisions affecting the child, including having the day-to-day care and control of the child and supervising the child's daily activities;
- (b) to decide the child's place of residence and to change the child's place of residence;
- (c) to make decisions about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities;
- (d) to make decisions regarding the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (e) to decide with whom the child is to live and with whom the child is to associate;
- (f) to decide whether the child should work and, if so, the nature and extent of the work, for whom the work is to be done and related matters;
- (g) to consent to medical, dental and other health-related treatment for the child;
- (h) to grant or refuse consent where consent of a parent or guardian is required by law in any application, approval, action, proceeding or other matter;
- (i) to receive and respond to any notice that a parent or guardian is entitled or required by law to receive;
- (j) subject to the Minors' Property Act and the Public Trustee Act, to commence, defend, compromise or settle any legal proceedings relating to the child and to compromise or settle any proceedings taken against the child;

- (k) to appoint a person to act on behalf of the guardian in an emergency situation or where the guardian is temporarily absent because of illness or any other reason;
- (l) to receive from third parties health, education or other information that may significantly affect the child;
- (m) to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.

[13] Section 21(7) of the *FLA* states that:

A guardian who exercises any of the powers referred to in subsection (6) shall do so in a manner consistent with the evolving capacity of the child.

Contact

[14] The Grandmother is not a guardian. Her application is for a contact order under Division 3 of the *Family Law Act* which reads as follows:

35(1) The court may, on application by any person, including a guardian, make an order providing for contact between a child and a person who is not a guardian.

(2) Subject to subsection (3), a person other than

(a) a parent or a guardian of a child, or

(b) a person standing in the place of a parent

may not make an application under this section without the leave of the court on notice to the guardians.

(3) A grandparent of a child does not require the leave of the court to make an application under this section if

(a) the guardians are the parents of the child and

(i) the guardians are living separate and apart, or

(ii) one of the guardians has died, and

(b) the grandparent's contact with the child has been interrupted by

(i) the separation of the guardians, or

(ii) the death of the guardian.

(4) In determining whether to grant leave under subsection (2), the court shall consider the best interests of the child, including

- (a) the significance of the relationship, if any, between the child and the person for whom contact with the child is proposed, and
 - (b) the necessity of making an order to facilitate contact between the child and the person for whom contact with the child is proposed.
- (5) Before the court makes a contact order, the court shall satisfy itself that contact between the child and the person for whom contact with the child is proposed is in the best interests of the child, including whether
- (a) the child's physical, psychological or emotional health may be jeopardized if contact between the child and the person for whom contact with the child is proposed is denied, and
 - (b) the guardians' denial of contact between the child and the person for whom contact with the child is proposed is unreasonable.
- (6) The court may, in a contact order, provide for contact between the child and the person for whom contact with the child is proposed in the form of visits or in the form of oral or written communication or any other method of communication, and may provide for any related matter as the court considers appropriate.

EVIDENCE

[15] In order to analyze the issues, it is necessary to set out fully the facts of the case.

[16] The Grandmother was born in Kenya on August 20, 1955. She became a widow at the age of 27. She has a large extended family in Calgary, including 11 nieces close in age to the Mother.

[17] The Respondent is the Child's Mother and sole remaining guardian. She is 34 years old, having been born in June 1979.

[18] The Mother obtained all of her education in India, namely a Master's degree in History and a post-graduate diploma in Computer Application and Information Technology. She also completed partial courses in Cosmetology and Interior Design.

[19] After arriving in Canada, the Mother learned that with her Master's degree in History she could obtain a teaching position if she attended university for two more years. After her Husband's death, she decided to go back to school but after receiving what she referred to as a letter from the Court, she had to pay Court fees instead of her school fees. I understood that to mean that after being served with a copy of the Grandmother's claim, she incurred legal fees and was unable to pay tuition fees, and so has been unable to return to school.

[20] The Mother testified that she has lived with her parents since June 11, 2012, when the Father was hospitalized.

[21] The Mother is currently employed in a retail sales position. She earns \$10.97 an hour and works approximately 38 hours a week, sometimes six days a week.

[22] The Father was born in June 1977 so he was approximately two years older than the Mother.

[23] The Child was four-and-a-half years old at the time of trial.

[24] The Mother estimated the Father and his extended family to include approximately 30 individuals.

[25] The marriage of the Father and Mother was arranged by family members. According to the Grandmother, at the request of a maternal uncle, the Grandmother introduced her son to the Mother whom he later married and "... he [her son] was very happy to meet her, and I said if there is any chemistry or you feel this is who you want to get married to let me know and then we can go from there and that is what happened."

[26] The Mother explained that she met the Father through family members who then arranged the marriage. The Father never did propose to her.

[27] The Mother described her family as a "traditional Indian family", meaning being brought up adherent to family values, including respecting one's parents, and respecting one's husband's family after marriage.

[28] The Mother immigrated to Canada in June 2007. She was introduced to her future husband in October or November 2007. They married the following May. During the intervening seven to eight months, according to the Mother, the parties did not date. They did go out for dinner but never went out to movies or parties.

[29] During that time, the Mother described her relationship with her future husband as being "good friends". She testified that it was the Grandmother's sister, A.A., who first brought up the idea of the Mother marrying the Father by speaking to the Mother's uncle, H.V. The Grandmother eventually approved of the Mother, and a group meeting with the Father then occurred in October or November 2007 to solidify the arrangement.

[30] Immediately following the marriage, the Mother moved to be with her Husband in the Grandmother's home.

[31] The Grandmother's evidence regarding life in her home included the following:

- (a) The Grandmother was present in the labour room for the Child's birth, at the Mother's request.
- (b) The Mother and Child returned to the Grandmother's residence after the Child's birth, following which the Grandmother's extended family visited almost every day.
- (c) When the Child was seven months old, the Grandmother provided daytime care for the Child for approximately 20 days while the Mother attended her brother's wedding in India.
- (d) The Mother failed to perform the duties the Grandmother expected of her. The Grandmother testified that "... my daughter-in-law's [the Mother's] duties were to look after my granddaughter and do a few chores in the

house, while my son and myself we went out to work. And the chores which were never done and I had to come back and do them always ...”

- (e) When asked about the Father and Mother’s contributions to household expenses, the Grandmother responded that “... the only responsibilities I had given [the Father] was [sic] to pay the telephone bill and the cable bill and the gas bill. That was their responsibility.”
- (f) The Grandmother paid the mortgage payment, all the groceries and “everything” including paying for all of the Father and Mother’s personal shopping.
- (g) The Mother was welcome to attend all of the Grandmother’s parties and get-togethers.

[32] The Mother testified that she and the Father tried to attend all paternal family functions because if they did not, family members would phone asking why they were not in attendance and asking if the Father did not want to have any interaction with his family, after all they had done for him. They accused the Father of not wanting to have any interaction with his family, now that he and the Mother had married. The Mother described the involvement of the Father’s family to be like a “controlling relationship” and, as a result, the Mother and Father “... always try to go to the events, parties, everywhere, wherever we were told.”

The Relationship between the Grandmother and the Mother

[33] The Grandmother’s evidence regarding her relationship with the Mother included the following:

- (a) The Grandmother at first described herself as having had a “wonderful relationship” with the Mother, without problems or issues, and that the Mother was more of a daughter to her than a daughter-in-law.
- (b) When asked to describe her relationship with the Mother following the birth of the Child, the Grandmother responded “Wonderful. We never had any issues. We never had any problems until today. I am speechless as to – of this behaviour. I don’t have an answer for that.”
- (c) The Grandmother also testified that her relationship with the Mother soured at the end of May 2012.
- (d) Referring to the time when the Father was hospitalized, soon after the departure of the Parents and Child from the Grandmother’s home on May 28, 2012, the Grandmother stated “I had a good relationship with [the Mother]. Even when I went to the hospital I told [the Mother] we will keep our sanity because of [the Father] and we had a good relationship there. We talked to each other in a cordingly [sic] - in an accord way and we had a good relationship there. We never had any arguments there as far as I remember. I never had any arguments with [the Mother].”

- (e) Later, in cross-examination, the Grandmother denied she had any conflict with the Mother.

[34] Despite describing her relationship with the Mother as wonderful and that the two women never had any issues or problems “until today”, the Grandmother then testified that her relationship with the Mother continued only until May 2012, two-and-a-half months before her son passed away. At the time, neither the Mother nor her son had worked in one-and-a-half to two years. The Grandmother testified that she suggested that the Mother find a part-time job “... and I could have my granddaughter – we could put her in a daycare so she could help me financially at home. And that’s the time the problems started and she thought I was trying to throw her out of the house. I really couldn’t carry anymore, the financial burden, so all I requested her was to [sic] if she could find a part-time job.”

[35] According to the Grandmother, the Mother stated that she did not want to work.

[36] According to the Mother, an uncle at one time had offered her a part-time job at his gas station at \$11.00 an hour. The Grandmother told her that she was not going to work for \$11.00 an hour and to go work at a 7-Eleven instead. The Mother did not take the job.

[37] When it was suggested to the Grandmother that she never ate any food that the Mother cooked, the Grandmother’s response was “She never cooked.”

[38] The Grandmother insisted that it was she who cooked all of the food in the house. Even though she left the home early (approximately 5:30 a.m.) and at times did not get home until 11:00 p.m., the Grandmother insisted that “... over the weekend I would be cooking for the whole week. I did all the cooking in the house, not [the Mother].”

[39] The Mother testified that because the Grandmother was working “all the time” she (the Mother) cleaned the house, did the laundry and cooked food which the Grandmother refused to eat. The Grandmother never ate with her and the Father except occasionally when guests were present. The Grandmother had informed the Mother not to cook for her because she did not like the Mother’s cooking.

[40] In cross-examination, the Grandmother denied several suggestions put to her regarding her relationship with the Mother. These included that:

- (a) Unless there was company, the Grandmother, Mother and Father never sat down and ate at the table together.
- (b) She did not want to be in the same room as the Mother.
- (c) If she found herself in the same room as the Mother, she would leave.
- (d) She encouraged her son to leave the Mother and Child.
- (e) On several occasions, in front of the Child and the Mother, she had told the Father that he had to choose between herself and the Mother.
- (f) At one point, she had asked the Mother and Father to move out of her home.
- (g) Marrying the Mother was the biggest mistake the Father had ever made.

[41] The Grandmother points to the fact that she had taken the whole family out for breakfast at the Hyatt in May 2012, at a time the mother claimed the relationship between the two of them was not good.

[42] P.A. testified on behalf of the Grandmother. She is the Grandmother's niece and the Mother's aunt. She grew up with the Father in Kenya. She described the Father as her "cousin/brother" and the Mother as "like a sister-in-law" to the family's 13 cousins, all of whom welcomed her into the family. As an example, the family threw a bridal shower for the Mother. The witness claimed that the Mother had been a close member of the family until the family were told they could not accompany the Grandmother on contact visits with the Child because they were a bad influence.

[43] P.A. claimed never to have witnessed any bad feelings, any spat, or any bad words between the Grandmother and Mother, nor between any member of the extended paternal family and the Mother.

[44] The witness testified that there were never any arguments among these individuals but that there was some tension around the time the Father was hospitalized regarding "... getting a job and helping in the family, that sort of thing, but not with the extended family and her ever or me and her ever." This tension appears to have been related to the suggestion by the Grandmother that the Mother should get a job and help with the family.

[45] According to P.A., the whole family, including the Father and Mother, got together approximately twice a week before the witness's Grandmother passed away on a date unspecified. After that, the same thing occurred once every week or two.

[46] P.A. testified that the Grandmother loved the Mother and that P.A. never heard the Grandmother say anything disparaging to the Mother. She spoke of the Grandmother sending the Father and Mother off to Banff for a weekend and to the Hyatt for Mother's Day brunch. She described the relationship among the Grandmother, Father and Mother as a very loving one.

[47] H.B. testified on behalf of the Grandmother. She was employed by the same firm as the Father, most recently as his supervisor. She described the relationship between the Father and the Grandmother as being extremely close. In fact, it had always surprised her that a son the Father's age was as close as he seemed to be with his mother. In her words, "Through his early employment with us, there were multiple days where there were many, many, many phone calls back and forth between them."

[48] In cross-examination, the witness admitted that she had never seen the Child with the Grandmother or the Mother except in pictures. She admitted that she did not know the state of the relationship between the Grandmother and Mother and had never seen them interact together.

[49] S.C. also testified on behalf of the Grandmother. She was a work associate of the Father from 2009 until he became ill. She described her relationship with the Father as being very good friends. She was unaware of any problem between the Father and the Grandmother or between the Mother and the Grandmother.

[50] In cross-examination, the witness admitted she had never seen the Child with the Grandmother. She likewise did not know about the relationship existing between the

Grandmother and Mother. She had never seen the Grandmother and Mother together nor had she observed any interaction between them.

[51] The Mother's evidence regarding her relationship with the Grandmother included the following:

- (a) On the day the Mother moved into the Grandmother's house, the Grandmother made it clear, that "the mother-in-law" (in this case the Grandmother) expected "the daughter-in-law" (in this case the Mother) to essentially follow the mother-in-law's lead.
- (b) The Grandmother laid down rules she expected the Mother to follow, including:
 - (i) The Mother was to be known not by her maiden name but by the surname of the Grandmother and the Father;
 - (ii) If she wanted to go out of the home she first had to obtain the Grandmother's permission;
 - (iii) If the maternal grandparents wanted to come into the house, the Mother was to first inform the Grandmother so that she could be present;
 - (iv) The Mother was not to talk about her family;
 - (v) Whenever she went to visit her own family members, she was to always smile so that no one would know if there was stress or anything going on in the Grandmother's house; and
 - (vi) The Mother was not to talk about the directions the Grandmother was giving to her.
- (c) The Grandmother expected the Mother to be a perfect daughter-in-law so that the Grandmother could boast of having gotten a very good daughter-in-law.
- (d) The Mother perceived two personalities in the Grandmother. She was one way with her family and different with the Mother and Father.
- (e) The Grandmother would remind the Mother that in the Indian tradition, the Mother's role was that of daughter-in-law and that she was not to try to fill the role of the Grandmother's daughter.
- (f) The Grandmother was boss of the house, meaning she wanted to know everything that was going on in the home, including what cooking and house cleaning was taking place, whether the Mother had done the laundry, who had telephoned the home, who came in, and who went out.
- (g) As the boss of the house, the Grandmother wanted to know everything that was going on in relation to the Mother and the Father. This even occurred during the Father and Mother's honeymoon
- (h) As the boss of the house, the Grandmother would telephone the house every couple of hours wanting to know what was going on.

- (i) If the Grandmother ever telephoned the home and the Mother did not answer, the Grandmother would telephone the Father to find out why the Mother was not picking up the telephone. It happened on at least one such occasion that when the Father called home to find out where the Mother was, she had to explain that she had not answered the telephone because she had simply gone to the bathroom.
- (j) Similarly, if a member of the Grandmother's family telephoned and the Mother did not answer, the family member would telephone the Grandmother and ask why the Mother was not answering the phone and why the Mother was ignoring them.
- (k) The Grandmother required the Parents to share with her any monetary gifts they received. The Grandmother insisted on this arrangement because that was how things were done before the Mother came into the house. In the Mother's words, "So she took the half part and we will take the half."

[52] According to the Mother, in the Indian tradition it is important that the family resides together. The maternal grandmother had lived with her mother-in-law until the family arrived in Canada. The Mother's sister lives with her mother-in-law. The Grandmother's sister-in-law lives with her mother-in-law. The Grandmother previously lived with her own mother-in-law in Kenya.

[53] The Mother described it as an Indian family value that when a girl comes into a family, she keeps the family together instead of breaking it up and taking the son from the home.

[54] The Mother testified that she used to respect the Grandmother "a lot" simply because she was her Husband's mother. The Mother regarded herself as the one who had come into the home, and wanted to demonstrate that she was the right choice for the Grandmother's son.

[55] Things began to change when, a few days after the marriage, the family was about to travel to a family dinner in the Parents' car. The Mother sat in the front seat of the vehicle with her Husband. The Grandmother became angry at her and didn't speak to either Parent at the dinner. Upon returning home, the Mother asked what the problem was and the Grandmother responded that as a sign of respect, the Mother should know that the Grandmother needed to sit with her son, and that the Mother was to sit in the back seat. The Grandmother found it very disrespectful to have to sit in the back seat of the car and felt that the Mother was coming between her and the Father. The Grandmother apparently felt she did not have as much control over her son as previously.

[56] When the parties married, the Father was working as a credit manager. He usually worked from 7 a.m. to 3:30 p.m. The Mother was working for the Royal Bank of Canada when she went on what was described as maternity leave. The Mother clarified that she did not actually go on maternity leave. That was the description the Grandmother insisted the Mother provide for no longer working at the Royal Bank. In fact, the Mother had been fired. She testified that the Grandmother had given the Parents an NSF cheque. When the Father went to access the funds, he used the Mother's debit card which was a contravention of bank rules and because of that, the Mother was terminated.

[57] The Mother testified that she did the laundry and ironing for everyone in the home until accidentally burning one of the Grandmother's shirts. After that, the Grandmother did her own ironing.

[58] The Mother testified that while her duties were to do the laundry, cooking, cleaning and taking care of the baby, the Father used to help with cleaning. When the Grandmother learned of the Father helping out, the Grandmother "... get mad at me and [the Father] that mens [sic] are not supposed to do these jobs. She doesn't like [the Father] to do household things."

[59] In cross-examination, the Mother confirmed that she found the Grandmother overbearing.

[60] The Mother testified that after the birth of the Child, she took care of the infant "24/7" except when she went to India for her brother's wedding for 17 days. She wanted to take the Child along, but the Grandmother gave her an ultimatum. If the Mother were to take the Child along, she would not be welcome back in the home. As the Mother explained, "[S]he didn't even let me to take my daughter to India." Encouraged by her Husband "for the peace of the house" the Mother went to India without the child.

[61] The Mother's understanding was that during her trip to India, the Father worked fewer hours so that he could care for the Child. When the Mother would call home, the Father would be at home taking care of the child. She did not know whether, during the trip, the Grandmother took time off of work to help care for the Child.

[62] According to the Mother, the only other time the Mother left the Child in the care of the Grandmother was for approximately five hours on a couple of occasions when the Mother accompanied the Father to chemotherapy.

[63] According to the Mother, on weekends she and the Father would be occupied with the Child and the Father would take her downstairs to play with the Grandmother for a couple of hours.

[64] The Parents and Child resided in the basement of the home until after the Father's surgery in April 2011, when they moved upstairs and the Grandmother moved down.

[65] The Mother testified that she and the Child and Father would attend birthday or anniversary get-togethers with extended family (including that of the Grandmother) one to three times a month. Other than those special occasions, she was not invited out by any of the approximately 30 extended family members, nor did she develop relationships with any of them.

[66] According to the Mother, the Father paid all the house bills, including electricity, water, gas, cable and phone, including cell phones for the three adults. The Father also bought groceries for the household.

[67] The Mother testified that after her marriage, the Father did not telephone his mother as often as previously, and the Grandmother would sometimes tell her that she was coming between the son and his mother and that she should not be doing that. The Father tried to encourage the Grandmother to get along with the Mother. The Mother resolved to do whatever she could and told the Father that even if she hadn't made a mistake, she would apologize to the Grandmother to try and keep her happy.

The Grandmother's Involvement with the Child

[68] It is not disputed that the Father and Mother continued to reside in the Grandmother's home after the birth of the Child in June 2009. The Grandmother's testimony regarding her involvement with the Child included the following:

- (a) When asked to describe her relationship with her granddaughter and the sort of things they did before May 28, 2012, the Grandmother testified that:

"My granddaughter spent whatever time I had on the weekends and the evening or whenever, at that time I wasn't doing two jobs. Since my son was diagnosed with cancer, I was doing only one job at that time because I wanted time with my son. And so I had all the time for [the Child] too, my granddaughter. And whenever my son had to go for his chemotherapy or for any doctor's appointments or anything, I would take time off and be with my granddaughter. And, in fact, on the weekends and the evenings my granddaughter would be with me in the basement or we would go for walks or we would go do something or the other. My granddaughter is very, very close to me. Basically, I have been there since her birth so she has that attachment with me."

- (b) In response to the question how much care the Grandmother provided the Child before May 2012, the Grandmother responded "... like financially - I was there all the time."
- (c) The Grandmother added that "... especially in the last one-and-half years I had a lot of time with [the Child] because my late son had to go for doctor's appointments or chemotherapy, or something or the other. I was there for [the Child]. I was there with [the Child]."
- (d) On the Child's first birthday, the Grandmother had a big party for her with about 150 people in attendance. The Grandmother stated she "... wanted to celebrate [the Child's] first birthday and I thought that was the best way to show [the Child]."

[69] The Grandmother did not specify the frequency of the Father's chemotherapy or doctor's appointments, nor their duration.

[70] According to the Mother, she only left the Child with the Grandmother "... a couple of times during the Father's chemotherapy" for about five hours.

[71] Absent specific detail regarding the amount of time the Grandmother spent with the Child during the evenings and weekends before May 28, 2012, I am left to conclude that when the Father, Mother, Child and Grandmother resided together, the Grandmother and Child spent some time together on weekends and evenings.

The Mother's Jewelry and Wedding Gifts

[72] Evidence was tendered regarding what happened to the Mother's jewelry and wedding gifts. While not pivotal in deciding the issues at hand, the evidence does contribute to an understanding of the background in which the contact issue arose.

[73] It was put to the Grandmother in cross-examination that she had sold the Mother's jewelry and wedding gifts, without the Mother's knowledge or consent. The Grandmother denied doing so, and claimed to have papers from some company showing that the Father and Mother had sold this "stuff". She claimed to have these papers at home and that she could provide them if required. She did not do so nor request to do so during the balance of the trial.

[74] The Mother testified that she had received two gold necklaces from the Grandmother and two from her parents as wedding gifts. She gave these to the Grandmother for safekeeping, as she and her Husband went to stay in a hotel for three or four nights for their first honeymoon. A two-week honeymoon followed later.

[75] In May 2012, the Mother asked the Grandmother for the return of the jewelry. The Grandmother first replied that her sister-in-law, A.N., had the jewelry. The Mother telephoned this woman, who denied having the jewelry. The Mother then again asked the Grandmother for the jewelry and the Grandmother, in reply, asked what the Mother was going to do with it. The Mother explained that she needed it because the Husband was sick and she needed it for the future and might need to sell it. She explained that "I really need it, please give it to me." The Grandmother responded that she had sold the jewelry and did not have it. The Mother received neither her jewelry back, nor any sale proceeds from the Grandmother.

[76] Likewise, the Mother's wedding ring went missing. The Parents and Child went to Jasper in July 2010. The Grandmother telephoned them there and explained that there had been a "small" robbery in the house. The family returned to Calgary the next day and the Mother learned from the Grandmother that only the Mother's wedding ring and one other ring were missing from the home. The Mother asked the Grandmother to make an insurance claim because it was, after all, her wedding ring which was missing. The Grandmother refused because she believed that would cause insurance costs to increase.

[77] The Grandmother subsequently bought a ring for the Mother but before the Parents permanently left the Grandmother's home, the Grandmother took the ring away from her. The Grandmother also demanded the return of all other gifts she had given the Mother.

[78] The Mother was afforded the opportunity to reiterate these details in cross-examination. Counsel for the Grandmother provided two receipts in the name of the Husband indicating he had sold a camcorder, battery charger and a white gold multi-stone ring in July 2011. The Mother did not know anything about her Husband having sold these items but they did not refer to the gold which the Mother subsequently asked be returned by the Grandmother.

Father's Chemotherapy

[79] In cross-examination, the Mother testified that the Father underwent chemotherapy from June 2011 to around May 22, 2012. These treatments were every second week. The Mother drove the Father to all of his chemotherapy appointments in what she described as "his" car.

[80] On one or two occasions, the Grandmother accompanied the Father and Mother to see the oncologist. She did not attend any chemotherapy treatments.

[81] The Father stopped working in September 2011, at which time the Father began to receive Employment Insurance in the amount of approximately \$1,700 a month. In addition, the family received a Child Tax Benefit of \$200 a month. They managed to meet their expenses on that combined amount of \$1,900 a month.

The Vehicle Situation

[82] Before the Parents' marriage, the Grandmother and the Father each had their own vehicle. After the marriage, the Grandmother sold her vehicle and she and the Father travelled together to work in the Father's car. The Mother testified that the Grandmother usually drove the car. One day the Mother asked the Grandmother to use the vehicle because she needed to pick up some medication for the Father. The Grandmother responded that the Mother should tell her parents to buy her a car.

[83] The Mother testified on this occasion that the Grandmother ultimately refused the Mother's request to use what was essentially her family's own vehicle.

[84] The Grandmother's sister, a member of the extended family, commented at one point that the Mother should go to work and purchase her own vehicle. When the Father and Mother moved out of the Grandmother's home, the vehicle remained in the Grandmother's possession.

May 23, 2012 Discussion regarding Daycare

[85] On May 23, 2012, a crucial exchange took place between the Grandmother and Parents regarding the enrollment of the Child in daycare. The Grandmother insisted on enrolling the Child in daycare, despite the fact that the Mother and Father did not want to do so, and despite them having already made other arrangements.

[86] The Grandmother stated, in cross-examination, that on May 23, 2012, she had simply "requested" some identification from the Parents because she wanted to put the Child in daycare.

[87] The Grandmother denied that there was a major disagreement between the Father and her regarding the Child's daycare. She testified that she was simply looking for daycare for the Child. She provided no evidence that she had been requested to do this and downplayed the whole discussion.

[88] The Grandmother's denial of the suggestion that there was a major falling out between the Grandmother and the Parents was as follows: "No, that's not correct at all. That's not correct at all because I have the – from the daycare, the subsidized – what I was looking for them I had it for early May."

[89] The Grandmother denied there had ever been a falling out with her son.

May 23, 2012 Discussion from the Mother's Perspective

[90] The Mother testified that the Father had just undergone his most recent chemotherapy session. The treatments were so strong that the Father was not able to walk and the Mother needed a wheel chair to get him to the car. Sometimes the Father would throw up during a

chemotherapy treatment. Afterwards, he would not be able to feel things or take a shower. In the Mother's words, "He used to feel so cold".

[91] The Mother's evidence relating to the May 23, 2012 discussion included:

- (a) On that day the Father was weak from having only recently received a chemotherapy treatment.
- (b) The Father clearly did not want to discuss the daycare question that day, yet the Grandmother persisted.
- (c) The Father reminded the Grandmother that he had just had chemotherapy and was not able to speak properly. He asked the Grandmother "... so please don't do this". He asked his mother not to create a scene and asked her to give him a couple of days to get better.
- (d) The Grandmother, however, insisted the issue be decided that day.
- (e) The Child was also present during the conversation.
- (f) The daycare issue had not been discussed previously with the Grandmother.
- (g) The Parents had already enrolled the Child in Kid's Choice Pre-School in April and the Child was scheduled to start there in September 2012.
- (h) The Grandmother clearly stated that she wanted to arrange the Child's daycare.
- (i) The Father told the Grandmother that he and the Mother had already arranged for the Child to go to pre-school.
- (j) The Father did not want the Grandmother to interfere in the Child's life. He and the Mother wanted to make the decision regarding which pre-school the Child would attend.
- (k) The Grandmother finally became angry and told the Father that because of the Mother, he was being "mouthy" and was talking back to her. She informed the Father that he had to decide whether he was going to stay with his mother or with his wife. The Father responded that he was "obviously" going to stay with his wife.
- (l) The Grandmother then telephoned three of her family members and met with them in her brother's house to discuss the situation. They all returned to the Grandmother's home, and the family members asked why the Father and Mother were not listening to the Grandmother. They wanted the Father and Mother to apologize to the Grandmother and to give her the documents she had asked for.
- (m) The family members then asked the Father how he could do this to his mother and how he could decide to leave her. They pointed out that the Grandmother had sacrificed all of her life for the Father and this was what she was receiving back from him. They blamed the incident on the Mother.

- (n) The Grandmother then informed the Parents that she wanted to speak to the maternal grandparents and the Mother's sister-in-law. She wanted the sister-in-law to know what type of person the Mother was, and what values her parents had given her.
- (o) The group all therefore went to the maternal grandparents' home, where the Grandmother stated that the Mother could not live with her any longer. According to the Mother, the Grandmother gave an ultimatum. "[E]ither you guys keep [the Mother] or [the Parents] need to move out".
- (p) The Grandmother went on to criticize the Mother by asking what sort of mother didn't potty train her child. She accused the Mother of not being a good human being, of not having any family values, and of not having received any values from her parents.
- (q) The Grandmother then referred to her financial contribution to the house, asked what the role of the Mother was in the home, and demanded to know what the Father thought about the Mother. The Father responded to his mother that he loved his Wife, that she was the mother of his Child and that he was going to support her. The Grandmother's response was "... then we can't live with her."

[92] As a result of the May 23, 2012 incident, Mother and Father decided to leave the Grandmother's home within a week, and ultimately did so on May 28, 2012.

Events on and after May 28, 2012

[93] The events on and after May 28, 2012 were very telling in regards to the state of the relationship between the Grandmother and her son.

[94] Having testified that her relationship with the Mother was "wonderful" up until the present ("until today"), the Grandmother subsequently admitted in cross-examination that her relationship with the Mother had soured by the end of May 2012.

[95] The Mother testified that the Grandmother left the home on May 25, 2012 in the Father's car to help with an engagement party. When she returned the next day the Grandmother advised the Parents to make sure that they did what they had promised, which was to leave by May 28.

[96] On May 28, 2012 the Father had a CT scan at Peter Lougheed Hospital. After the scan, the Parents and Child checked into the Comfort Inn and stayed there until June 11, 2012, the day the Father was hospitalized. As proof of their stay at the Comfort Inn, the Mother produced a bill from the Comfort Inn Hotel in the name of the Father showing an arrival date of May 28, 2012 and a departure date of June 11, 2012.

[97] According to the Grandmother, however, the Father had told her that he would be taking the Mother on a trip to British Columbia to celebrate his and the Mother's wedding anniversary. She testified that on June 3, 2012, the Father asked her for some money and told her that "We're on a holiday and I need some money" The Grandmother emailed \$400.00 into the Father's account that day.

[98] The Grandmother disagreed that her son and the Mother stopped living with the Grandmother because the relationship between the Grandmother and the Mother was conflictual, and that the Mother was stressed by the conflict.

[99] The Grandmother denied that Mother and Father moved out at the end of May, 2012 and then distanced themselves from the Grandmother's entire extended family.

[100] In response to the suggestion that the Parents and Child had moved out of the Grandmother's home at the end of May 2012, the witness P.A. testified that the Father had said he was in Banff or British Columbia with his friend.

[101] The Mother testified that during their stay at the Comfort Inn, the Father had contact neither with the Grandmother nor with anybody else in the family. He did not want any one of the family in his life anymore because of what the family had done. She described the Father as having been "totally shattered" by what had happened on May 23, 2012, and as not wanting to be in touch with any of his family members. He did not tell any of these individuals that the family was living at the Comfort Inn. Rather "[H]e just told them we are out of town."

[102] In response to the suggestion that the Grandmother had thrown the Mother and Father out of her house, the Grandmother's adamant denial includes the words "[H]ow can a Mother throw her son out when she knows he's dying at the end of May? You tell me. I kept them all this time we had been living together and [the Mother] claims I threw my son out when I know he's dying."

[103] According to the Grandmother, the Mother moved out of the home as soon as the Father was admitted to the hospital, which she believed to have occurred on June 9, 2012.

The Father's Hospitalization

[104] The Mother testified that on June 11, 2012 she took the Father to the Foothills Hospital. The Father stayed there for nine days while the Mother and Child stayed at her parents' house.

[105] The Father was discharged from the hospital on June 20, 2012 for two days. Instead of going to the Grandmother's house, he stayed with the Mother and Child at the maternal grandparents' home. He again felt ill and returned to hospital on June 22 or 23 and stayed there until he died on August 7, 2012.

At the Hospital from the Mother's Perspective

[106] The Mother's evidence regarding what transpired at the hospital included the following:

- (a) While the Father was in the hospital, the Mother would leave her parents' home at 6:00 a.m. and travel two hours by bus to get to the hospital.
- (b) She would arrive at the hospital by 7:30 - 8:00 a.m. and then help the Father shower, brush his teeth, shave and have something to eat, if he was able.
- (c) The Father did not want his family to know he was hospitalized on the second occasion (June 22 or 23, 2012) because when he was discharged the first time, the Grandmother had asked the Father if he wanted to go home with her. The Father

replied that he did not want to, and the Grandmother stated “[O]k, you will be back in the hospital soon”.

- (d) When the Father did find himself back in the hospital a couple of days later, he told the Mother “[T]hat’s what my mother wants me to be, so I don’t want to call her right now, ‘til I’m ready to call her”.
- (e) On June 24, 2012, the Mother took the Child to the hospital to celebrate her birthday with the Father. The Mother “again” asked whether the Father wanted the Child to speak with the Grandmother and the Father said “No”. The Grandmother had not called to wish the Child a happy birthday.
- (f) The Father did not speak to any of his family members on his own birthday in June 2012.
- (g) The Father was moved to Unit 47 at the Foothills Hospital. After his second day there, and after speaking with the doctors, the Parents decided that it was now time to tell the family that the Father was again in hospital.
- (h) The Father finally did this because he believed that otherwise, the family was going to accuse the Mother of not letting the Father speak to his family. He therefore decided to call the family before it was too late, and so telephoned the Grandmother to advise he was in hospital.
- (i) After learning of the Father’s hospitalization, none of the extended family ever offered to transport the Mother to or from the hospital despite the fact some lived only a 10-minute drive from her parents’ home. On one occasion, the witness, P.A., dropped the Mother off at the C-Train station because the Father had informed her that the Mother had missed her bus and would otherwise arrive home late.
- (j) In order to avoid conflict, the Father informed the Grandmother that the Mother would be visiting him in the morning and the Grandmother and any family members were to visit in the evening. He wanted this arrangement because he did not want to create more stress for everybody.
- (k) The Mother’s pattern was to attend in the morning and to return home around 4:00 p.m. to 5:00 P.M.
- (l) While at the hospital, the cousins were “fine” in their treatment of the Mother. The older family members, however, would not speak to her. They told the Mother’s family that this was all the Mother’s fault, and complained that the Mother hadn’t even told them that the Father had been hospitalized.
- (m) The Mother and Grandmother would greet one another and ask how the other was doing. The Father would then tell the Mother that she should leave.
- (n) The Grandmother did not offer to transport the Mother to or from the hospital. She knew the Mother was without a vehicle because she was driving the only vehicle the Parents owned.

- (o) The Mother would take the Child on weekends to visit her Father. The Father and Child would also speak over the phone.
- (p) Only one cousin on the Father's side would call and ask the Mother how she was doing or whether she needed anything. None of the aunts or uncles telephoned. They did not even speak to the Mother at the hospital, if they encountered one another.
- (q) There were times when both the Mother and Grandmother were present at the same time. The Father would ask the Grandmother to come later in the day because the earlier part of the day was to be reserved for the Mother's visit. The Grandmother "... used to say, okay, next time she will come later."
- (r) When asked whether "... all the cousins ..." were there visiting the Father when the Mother was there, the Mother responded yes.

At the Hospital from the Grandmother's Perspective

[107] The Grandmother testified that she found out on June 9, 2012, when the Father phoned her, that he had been hospitalized.

[108] The Grandmother's evidence regarding what transpired at the hospital included the following:

- (a) The Grandmother went to the hospital shortly after learning the Father was there. As she was leaving that night, she informed hospital personnel "[I]f there is any problem, call me at night".
- (b) The Grandmother testified that "[T]here were a couple of times she [the Mother] had some problems and I brought her outside and I said you talk to me one on one".
- (c) The Mother asked the Grandmother to be able to stay behind on the Father's "last night". The Grandmother's response was that it was perfectly alright for the Mother to stay and that, as the Wife, she did not have to ask the Grandmother.
- (d) The Grandmother denied that it was uncomfortable for the Mother to be at the hospital because of the fact that either the Grandmother or her extended family were there most of the time.
- (e) The Grandmother denied that either she or some of her extended family were at the hospital at all times. The Grandmother claims to have worked around the Mother's schedule. The Grandmother says that she and the Mother "[B]oth decided if one was not there the other would be there. We'll never leave him alone."
- (f) The Grandmother denied that she did not want the Mother at the hospital. She claims that she wanted the Mother there, that it was not her decision to make, and that there was no way she could have restricted the Mother from attending.

At the Hospital from the Perspective of P.A.

[109] P.A. (Grandmother's niece and the Mother's aunt) testified that the extended family were at the hospital "every single day for three or two months" when the Father was hospitalized.

[110] The witness testified that the Father had never told her that he was upset at his mother or that she was being nasty or had said nasty things. She related a conversation where the Father had said to her "... I love my mom a lot, I – don't know what we are going to do because I want to keep my wife happy. I want to keep my mom happy. I'm in a very tough spot and my mom has been amazing to me."

[111] P.A. described the Mother as usually visiting the Father in the hospital from 9:00 a.m. to 12:00 noon. When the witness visited, she would see the Mother for maybe an hour or so. The Mother would then leave and "We'd be there 'til visiting hours were closed."

[112] According to P.A., "Everybody would talk to" the Mother who would fill them in on what was going on and how the Child was doing.

The Death of the Father

[113] The Mother testified regarding the death of the Father. She was asked in cross-examination, whether, in the presence of the cousins, she had ever approached the Grandmother, asked forgiveness for her behaviour and promised to do what the Grandmother wanted. In responding, the Mother became emotionally distraught as she explained what had happened. At a certain point on August 6, 2012, the Grandmother stated that the Father was "going now" and that by 8:00 that night he would be "gone" (as in "deceased"). She told everyone present to be quiet and not to make the Father "come back". The Mother responded "[O]kay, that's fine".

[114] A nurse then came in and checked on the Father and announced that he was still fine and could be spoken to. The Mother then clasped the Father's hand and called his name. The Father opened one eye. At that point the Grandmother "... got mad at everybody ..." including the Father's cousins who were speaking to him. According to the Grandmother, by speaking to him, those involved were bringing the Father back from the brink of death. The Grandmother did not want to see the Father in more pain.

[115] Because they were in the hospital, the Mother did not want to create a scene or fight with the Grandmother so told her "... I will do what she will tell me to do."

[116] The Mother fought back tears as she described her Husband's final moments. At approximately 1:00 a.m. that night, the Father opened his eyes and in her words:

"He looked at me, he said [Mother]. I said, yeah. He said, how are you and [the Child]? And I said yeah, good. How are you? He's saying I'm having so much pain what should I do? I said, [Father] do what you feel is good for you right now. He's – and [Father] said, don't worry [Mother] I will be always with you and [the Child], and don't worry about anything I am always there for you. Whenever you need me I will be there for you – for you and [the Child]. I said Okay. And he gave me a hug and he said, I love you, and promised me that he will be with me always. I said – and he – and we said, remember we always said we are always together, so we are. So he said I am not going anywhere, I am there. So that's all conversation – last conversation I have with [Father]. That's all your Honour."

[117] In response to the Court's questions, the witness confirmed that the Father had said nothing further, and gave her a last hug and a smile.

The Mother's Attempt to Continue or Restore a Relationship with the Grandmother

[118] The Mother testified that on the day of the Father's death, she told the Grandmother privately that the Mother would try one more time to have a relationship with her, and asked whether the Grandmother wanted the Mother and the Child to stay with her for a while. The Grandmother's declined, and stated that that day she had lost her son while the Mother had lost nothing. She claimed that the Mother's parents and the Mother had killed the Father and that the Mother was to tell her parents to stay away from the Grandmother and that they were to either keep the Mother or to throw her out. The Mother should just go to be with her parents and to take the Child with her.

[119] After the Father's ashes ceremony, only the family members, A.N, P.N., S.N and R.N., had any contact with the Mother. At the Mother's request, two of these individuals were in attendance in mid-August 2012, when the Mother attended at the Grandmother's home to pick up her possessions.

Retrieval of Mother's Possessions

[120] When the Mother attended at the Grandmother's home in mid-August 2012 to pick up her possessions, they were already in garbage bags and a suitcase. When the Mother tried to leave with these, the Grandmother stopped her and informed her she needed to check to see whether the Mother was stealing anything from her house. Included in the material were CD's of music, and family and wedding CD's. The Grandmother refused to let the Mother remove those CD's claiming she had brought them from her office and had paid for them.

[121] In the end, the Mother was not able to leave the Grandmother's home with any pictures of her daughter other than two pictures which were in the garage. The Grandmother has not offered the Mother any other of the child's pictures. The Mother was not able to retrieve all of the child's toys and clothes. The Grandmother insisted that the Mother leave them in the Grandmother's residence because the Child was going to come back to stay with the Grandmother and the Grandmother would need these items then.

[122] According to the Mother, the Grandmother's attitude towards all of the missing items (including the missing jewelry) was that the Mother ended up with her daughter and that was all she needed.

[123] The Grandmother's parting comment to the Mother on this occasion was that the Mother should wait to see what the Grandmother was going to do next.

[124] The Mother did not try to obtain the return of her Husband's possessions from the Grandmother's home because the Grandmother had told her that she had had a dream and she wanted to treat the Father's possessions the way the family had treated the deceased paternal grandfather's possessions. That is, the Grandmother wanted to donate everything. The Mother respected that wish and left the Father's possessions in the Grandmother's home.

[125] The Mother never retrieved her jewelry. Nor did she end up with the family car. She testified that the Grandmother informed her that if she wanted the car, she would have to pay the Grandmother \$5,000 for it, being the amount the Grandmother claimed to have spent servicing the car. The Mother did not have \$5,000 to pay the Grandmother, so she simply signed over ownership to her, as demanded.

The Father's Funeral

[126] The Grandmother testified that she paid for the Father's funeral expenses and that the Mother "... didn't even ask" about the costs.

[127] According to the Grandmother, her brother and the Mother's uncle decided on the day and the timing of the Father's funeral. According to the Grandmother, the Mother's uncle was supposed to inform the Mother of the funeral arrangements. The Mother was on time for the funeral but arrived half way through the prayers.

[128] When asked in cross-examination to confirm that she did not allow the Mother or her family to assist with the funeral arrangements, the Grandmother responded "they didn't even ask".

[129] The Grandmother confirmed that the Mother was late for the funeral prayers but blamed that on her uncle who was supposed to inform the Mother's side of the family.

[130] According to the Mother, the Father's funeral was arranged by the Father's uncle, N.N., and by the Grandmother. The Mother was not involved in the funeral arrangements. She testified that on the day of the Husband's death, the Grandmother told her that she (the Grandmother) would inform the Mother about the funeral arrangements. The Mother's family offered to help with the funeral arrangements but the Grandmother rejected that offer.

[131] According to the Mother, the Grandmother had told her that the Father's funeral would be at 2:30 p.m. and that there would be prayers in the evening. The Mother then learned from one of the Father's cousins that, in fact, the funeral was planned for 1:30 p.m. When the Grandmother learned that the Mother had been informed of the earlier start time for the funeral, the Grandmother began yelling at the Mother and demanded that she not speak to the Grandmother about any of the arrangements. If the Mother wanted any more information, she was to speak to the Grandmother's brother, N.N.

[132] None of the extended family, meaning cousins, aunts or uncles, and the Grandmother called the Mother after her Husband's death to offer their condolences.

Funeral Arrangements – Grandmother's Evidence

[133] The Grandmother denied the Mother's family asked her brother to be able to assist with the funeral arrangements and that he closed the door in their faces.

[134] The Grandmother testified that her brother and one of the Mother's uncles were to have made the prayer and funeral arrangements. When it was suggested to her that the Mother was late for the prayers because the Grandmother's family did not tell the Mother, the Grandmother responded "That is not true because our uncle was supposed to be telling that side of the family".

[135] The Grandmother admitted that the Mother's entire family was late for the prayers ("Every family member came late.")

Grandmother as Executrix

[136] The Mother was aware that the Father had named his mother (the Grandmother) as executrix of his estate. The Mother testified that she did not find that odd because she and the

Husband had discussed the issue. Even though the Father was very upset at the Grandmother for the way she had treated them, the Father believed that if the Mother were named as executrix “everybody” would speculate about how much he had left her. By leaving the Grandmother as the executrix, everybody would know the (apparently small) amount he was leaving to the Mother. The Mother agreed with that decision.

Alleged Denial of Contact – Grandmother’s Evidence

[137] The Grandmother’s evidence regarding the Mother’s alleged denial of contact with the Child after the Father’s death consisted of the following:

“After his death I didn’t have any contact with my granddaughter. I tried to call my daughter-in-law [the Mother] several times but she never answered my call because I wanted to see my granddaughter. And that is the time I took help of the court to try to get contact with my granddaughter.”

[138] When asked in examination-in-chief whether the Grandmother had any knowledge or idea why there was an issue, from the Mother’s perspective, with the Grandmother continuing to have contact with the Child, the Grandmother responded “Very honestly it has always been finance. It’s always been money.”

[139] The Grandmother admitted in cross-examination that the Mother had not, in fact, refused the Grandmother “access”. After having been served with the Grandmother’s Claim, and at the meeting at Tim’s Horton’s (described below), the Mother had offered contact every second Saturday for about three hours but wanted to be present. The Grandmother agreed that this is what had occurred. However, the Grandmother disagreed with that proposal as a long-term resolution because she wanted more contact than the Mother offered.

[140] The Grandmother testified that after her son’s death “... I called her and whenever she came home with [the Child] on the visits ...whoever was there talked to her that she ... chose not to talk to anybody.”

The Alleged Denial of Access – Mother’s Evidence

[141] The Grandmother saw the Child on August 7, 2012, when the Mother took the Child with her to retrieve the Mother’s possessions from the Grandmother’s home. According to the Mother, the Grandmother was then busy with a wedding ceremony which was to take place September 21 and to last for ten days.

[142] In October 2012, the Mother received a call from the Grandmother saying she wanted to see the Child. The Mother responded “[O]k, let’s meet somewhere outside”. The Grandmother insisted on the Mother coming to the Grandmother’s house. The Mother explained that would be very hard for her to go back to that house. The Grandmother insisted that the meeting be in the Grandmother’s house and that if the Mother did not listen to her, she would “... do something.”

[143] The Mother’s evidence at that point, which I find to be extremely important, was:

“I said, no, let’s meet outside please. You wanted to see [the Child]. You are most welcome. You are [the Child’s] Grandmother. I’m not stopped you to

seeing her, but please let's meet outside, but she said no. After that day, we don't have any contact."

[144] Shortly afterwards, on October 31, 2012, the Mother was served with the Grandmother's Claim.

Meeting at Tim Horton's and Alleged Agreement regarding Contact

[145] After the Mother was served with the Grandmother's application for contact, the Mother and Grandmother met at a Tim Horton's. According to the Grandmother, the Mother agreed at that meeting to the Grandmother having contact "... every Saturday and during the week couple of days, and then there was more because I wanted more ..." The following day the Grandmother sent the Mother an email with an attached Access Agreement which the Grandmother claims set out everything the parties had agreed to, and "... everything I wanted."

[146] By "everything", the Grandmother meant that the Mother "... had given me full access to my Granddaughter and she said she has no issues ..."

[147] The Mother did not respond to the email containing the purported agreement.

[148] The document is summarized later in this Decision. Suffice it to say for now that it goes vastly beyond simply setting out terms of access or contact.

The Alleged Access Agreement – Mother's Evidence

[149] The Mother testified that she did not agree to the terms of the agreement. After receiving the Court papers, she called the Grandmother and arranged to meet at Tim Horton's. At the meeting, the Mother pointed out that, as the Grandmother would be aware, the Mother had no money to fight, and asked her please not to go to Court. The Mother had only \$1,300 in her bank account at that time.

[150] According to the Mother, the Grandmother's response was that she did not care, and that she was going to get what she wanted. The Grandmother again stated that she had lost everything when her son died.

[151] The Mother's evidence at this point continued with

"And I still said, I'm not stopping you to see [the Child], please don't go to the court. She said she has so many lawyer friends she – her family is supporting her, her office people are supporting her, so they're going to pay for her, so she doesn't care that how will I manage the court. She said go to your family, if they are there they are going to help you, otherwise she said she has an agreement, she will send it to me. If I signed it, she will withdraw the case. If I didn't sign it, then, she said, see you in the court."

[152] The Grandmother's own testimony confirms that the Mother's financial need contributed to her concession regarding contact. The Grandmother's words were that at the time of the meeting at which contact was discussed, the Mother "... was looking for financial help and that is why she agreed to all this". And further "I'm here for them, if we can come to some sort of an understanding".

[153] After not hearing back from the Mother regarding the purported Access Agreement, the Grandmother served the Mother with her Claim for Contact.

Contact Pursuant to November 22, 2012 Order – Grandmother’s Evidence

[154] The return court date on the Grandmother’s Claim was November 22, 2012. An Order was entered that day granting the Grandmother contact for three hours every second Saturday, under the supervision of the Mother or a person mutually agreed upon by the parties. The matter was adjourned to a Judicial Dispute Resolution on March 13, 2013 and then back into Court on March 20, 2013.

[155] The Grandmother testified that she was not satisfied with the amount of contact ordered, but took what she could get while continuing with her application for more time with the Child.

[156] Although the Order was referred to during the trial as a Consent Order, it is in fact simply a Contact Order. The word “Consent” does not appear on it.

First Visit, Dec. 8, 2012

[157] The Grandmother exercised contact to the Child under the November 22, 2012 Contact Order in her own home. There was conflicting evidence whether that arrangement was by mutual agreement or by the unilateral decision of the Grandmother.

[158] Counsel for the Mother suggested to the Grandmother that she had unilaterally decided that contact would occur in her home and that she would pick up the Child. The Grandmother denied that she had made those decisions. She claims it was a mutual decision between her and the Mother that the Grandmother would provide transportation for the visits since the Mother had no means to do so.

[159] The Mother testified that on the Grandmother’s first visit, December 8, 2012, the Grandmother came to pick the Mother and Child up. The Grandmother’s sister was with her. When the Mother protested that it was just supposed to be the Mother, Child and Grandmother at the visits, the Grandmother told her not to make a scene in front of the Child and that there was no stipulation in the Order that only those individuals were to be present. The Grandmother made it clear that she was going to do what she wanted to do and that the Mother was to simply get in the car.

[160] When asked whether the Mother suggested to the Grandmother that they go to public places for the Grandmother’s contact, the Grandmother responded “I don’t remember. I don’t recall that, ma’am.” When it was put to the witness that the Mother had made this suggestion rather than having to go to the Grandmother’s home where she didn’t feel comfortable, the Grandmother responded “I don’t recall that, ma’am.”

[161] When it was suggested to the Grandmother that the Mother had said to her that she did not feel comfortable going to the Grandmother’s home for visits because she had lost her Husband, her daughter had lost her Father, and going to the Grandmother’s home brought back bad memories, the Grandmother responded “I don’t recall that discussion.”

[162] When it was suggested to the witness, that despite the forgoing discussions, the Grandmother still insisted that contact would occur in her home, the Grandmother again responded that she did not recall anything of the sort.

[163] The Grandmother admitted that on the very first Court-ordered visit, on December 8th, 2012 that she brought over her extended family. The Grandmother insisted that the Mother did not object to the Grandmother doing that. She testified that “[the Mother] never had any problem and she never even told me that.”

[164] The Grandmother denied various suggestions put to her in cross-examination, including:

- (a) That when the Mother protested about the Grandmother bringing the entire extended family to the visit, the Grandmother allegedly responded that she was going to do what she wanted, that the Mother was to supervise and be quiet, and that she did not have any right to speak during visits. Besides denying these allegations the Grandmother stated she would never refuse to speak to the Mother, even if there were differences between them. She claimed she would never do that in front of [the Child].
- (b) That when the Child wanted to speak to the Mother during visits, the Grandmother told the Child it was the Grandmother’s time and not to speak to her Mother.

[165] It was suggested to the Grandmother in cross-examination that the Mother had told the Grandmother many times that the Child needed a booster seat and that the Grandmother had refused until finally one of the supervisors told her that she should use one for the Child. The Grandmother’s response was that she had checked with some Minister who had told her that the Child did not need a booster seat if she was over 47 pounds. . The Mother asked for a copy of the letter but the Grandmother responded that the Mother needed to speak to her lawyer about the issue, and that the Grandmother was not answerable to the Mother. She was answerable only to the Mother’s lawyer.

[166] It was not until shortly before trial that the Grandmother obtained a booster seat for the Child, after having been told to do so by a professional supervisor.

[167] The Mother’s version of the first visit included that:

- (a) After fruitlessly protesting the inclusion of others in the visit, she sat in the car as the Grandmother had instructed her to do.
- (b) The Mother asked where they were going for the visit and that this needed to be decided together. The Grandmother responded that they were going “home” meaning the Grandmother’s home.
- (c) The Mother reminded the Grandmother that she had asked to meet in a public place and asked to take the Child somewhere else. The Grandmother refused and drove to her home.
- (d) . The Mother’s response was “I didn’t said [sic] anything because [the Grandmother] told me that I was just there to supervise the visit, not to say anything, just be quiet.”
- (e) During the visit, when the Child tried to speak to the Mother, the Grandmother would not let her.

(f) None of the family members present on the December 8, 2012 visit spoke to the mother.

The Child Not Being Allowed to Play with Toys

[168] The Mother testified that during the Grandmother's first visit on December 8, 2012, at the Grandmother's house, the Child tried to play with her old toys which were present. At that point, the Grandmother told the Child, "[Child] did you forget your manners, you need to ask Grandmother to touch your things." From then on the Child did not play with any of her toys. In the home of the Mother and the maternal grandparents, the Child does not need to ask permission to play with her own toys.

[169] After having been rebuked by the Grandmother for trying to playing with her own toys, the Child asked the Mother why she had to ask permission to play with her own toys. The Mother's response was "[Child], that's okay, you need to listen so just always ask." The Mother testified that the Child was disturbed to have been told she needed the Grandmother's permission to touch her own possessions. In fact, the Child needed permission to touch anything in the Grandmother's house.

[170] The Mother testified that on another occasion the Child tried to take one of her toys from the Grandmother's house but the Grandmother reminded her that she did not have permission. The Child therefore asked if she could take it. Even though the Grandmother responded "yes" the Child decided not to take the toy after all.

2nd Visit, Dec. 22 2012

[171] The Grandmother admitted that on the second visit, December 22, 2012, the Grandmother's sister, I., was present as well as other family members. On that occasion, the Grandmother denied pushing the Mother and taking the Child from her arms.

[172] The Mother testified that on this occasion, when the Grandmother came to pick up the Mother and Child, a niece was present. The Grandmother again took everyone to her house and several more family members arrived. When the Child tried to hold the Mother's hand, the Grandmother pushed her back and told the Child that she was there to visit the Grandmother, not to hold the Mother.

[173] None of the family members present spoke to the Mother during the visit, other than to say "Hi".

3rd Visit, January 5, 2013

[174] When it was put to the Grandmother that on the January 5th, 2013 visit she had come with her sister again, the Grandmother's response was "My sister came to my home. Yes, that's correct."

[175] It was suggested to the Grandmother in cross-examination that on the January 5th, 2013 visit both the Grandmother and the Grandmother's sister said to the Mother that she was not a good Mother and that she was the biggest mistake the family had ever made, the Grandmother responded "There was no reason to say anything to her like that at that time."

[176] The Grandmother testified several times that on one occasion, the date of which she did not recall, the Mother asked her why, if she loved kids, she didn't go and have another one. The

Grandmother asserted that this was the only time her sister reprimanded the Mother and asked her whether this comment was appropriate to say to the Mother-in-Law.

[177] The Grandmother denied that her sister, in the presence of the Grandmother, Mother and Child, told the Mother that the Grandmother would make the Mother suffer her whole life. The Grandmother also denied that she prevented the Mother from taking the Child to another room during the conversation. .

[178] The Grandmother was cross-examined regarding an incident where the Grandmother and her sister allegedly began yelling at the Mother in front of the Child because the Mother had changed the Child's surname to that of the Mother. The Grandmother and her sister allegedly stated that they did not see the Mother as the Child's mother. The Grandmother denied the allegations and provided a different version of events. She stated that the conversation took place when the Grandmother referred to the Child using the Father's family name. The Child allegedly responded that she was not a [Father's family name]. Rather, she insisted that she was a [Mother's maiden name] and that her Mother had told her that she was not a [Father's family name] anymore.

[179] It was suggested to the Grandmother in cross-examination that she had threatened the Mother, very slowly and aggressively, to take the Child away from the Mother. The Grandmother responded "How could that be possible, ma'am" and asked how it would be fair for her to take the Child from the Mother when she herself had been in that same situation. She went on to state "I would never do that".

[180] The Mother's version of this incident during the January 5, 2013 visit was as follows:

- (a) The Grandmother at one point referred to the Child using the Grandmother's family name.
- (b) When the Child responded that she now went by the Mother's family name, the Grandmother and her sister "... just blow up on ..." the Mother. They said they did not accept the Mother as the Child's mother and that the Mother was not the one who had brought the Child into this world and that they did not accept the Mother as the Child's mother.
- (c) In response, the Mother stated that "I am [the Child's] Mom, so if you guys don't accept me as [the Child's] Mom, you guys can go and adopt any other child. [The Child] is my daughter and I am [the Child's] Mom ... that's how it is."
- (d) At this point the Grandmother's sister stated that the biggest mistake the Grandmother had ever made was to have brought the Mother to her house. The Grandmother made a similar comment. At that point, according to the Mother:

"And they told [the Child] that you lost your Father and now your Mother is a bad mother and slowly, slowly they are going to take [the Child] away from the mother."

- (e) After this exchange, the Mother tried to take the Child away from the situation but the Grandmother insisted that the three-hour visit was for the Grandmother herself, that the Mother was not allowed to take the Child anywhere, and that if she wanted to leave, she

could. The Mother understood that were she to leave, it would have to be without the Child.

- (f) The Mother then described how the Grandmother and her sister continued to yell. The Grandmother then called her brother, N.N., who arrived with his Wife, A.N., and then delivered the Mother and Child back to their home
- (g) The Child was in the room with the Mother during the foregoing exchange. The Mother described the Grandmother as “yelling and crying”. In the words of the Mother:

“I was scared during that visit, Your Honour, that I don’t know what they are going to do with me. So I was scared during the visit for myself and for my daughter and the ... way they were yelling ... they were scaring my daughter and myself. My daughter was so scared she was holding me tight and saying Mama I need you. Don’t leave me please, she was saying.”

[181] When it was suggested to the Grandmother that she often cried in front of the Child and became extremely emotional during contact with the Child, the Grandmother responded “I wouldn’t say I have cried. Yes, I have cried occasionally, but I can’t just help it.” She says that she had just lost her son and could not help crying.

[182] At this point in the evidence the Grandmother became very emotional and teary-eyed. Counsel asks her “That’s how you are in front of your granddaughter?” The Grandmother’s response: “Not all the time, I have done it occasionally. Yes, I agree.”

[183] The Grandmother denied belittling the Child when she incorrectly identified the capital of Canada. It was put to the Grandmother in cross-examination that, during the time the Mother supervised visits, the Child hadn’t answered any of the Grandmother’s academic questions correctly. The Grandmother’s response was to say that she did not understand.

[184] When it was put to her that the Child did not find it fun to answer the Grandmother’s questions anymore, the Grandmother’s responded that the reports would speak for themselves and that “I don’t have to say after that what happened”.

4th Visit, January 19, 2013

[185] The Grandmother admitted that on the fourth visit, on January 19, 2013, she brought a 24-year-old young man to supervise. When it was suggested to the Grandmother that this man was a stranger to the Child, her response was “I had no idea if he was a stranger to her, but, yeah, he was my friend’s son.”

[186] The Grandmother denied that the Child had asked her who the stranger was during the visit.

[187] When asked why she would bring a supervisor to a visit which was already being supervised by the Mother, the Grandmother responded “That was for my own satisfaction. [The Mother], whenever she came for a visit, anything could come out of her mouth. She would say anything and everything so I needed some - somebody around me to ensure that things didn’t go out of hand.”

[188] The Mother testified that she had never seen this boy. She asked who the boy was and the Grandmother responded that the Mother had no right to ask and that she would tell the Mother's lawyer who the boy was.

[189] After that visit, the Mother consulted with her lawyer who confirmed that the Grandmother's visit should be among the Grandmother, the Mother and the Child only, at a place the parties decided together. The Mother's lawyer sent an email to the Grandmother to that effect.

Other's Present during Grandmother's Visits

[190] The Grandmother believed it was her right to have whomever she wanted present during her contact time with the Child because the initial Court Order did not state otherwise.

[191] The Grandmother was asked whether she recalled telling the supervisor that she could have anybody she wanted present during visits. Despite knowing that the Contact Order referred only to herself the Grandmother's first response was to say that she was not sure which visit was being discussed. She then simply stated that she did not recall that comment. She then went on to say that she was not denying the comment just that she did not recall.

[192] It appears that during the Grandmother's visits between December 3, 2012 and March 20, 2013, there were always extended family present. Her position was that the Court Orders did not prevent that. In her words, "No, that was not decided originally that no family members would be there and I clarified with her lawyer at that time that - that there is nothing- there was nowhere and I said if they had a problem that we could go back to Court, but nobody went - came back to Court."

February 2nd, 16th, and March 2nd 2013 Visits

[193] The 24-year-old young man attended three other visits, February 2nd, 16th, and March 2nd, 2013. The Grandmother testified that the Mother asked this individual who he was and pointed out that the Court order did not provide for his attendance. The Grandmother's evidence is that in response "I said to her we can talk about this later. [The Child] is here, why don't we discuss this later?"

[194] It was put to the Grandmother that during the March 2, 2013 visit she had told the Child that she belonged to the Grandmother and that within a few days she would be with the Grandmother more. The Grandmother did not deny having made the comment. Her response was to ask "Would that be even possible?"

[195] The Grandmother testified that the Mother would accompany the Child to her home for visits, during which the Mother "... would be sitting there in a corner, sulking away, texting ...". On every visit the Child would go to the Mother and say "You're not mad at me I'm playing with Grandma?" or "Can I hug her? You won't get mad at me?" According to the Grandmother, this happened every visit.

[196] The Grandmother testified that it was too distressing to have the Mother supervise contact.

[197] The Grandmother denied there had been much conflict in the Child's presence between the Grandmother and her extended family on the one hand and the Mother on the other, while supervising the Grandmother's contact.

[198] When it was put to the Grandmother in cross-examination that she had accused the Mother of being mannerless, the Grandmother responded "I have never talked down to her ever."

[199] The Grandmother denied telling the Mother that she was evil, bad luck for the family, and a mistake.

[200] According to the Grandmother, it was because of her concerns before the Court on March 20, 2013 that supervision was changed to a third party.

[201] In addition to the Grandmother's sister A.A. being present during visits, the Mother testified that the Grandmother's sister, R. S., was present on occasion, as well as T. A. (who testified for the Grandmother) T.S., the Grandmother's brother, N. N., and his Wife, A.N. All of these individuals, including the Grandmother's sister, A.A., were present on the last visit the Mother supervised, which was March 12, 2013.

[202] The Grandmother's contact occurred on the dates specified in the Court Orders, except for a few mutually agreed-upon changes. Until March 20, 2013 the Grandmother picked up the Child and Mother and transported them to and from the Grandmother's home for the visits.

[203] The Grandmother's criticisms of the Mother included the following:

- (a) The Grandmother brought the matter into Court on March 20, 2013 to have the Mother removed as supervisor of contact because during visits, the Child "...was very clearly looking all the time for reassurance from her mom" whether she was doing things properly."
- (c) The Grandmother testified that she and "all of the extended family" brought Christmas gifts. The Mother did not take any of the gifts and the Child "...very clearly said I'm not allowed to take gifts from you...otherwise I will get into trouble".

Contact Pursuant to March 20, 2013 Court Order

[204] When the matter returned to Court as scheduled on March 20, 2013 the contact supervisor was changed from the Mother to the Sheriff King Supervision Program or an alternate supervisor recognized by the Court.

Mother's Concern Regarding Visits Supervised by Town and Country

[205] On the first visit supervised by Town and Country pursuant to the March 20, 2013 Court Order, the Child asked the Mother why she was not going on the visit. The Mother consulted with her lawyer on how to respond, and ended up simply encouraging the Child to go for the visit, just as she had gone to pre-school for three hours without the Mother. The Child cried at the beginning of that visit but the Mother left her at the visit with the Supervisor.

[206] In relation to the Child not wanting to be out of the Mother's presence, the Mother explained to the Child's school personnel that since the Father's death, the Child always wanted the Mother to be around her.

The Child's Demeanour during the Grandmother's Contact

[207] The Grandmother testified that when her contact began, the Child was fine and would say "I love you" or hug the Grandmother. This changed after the first visit and the Child would then say that she could not hug or kiss the Grandmother or that she could kiss the Grandmother only once "... or if we do this don't tell Mom".

[208] The Grandmother further testified that the Child appeared worried for the first three or four minutes of every visit but then the Child "forgets" and "she's herself". When it is time to go, the Child will change completely and she'll say "Oh I have to run to Mom. I have to say I miss you."

[209] According to the Grandmother, at the time of Trial things had "... gotten a little bit better..." but the Child still made sure the third party was not watching, if she hugged the Grandmother.

[210] The Grandmother testified that the Child "... thinks like an adult now because the way things are going on." The Grandmother describes it as a "shame". At some point, the Grandmother wrote to the Mother questioning whether it was "fair" what they were putting the Child through.

[211] The Grandmother "absolutely" denied ever having said anything disparaging to the Child about the Mother.

[212] The Grandmother testified that whenever the Child arrived or left the home, the first and last thing she and the Child did was talk to photographs of the Father. The first time this occurred, the Child pointed out that "[P]ictures don't talk ..." The Grandmother responded "... but they can listen." The Child now has the practice of speaking to the photographs upon her arrival and just before her departure.

[213] During visits, the Grandmother and Child do things such as go to game places like Stir Crazy, play like the Grandmother is the Child's horse, and go places such as children's parks. There were visits where the Child would "... cry she didn't want to go home [sic]".

[214] The Grandmother testified that the Child was not allowed to take any gifts and that she was even afraid to cut her cake in the Grandmother's presence. She alleges that the Child said "[D]on't tell Mom we are cutting this cake."

[215] In cross-examination, it was suggested to the Grandmother that she did not like the Mother. She responded "I like [the Mother]. I have no reason not to like her." The Grandmother acknowledged that the Mother is a good parent

[216] According to the Grandmother, the Child told her that she was not allowed to take any gifts during visits; otherwise she would get into trouble.

James Mitchell

[217] Mr. Mitchell is employed by Town and Country Youth and Family Services as a visit supervisor. He first met the Grandmother on April 27, 2013.

[218] Mr. Mitchell supervised three of the Grandmother's visits. These visits occurred April 27, July 20 and August 17, 2013. The visit reports from these visits were entered into evidence.

[219] The witness's practice was to meet the Mother outside the Grandmother's residence (usually around the corner) and to then walk the Child up to the front step where the Grandmother would be waiting.

[220] The Child was a bit hesitant on the first visit. The Mother and the witness sat on the front step and calmed the Child down because she was a little upset.

[221] The witness testified that the Child was always excited about the visits. She would run the last 10 to 15 feet across the front yard to the Grandmother with her arms open and a smile. The witness had no concerns of distress for the Child.

[222] The supervisor acknowledged that there was another child in attendance at one visit which the witness believed to have been the August 17th visit. The witness found out after the fact that the Mother complained to the supervisor about the presence of the other child. There had not been any mention prior to the visit preventing anyone else from being present during the visit.

[223] The witness did not observe anything negative towards the Child during visits. The Child was always introduced to the Father, meaning his picture on the wall, and the Grandmother "... always encouraged her about her Father who is always watching over her ..."

[224] The witness confirmed that the Grandmother was attentive to the Child's needs and safety.

[225] The Child's reaction to her Grandmother was always happy and loving. The witness testified that sometimes at the end of the visits the Child would not want to go, would get upset and sit on the floor. The witnesses would just coach the Child in those circumstances to go outside and play and the Child would see her Mother and they would depart.

[226] The witness described the visits as "very successful", based on the 200 – 250 visits he supervises a year. He described the Grandmother was always cooperative at the end of the visits in assisting the witness to get the Child out of the home.

[227] The witness did not observe the Child exhibiting any fear of the Grandmother. The Child seemed to be happy and to have fun during visits.

[228] Mr. Morrison did not observe the Grandmother do or say anything to the Child during visits that would have given him any concern about the Child's well-being, physically or emotionally.

[229] The witness did not hear the Grandmother saying anything derogatory about the Mother, and the Grandmother "always" encourages the Child to listen to her Mother and was "always" supportive.

[230] The witness testified that, during visits, the Child was “always” saying to the Grandmother how much she loved her. The witness confirmed in cross-examination that he believes it appropriate for him to ask the Child if she enjoyed the visit and then to put the answer in his report.

[231] In cross-examination, the witness confirmed that the Grandmother did not tell him that no one else was supposed to be at the visit.

[232] Again in cross-examination, with regards to the expressions of love during visits, the witness confirmed the accuracy of a portion of the April 27th report where the report reads:

“[The Grandmother] told [the Child] that she loved her very much, and [the Child] said to [the Grandmother], ‘I love you’.”

[233] The witness admitted that during that occasion, the Grandmother prompted the Child and the Child responded back.

[234] Still in cross-examination, it was put to the witness that in the second supervision report there was no exchange of “I love you”. In response, the witness stated that if it had happened, it would have been in the report.

[235] Ultimately, the witness admitted that there was an exchange of I love you twice in his visit reports, which is not the same as “always”.

Shelley Cheshire

[236] Ms. Cheshire testified on behalf of the Mother. She is a supervisor of family visits for Town and Country Youth and Family Services. She supervised four of the Grandmother’s visits with the Child on August 31, 2013, October 26, 2013, November 2, 2013 and November 9, 2013.

[237] Ms. Cheshire’s practice was to meet the Mother and Child at the corner of the Grandmother’s street then walk to the Grandmother’s residence with the Child.

[238] On one occasion, the Mother asked the witness not to have a certain young boy at the visit. The Mother did not say why she did not want the boy there.

[239] The witness testified that after meeting the Mother and Child at the corner, the Child would stay with the witness until they got into the Grandmother’s residence. At that point, “Normally Grandma would give her a hug and a kiss and say hi to her, then ask her how she was, and what she wanted to do for the visit.” The witness described the Grandmother as being excited to see her Granddaughter, who would be a little quiet for approximately the first ten minutes of the visit and then start playing and laughing and carrying on with the Grandmother.

[240] The sorts of things the Grandmother would do with the Child included playing horsey and other games, having breakfast, watching cartoons, painting, and coloring. On a couple of occasions they went out to an amusement park called Stir Crazy.

[241] The witness confirmed that the Grandmother was attentive to the Child’s needs and safety. This included hanging on to the Child’s hand on the way to the car or in a parking lot, taking her to the washroom and making sure she had something to eat and drink.

[242] During visits, the Child appeared to be having a good time unless the witness was watching. The witness testified that if the Child noticed that the witness was watching, the Child would stop laughing or stop whatever she was doing. When asked if she had any idea why the Child would do that, the witness responded that she thought the Child just did not like being watched. She did feel that the Child was "for the most part herself" during visits.

[243] When asked whether the Child appeared to have been coached in any manner, the witness responded that "There were a few times during the visits that that crossed my mind."

[244] When asked what led her to have that belief, her response was that "Grandma would say, Oh, I love you, and (the Child) would look at me and say to Grandma that I don't love you, or that she didn't have fun ...at the visit." Mother's counsel then asked "And did you know that that was untrue?" to which the witness responded "She appeared to be having a great time."

[245] The witness testified that she heard the Child tell her Grandmother a couple of times that she loved her. Those expressions were not prompted by the Grandmother.

[246] During the visits supervised by the witness, the Child appeared to be happy and having a good time. The Grandmother did not utter any disparaging comments about the Mother or the Mother's family. The witness did not observe or hear anything during the visits that would give her any concern about the Child's welfare.

[247] The witness opined that there was nothing in the visits that would lead her to believe that supervision was required.

[248] The witness admitted, in cross-examination, that she had not witnessed any interaction between the Mother and Grandmother and had not been told any information regarding their relationship.

[249] The witness admitted that during the four visits, she heard the Child tell her Grandmother that she loved her "a couple of times".

[250] The witness was questioned about a discussion referred to in the October 26, 2013 visit relating to the use of a booster seat for the Child. The witness had raised the issue with the Grandmother. It appears the witness was uncomfortable with the fact that the Grandmother had not used a booster seat for the Child on the trip to Stir Crazy. When she raised the issue with the Grandmother, Grandmother's response was that the issue had been discussed during a previous visit after which the Grandmother had contacted someone at Transport Canada who had stated that the Grandmother did not need to use a booster seat.

[251] The witness had raised the issue as a safety concern. She showed the Grandmother where the seat belt strap would otherwise come across the Child's neck and would cut into her neck and pelvic area if a booster seat were not used. The Grandmother was receptive to the supervisor's comments

[252] Following the discussion, the Grandmother used a booster seat for the Child. From then on the Grandmother used the booster seat on subsequent visits.

[253] The witness was questioned about the fact that her August 31, 2013 visit report referred to a Child named G. being in attendance. The witness was aware from speaking with the Mother

that this Child was not to be in attendance. When it was put to the witness that someone named Diane was supposed to have put a note on the file following the August 17th visit stating that no one else was to be present at the visits, the witness confirmed that there was nothing on the file that would have alerted her to this fact.

[254] When the witness mentioned to the Grandmother that G. was not supposed to be present, the Grandmother responded that the child G. had attended the previous visit and that if the Mother wanted to discuss it, “[S]he could discuss it with her counsel.”

[255] When it was suggested to the witness that the Grandmother’s behaviour and response confirmed that she did not care whether the Mother objected to the child, G., being present or not, the witness responded “Yeah, G. stayed at the visit and we continued.”

[256] The witness added that the child, G., was the Grandmother’s next-door neighbour’s child and that he had been waiting for the Child to arrive because they had played together on the last visit. In response to the leading question whether the child, G., was anxious for the Child to arrive, the witness responded “Yeah”.

[257] The witness testified that the Child seemed a bit confused when the Grandmother made the Child look at a picture (presumably of the Father) and say “I love you” to the picture. In compliance, the Child did say to the picture “I love you”. The witness found this interaction “a bit odd” and “different”. During this exchange, the Child “... appeared a bit uncomfortable and just not understanding.” The Child was four years old at the time.

Tamarlie Lorenz

[258] Ms. Lorenz is a supervisor with Town and Country Youth and Family Services. She supervised a visit on November 23, 2013.

[259] The witness testified that the Child was smiling on her arrival at the Grandmother’s house.

[260] The witness noted that shortly after the Child’s arrival, the Grandmother asked whether the Child wanted to go to Tim Horton’s or to Stir Crazy. The Child responded that she was not allowed to go. After a short horsey ride on the Grandmother, the Child announced that she had decided she wanted to go to Tim Horton’s and then to Stir Crazy. The witness did not recall whether the Child explained why she wasn’t allowed to go. The Mother had not provided that direction to the supervisor.

[261] The supervisor’s file indicated that there were to be no others allowed on the visit.

[262] Within approximately two minutes of arrival, the Child was laughing and giggling and having a good time.

[263] The witness overheard the Child respond, when the Grandmother had asked if the Child loved her, that the Child was “... not allowed to tell you that and especially not in front of her”, indicating the supervisor. The witness had no idea why the Child made that comment.

[264] The witness confirmed that the Grandmother was “absolutely” attentive to the Child’s needs.

[265] The witness testified that the Child became “really quiet” on her way home.

[266] When asked whether there was anything that the witness had overheard or observed that would have indicated that the Child had been trained or rehearsed to say or do something, the witness responded that the only thing was hearing the Child say that she was not allowed to say “... I love you and especially in front of her.”

[267] The witness had not witnessed any interaction between the Grandmother and the Mother.

[268] The witness acknowledged that, judging by the Child’s statements, the Child was uncomfortable with supervisors watching her interact with her Grandmother. The witness confirmed that when the Child thought the supervisor was not watching, the Child did tell her Grandmother that she loved her but when the supervisor was watching the Child would not say anything.

Grandmother’s View Regarding Ongoing Contact

[269] The Grandmother believes that extended family should be an important part of the Child’s life and that she should be allowed to attend family celebrations with her Mother

[270] It was suggested to the Grandmother that it is recorded in a supervision report that the Child frequently asked why the Mother could not be in attendance. The Grandmother responded that she did not ever remember the Child saying that she wanted the Mother present.

[271] The Grandmother believes that it did not work to have the Mother supervise visits “... because Mom made it so difficult for us.” The Grandmother did not believe she had any responsibility at all for the difficulties with the visits supervised by the Mother. She claimed to have tried “... every bit to work with [the Mother] but she just doesn’t want it.”

[272] The Grandmother testified at that after her son’s death, it was the Mother’s choice not to communicate with her or have any dealings with Grandmother’s extended family. She claimed that neither she nor the extended family had said or done anything to the Mother to make her feel she was not welcome by them.

[273] The Grandmother seeks contact to the Child either every Saturday or every other weekend overnight, unsupervised, “with no restrictions”.

[274] The Grandmother wants more time with her granddaughter and sees no reason why that time should be supervised or why she “... should be restricted to have that contact with my Granddaughter”.

[275] The Grandmother believes it is important for the Child to have continued access to her and to her extended family, who have “... always been in [the Child’s] life.” In that way, the child will receive “... unconditional love from everybody.”

Extended Family Seeing the Child after Father’s Death

[276] Neither the Grandmother nor any of the extended family has helped the Mother financially nor offered to assist her with the care of the Child since the Husband’s untimely death.

[277] The only attempts by any of the extended family to see the Child occurred in October 2012 when R.N. and A.N. contacted her. The Mother and Child went with these individuals to Chuck E. Cheese. The Mother testified that after that outing, the Grandmother told the family that the Mother had referred to the extended family as a bad influence on the Child. After that, there was no further contact by any member of the extended family.

[278] Neither the Mother nor her parents have been invited to any family celebrations, including the wedding of R.A., since her Husband's death. As is the custom in the family, that wedding celebration lasted ten days. The Mother was not invited to any of the celebrations nor to the new couple's housewarming party thrown by P.A., one of the Grandmother's witnesses.

[279] Another family wedding occurred toward the end of June 2013 for the late Father's cousin, S.A. Neither the Mother nor any of her family members were invited to the wedding, to which 500 other people were invited.

Grandmother and Extended Family's Treatment of Mother and Child after Father's Death

[280] The Grandmother denied that she and her extended family excluded the Mother and Child from all family celebrations following the Father's death. She stated that there was a wedding just two months after her son's death and that she had called the Mother and said to her "I would like you both to be there and she says we are not interested".

[281] The Grandmother testified that the reason the family members who attended Court did not say hello to the Mother was because of the suggestion in the Mother's affidavit that "They are a bad influence" and that everybody is afraid to talk to the Mother now.

No Room for Mother and Child at Grandmother's Home

[282] The Grandmother denied telling the Mother that she did not have room for the Mother or Child in her home.

[283] When it was suggested to the Grandmother that she had told the Mother to tell her parents "... to keep them or throw them out", the Grandmother denied she would ever say that and asserted they were part of her son's family. "How could I say that to her?"

[284] The Mother described herself and the Child as being each other's "ward". They love and understand each other. The Mother's life project is now her daughter and her future. The Mother wants to give the Child a good education and to have a normal life like other kids. In this regard, the Mother described wanting to take the Child for swimming classes but because of Court-ordered visits on Saturdays, the Mother feels she cannot do so

[285] The Mother does not want the Child to have to go through the stress which she and her Husband experienced in dealing with the Grandmother. She does not want the Child to be financially stressed. After the Father's death, the Mother decided to go back to school. Her parents offered to pay her way. However, because of the Grandmother's Court action, the Mother had to pay what she described as "Court fees" (which I take to mean legal fees) instead of paying for her own further education.

[286] The Mother now lives in fear of what the Grandmother is going to do next to her and the Child. She asks "what will be her next step?" The Mother lives in fear about the answer to this

question and about her daughter's future. All the Mother wants is a little bit of happiness and that she and the Child can live happily without stress, like other people do. Even without her Father, the Child wants to do things like a normal child does.

Change to the Child's Surname

[287] On cross-examination, the Mother was required to justify why she had changed the Child's surname. In attempting to justify the relevance of the question, counsel for the Grandmother asserted that the change of name showed the Mother's lack of respect for the deceased Father and his family. The Mother's explanation was that without the name change, she would be required to always carry documents showing she was the Child's Mother.

[288] Counsel for the Grandmother persisted with the line of questioning and asked whether it is in the Indian culture for a Child who has lost her Father to have her name changed. The Mother's response was that it was all up to the mother to decide.

FURTHER EVIDENCE OF APPLICANT'S OTHER WITNESSES

P.A.

[289] The witness P.A. (Grandmother's niece and the Mother's aunt) described the Grandmother as loving and caring towards the Child and as having educated her. She described the Child as reacting to the Grandmother in a loving manner, with hugs and kisses and lovingly referring to the Grandmother as "meetah dadiji" which means "sweet paternal grandma".

[290] In cross-examination, the witness admitted that she would not have been privy to every conversation between the Mother and the Grandmother. She admitted that she has never known the Mother to be impolite to anyone at family meetings or gatherings, and as being a very kind and respectful individual.

[291] Since the Father's death, P.A. has made no direct contact with the Mother other than seeing her at visits with the Child. The witness did not make contact with the Mother after hearing from her aunt that the Mother viewed the family, collectively, as a bad influence on the Child.

[292] P.A. attended approximately half the visits the Mother supervised. She admitted she did not know what went on at all of the visits. The witness testified that she did not ever hear anybody say that the Mother was a bad mother or that there was any conflict during any of the visits. She herself never saw any conflict during any visit.

[293] The witness admitted that she wants to see the Grandmother have regular access to the Child so that all the family members can be there. She estimates that six or seven of the family members would attend any visit.

[294] The witness confirmed that it was the Grandmother who told the family that they were no longer allowed to come to visits because the family was a bad influence.

[295] In redirect, the witness confirmed that it was in the Mother's affidavit of November 13, 2012 that the Mother claimed the family to have been a bad influence. In the affidavit, the

Mother had stated "I am opposed to increased contact because I believe the applicant will bring the Child to my Husband's extended family and that this is not a good influence on my daughter".

[296] P.A. attended visits after the swearing of the November 13, 2012 affidavit, knowing that the Mother did not want her to be present.

L.L.

[297] L.L. is the Grandmother's neighbour and very good friend. She has known the Grandmother for approximately three years and knew the Father. She did not know the Mother, although had seen her as a neighbour.

[298] The witness had observed the Grandmother, Mother and Child coming and going. From the witness's observation, it appeared that they were "... very loving, and very affectionate, and always smiling ..."

[299] The witness observed the Grandmother playing with the Child.

[300] The witness became aware of the Father's illness and that he had been diagnosed with cancer.

[301] The witness provided some hearsay information regarding her understanding of how many jobs the Grandmother worked at a particular point in time and regarding when the Mother moved out of the Grandmother's home.

H.B.

[302] H.B. was employed by the same firm as the Father, most recently as his supervisor. The witness described the relationship between the Father and the Grandmother as "extremely close." She stated that "As a matter of fact, it always surprised me that – that a son of that age was as close as he seemed to be with his mom. Through his early employment with us, there were multiple days where there were many, many, many phone calls back and forth between them."

[303] The witness provided hearsay evidence regarding the Grandmother's involvement in the family and the Father's living arrangements.

S.C.

[304] S.C. provided a non-expert's view that the Father did not like confrontation and wanted everybody to get along. The witness made reference to hearsay evidence regarding the Father at one time wanting the Mother to get a job.

EVIDENCE OF THE RESPONDENT'S OTHER WITNESSES

D.W.M.

[305] D.W.M. testified on behalf of the Mother. He is a spiritual care provider on the Intensive Palliative Care Unit 47 at the Foothills Hospital in Calgary. He has a Master of Divinity and a Doctor of Ministry and has completed the Intensive Residency Program and Clinical Pastoral Education Program offered through Alberta Health Services. He is also certified as a Pastoral Care Specialist through the Canadian Association for Spiritual Care.

[306] The witness wrote a letter dated November 9, 2012 in which he stated that, according to the Father, the Grandmother had blamed the Mother for the Father's illness and for the fact that he was not getting better. The letter also stated that the Grandmother had urged the Father to dismiss the Mother, and that the Mother and Father had lived with the Grandmother until her attitude towards the Mother made it impossible for them to continue to live there.

[307] The Grandmother disagreed with the contents of D.W.M.'s letter, and denied blaming the Mother for the Father's illness.

[308] D.W.M. had met the Mother and Father when the latter was admitted as a patient to the Intensive Palliative Care Unit 47 in June 2012. The witness role, as part of a multi-disciplinary team, is to support patients and families with the intangible things that go along with dealing with hospitalization and serious illness, such as illness adjustment, psycho-social issues, coping, a person's sense of meaning and assisting patients with a life review when they are facing possible imminent death.

[309] The patients on the Palliative Care Unit have a terminal illness and are likely in the last year of their life.

[310] At the request of the Mother, the witness wrote the November 9, 2012 letter. The Mother had asked for a brief statement of the witness's knowledge of her relationship with her Husband and the family dynamic. The letter was entered an exhibit.

[311] D.W.M. testified regarding his meeting with the Mother and Father. He described them as a typical young couple sitting together with the heavy awareness that the Father's disease was progressing and that the prospects were "threatening". His conversation with them was open and friendly. The witness invited the Husband to talk about what was on his mind, and the Husband outlined the story of his life. The witness described the discussion as the kind of conversation you would have with people as they are just coming to terms with the meaning of their lives as they face the prospect of dying.

[312] The Husband spoke to D.W.M. about having had a good life, including his marriage and the birth of his daughter. The thing that had been bad was his cancer diagnosis and how it had changed everything. The Husband spoke about growing up in East Africa, about coming to Canada with his mother and about being her only child. The Husband confirmed that he had a close relationship with his mother.

[313] D.W.M. was asked about the statement in his letter which read "[the Grandmother] blamed [the Mother] for [the Father's] illness and for the fact that he was not getting better." According to the witness, that information came out in his first interview with the couple. He entered the information in the Father's chart because he felt it was important psycho-social information for the rest of the multi-disciplinary team. He wanted the team to know that there was tension between the Grandmother and the Mother.

[314] The witness also related in the letter what the Father had told him about the Grandmother's wish that the Father send the Mother away, about her view that the relationship wasn't good for the Father, and that it would be better for him not to be married to the Mother.

[315] The last sentence of the letter stated that "they had lived with [the Grandmother] until her attitudes towards [the Mother] made it impossible for them to continue to live there." The

witness' understanding was that the tension between the two women was the reason for the change in the living arrangements.

[316] D.W.M. went on to testify that late the previous year, the Grandmother had telephoned him to complain about him having written the letter. Her tone was angry and threatening. She felt it was inappropriate for someone in the witness' position to write a letter that she thought was untrue and hurtful.

[317] The witness confirmed that he was not in the position to verify the truth of the Father's comments to him. He was simply confirming what had been reported to him.

[318] When asked in cross-examination whether he had anything further to say regarding the relationship between the Father and the Grandmother, D.W.M. testified that it was after remarking to the Father that he and his mother must have had a very close relationship, that the Father began to describe the conflict between the Mother and the Grandmother. In Mr. Morrison's view "[T]he closeness had a – particular intensity to it and that now that closeness seemed to be expressed in this intense conflict."

[319] The witness did not know when or how the conflict had begun.

Dr. A.M.

[320] Dr. A.M. testified on behalf of the Mother. She is a palliative care physician at the Foothills Hospital and works as a clinical associate with medical oncology at the Tom Baker Cancer Centre. She did her undergrad at Queens University then attended the University of Ottawa Medical School, and did a Master's degree in Public Health at Harvard University in Boston. She works on Palliative Care Unit 47. She knows the Mother as the Wife of a patient she treated, namely the Husband.

[321] The witness described the Mother and Father as seeming to care about each other and having each other's best interests in mind.

[322] Dr. A.M. was aware that before the Husband's hospitalization, the Parents had been living with the Husband's family. She did not know where they would be residing if the Husband were to be discharged.

[323] In cross-examination, the witness estimated that she had approximately ten conversations with the Husband during the two weeks she took care of him. The focus of the conversations was on the Father's medical care. She also spoke to the Grandmother about the Father's care.

[324] Dr. A.M. could not recall a number of times she had spoken with the Mother. The witness recalled one conversation with the Grandmother late one night to let her know that the Father appeared sicker that night. The purpose of the call could have been to advise the Grandmother that the Father needed a blood transfusion. The witness recalled few details of the conversation. She did recall a note on the hospital chart to the effect that the Father was comfortable with information about him being shared with both his Wife and his mother.

[325] Approximately a year before trial the Mother asked Dr. A.M. to write a letter. In the letter the witness summarized entries made on the Husband's hospital chart, and made reference to entries made by D.W.M.

[326] In that letter, which Dr. A.M. explained had been based upon her review of the file notes, is the following:

On June 28th [the Father] told a nurse working for the Palliative Care Consult Service that he was close to his Wife but not close to his own side of the family.

[327] The Grandmother did not believe that assertion to be true. She claimed that in the five or six weeks before he died, the Father was not himself. He was dying very slowly and did not know what was going on around him. According to the Grandmother, her son never had a problem with her.

[328] When asked whether she had accused the Mother of killing the Husband, the Grandmother responded “Oh, my god. I have been there myself. I was in my twenty’s when I lost my husband. How can I say something – blame her for something like that especially when I have gone through it myself.”

[329] The Grandmother denied blaming the Mother for her son’s illness and denied calling her evil. The form of her denial was to say “As I said, I’ve been through my – that myself. My – I lost my husband when I was in my twenties. How can I blame her? This is destiny ... how can I blame her?”

The Mother’s View Regarding Future Contact by the Grandmother

[330] The Mother believes that if it is ordered, the Grandmother should have contact three to four times a year, supervised. If not ordered, the Grandmother will have contact once she demonstrates respect for the Mother as a person and as a guardian.

[331] The Mother’s biggest concern about the Grandmother’s contact is her stated intention to take the Child away from the Mother, and that the Grandmother has told her repeatedly that she is a bad mother. She is also concerned about the Grandmother’s comments to the effect that the day the Grandmother takes the Child away from the Mother will be the day the Mother understands the pain the Grandmother suffered in losing her son.

[332] According to the Mother, the Grandmother is very good at emotional blackmail. The Mother’s fear is that just as the Grandmother attempted to do with the Father, the Grandmother will attempt to gradually take the Child away from the Mother.

PARTIES’ POSITIONS

Grandmother’s Position

[333] In seeking an order for on-going, unsupervised contact to the Child, the Grandmother submits that the evidence supports the following:

- (a) There was a “very, very substantial” connection between the Child and her Grandmother, the Child having resided in the Grandmother’s home for almost the first three years of her life.
- (b) The evidence of the Mother’s denial of contact is that the Grandmother was “... seeking greater contact than what she had enjoyed; and the Mother was not inclined to do so.”

- (c) When pressed to refer to the specific evidence Grandmother had present that contact had been denied, Grandmother's counsel responded "I do not believe that that evidence was given, sir". As evidence of the Mother's denial of contact, he could only point to the Mother's refusal to sign the ten-page document which the Grandmother forwarded to her after the discussion at Tim Horton's.
- (d) The Grandmother denies making any negative comments about the Mother, and claims that, in fact, she did the opposite.
- (e) The Grandmother never tried, and never would try to usurp or interfere with the Mother's guardianship and child-rearing responsibilities over the Child. No such allegation was made by the Mother and that there was little, if any, evidence presented to the Court in that respect because "... it does not exist."
- (f) To deny the Child contact with her grandmother and to her late Father's family would be not only losing her Father but losing her Father's roots all at once.
- (g) The Mother is agreeable to the Grandmother having continued contact with the Child. Therefore, she herself must realize that such continued contact would be beneficial to and in the Child's best interests.
- (h) Until at least late May 2012, there was nothing but love and respect between the Grandmother and the Mother.
- (i) The Grandmother was a very hands-on Grandmother to her granddaughter until the time she moved out of her home in late May 2012. This meant that for at least the first three years of the Child's life, the bond between the Child and her Grandmother was very strong, and should be maintained in the future.
- (j) The Grandmother was asked to look after her seven-month-old granddaughter when the Mother went to India for almost three weeks. The Grandmother gladly did so and even took some time off work to do so.
- (k) The supervised visits were "success", meaning all three supervisors observed the Child laughing and smiling. Further, there were no problems reported.
- (l) Grandmother was always tending to her granddaughter's needs and was very mindful of her safety and well-being. Never once did she say anything derogatory about the Child's Mother or, in any event, in front of the Child.

[334] The Grandmother's position is that Leave to bring a contact application is not required in these circumstances because of the wording of s. 35(3) of the *Family Law Act*. One of the guardians has died and the grandparent's contact with the Child has been interrupted as a result.

[335] The Grandmother would distinguish this Court's decision in *W.A.D. and V.D v. D.L.S and J.J.S.* on the basis that, whereas the grandparents in that case were meddlesome and interfering, the Grandmother in the case at bar was anything but meddlesome and interfering. The Grandmother claims that, in fact, she had gone out of her way to instill respect of the Mother in the Child. That is arguably borne out by the evidence of the supervisors in their reports and in

their verbal evidence. The Grandmother pointed to no specific references in the reports to support that assertion.

[336] The Grandmother would also distinguish on their facts the cases of *M.W. and A.W. v. D.W.* (Franklin, PCJ) and *Z.X. and H.X. v. V.D.* (Lipton, PCJ).

[337] The Grandmother submits that this case is different from the *Z.X.* case decided by Lipton, J who found that the parties would not be able to restrain themselves from speaking negatively about each other in front of the Child, and that they would continue to have a negative impact on the Child and on the bond between the mother and Child. In support of this position, the Grandmother asserts that throughout the period of the Grandmother's contact with her grandchild, the bond between Mother and Child has been very strong and will continue to be so.

[338] The Grandmother submits that there exists a right of the Child to have contact with her grandparents on both sides of the family. That right should not be impeded and should not, without valid reason, be interfered with. In support, the Grandmother referred to the decision of *M.W. and A.W.* (cited below) where this Court stated at paragraph 87:

"This child has a right to know her only set of Grandparents, her father's parents, and her only Opa. She has a right to be protected from the strain in the relationship between her Mom and her paternal Grandparents. She has a right to be loved and doted on by these Grandparents as she is by her mother's mom to deny this child these people in her life is to have her lose not only her maternal Grandpa, her Dad and her Brother, but her paternal Grandparents and her Father's roots all at once. That is not in her interest."

[339] In arguing that continued contact by the Grandmother would be in the granddaughter's best interests, the Grandmother referred to two Court of Appeal cases, namely the *First AHT Case* and *Second AHT Case* (cited below) where, despite the egregious contact of the grandparents, the Court of Appeal allowed continued access.

[340] Grandmother referred to another decision of the Provincial Court, *M.D.W. v. M.J.W.* (cited below) where the Court found that a resumption of access between the child and grandfather was found to be in the best interests of the children.

[341] The Grandmother frames the ultimate question to be whether the relationship between the Grandmother and the Child should be severed. It is clear that the Grandmother loves her granddaughter very much and had a close relationship with her from birth to near the end of May 2012. After that, she had contact from December 8, 2012 onwards on a consistent basis. The Court should not sever the relationship between the Grandmother and the Child.

[342] The further question would be whether future contact, if it is ordered, should be supervised. The Grandmother submits there was no evidence that such supervision should be required or warranted for the safety and welfare of the Child.

[343] In conclusion, the Grandmother argues that, in this particular case, it is in the Child's best interest that she continue to have "access" to her paternal grandmother and family "... so that she could have and keep a close tie and memory of her deceased father, at least until she was old enough to make her own decision."

[344] Further, the Child now has and will continue to enjoy the joys and benefits of being around her maternal grandparents and extended family and should be able to enjoy and benefit from exactly the same relationship with her paternal grandmother and extended family.

Mother's Position

[345] In opposing the Grandmother's application, the Mother submits that the evidence supports the following:

- (a) The Father interrupted the Grandmother's contact with the Child two months before his death.
- (b) There was no interruption of the contact between the Grandmother and the Child caused by or as a result of the death of the guardian. The interruption of that contact occurred before, not because of, the deceased guardian Father's death.
- (c) There was no contact between the Grandmother and the Child after May 28, 2012 (until Court-ordered). That is when the Parents moved out of the Grandmother's home, before the father was hospitalized.
- (d) The interruption in the Grandmother's contact occurred following a joint decision by the parents. The Parents moved out of the Grandmother's home because she was not respecting her own son and daughter-in-law's wishes regarding whether the Child should be attending daycare or pre-school. The Grandmother had demanded the Parents' identification so that she could fill out the daycare application when she knew that that was not what the Parents wanted.
- (e) The Grandmother's insistence on enrolling the Child in daycare caused the severing of the relationship between the Grandmother and the Parents. It was severed because the Grandmother was trying to dictate what the Child was going to do and the Father was not going to stand for it. He chose his Wife and daughter over his mother. The message was very clear.
- (f) Contact was offered to the Grandmother after the Father's death, but the Grandmother did not like what was offered.
- (g) The Grandmother and her extended family have cut off contact with the Mother. The Mother and her family have not received any invitations to attend family celebrations since the death of the Father.
- (h) It is clear that the Grandmother and her extended family only want to embrace the Child and to not include the Mother.
- (i) The Mother is still offering contact. It is just not the kind of contact Grandmother wants; however, it is contact and it would maintain the relationship. The Mother has indicated that once there is some respect shown the Mother by the Grandmother, her contact would change over time. At present, however, the Mother has been shown absolutely no respect.
- (j) When asked to identify the evidence of the Mother facilitating contact after the Father's death, Mother's counsel pointed to the meeting at Tim Horton's where the

- Mother offered contact every second weekend at a public place or at her parents' home.
- (k) The Grandmother would have seen the Child when the Mother went with her to the Grandmother's home shortly after the funeral to pick up the Mother's belongings. The Grandmother was allowed a visit with the grandchild at that time.
 - (l) Not only did the Grandmother not respect the Mother before the Father's death, she also lacked respect afterwards. For example, the Grandmother insisted that her court-ordered visits, which were supervised by the Mother, had to be at the Grandmother's home. The Grandmother knew that caused the Mother to be uncomfortable. The Child would have felt her Mother's anxiety, which would not have been good for the Child.
 - (m) Another sign of the Grandmother's disrespect was that she insisted on having others present at her visits, despite a Court Order that named only her and despite knowing the Mother did not want others present. Family members also attended visits also knowing that the Mother did not want them there.

[346] The Mother referred to the wording of the *FLA* in relation to the best interest test and submitted that the Court must consider whether "... the Child's physical, psychological or emotional health may be jeopardized if contact between the Child and the person for whom contact with the Child is proposed is denied".

[347] Furthermore, the Court must find that the guardian's denial of contact be unreasonable.

[348] The Mother submits that Grandmother has not provided any evidence to satisfy these two points. Even if she meets one of them, she does not meet the other.

[349] In regards to the best interests of the Child, the Mother submitted that:

- (a) There are clear signs and red flags that contact by the Grandmother causes stress both to the Child and to her Mother. The Grandmother did not allow the Child to go to her Mother for support when she felt she needed it and denied the Child physical contact with her Mother.
- (b) The Grandmother's sister told the Mother, in front of the Child, that the Mother was a bad mother and the biggest mistake the Father had ever made.
- (c) The Grandmother's emotional outburst in the Courtroom was evidence that emotional outbursts likely occurred in front of the Child.
- (d) There was an emotional outburst by the Grandmother and her sister after the Mother changed the Child's surname. The Grandmother's brother was also involved in that verbal assault. The Mother was afraid for her life because she didn't know what they were going to do.

[350] Mother's counsel submits that the denial of contact by the Grandmother under all the circumstances of this case was reasonable and justified based on the evidence, much of which clearly demonstrated the Grandmother's lack of respect for the Parents, and included the following:

- (a) The relationship between the Grandmother and the Mother was strained throughout the four years that they resided together.
- (b) The Parents did whatever the Grandmother wanted in order to keep the peace. That proposition was supported by the one of the Grandmother's witnesses, Father's former co-worker S.K., who stated that the Father did not like confrontation. It is also supported by the Mother's evidence that when her ring was stolen or misplaced, the Grandmother would not file an insurance claim because it would increase the monthly insurance cost. The Father's words to the Mother were that she should not worry about it, to let it go, and that he would buy her another ring.
- (c) The Grandmother would not let the Mother's family visit without her prior approval.
- (d) Further signs of the Grandmother's disrespect included her demand that the Mother turn over her identification cards so that the Grandmother could register the Child in daycare when she knew her Parents did not want that to happen. The Grandmother was already aware that they had pre-registered the Child in pre-school.
- (e) The biggest form of disrespect was that the Grandmother would not eat the food that the Mother cooked. The Grandmother claimed that she, not the Mother, cooked essentially all the food for the family. According to the Mother's counsel, not eating your daughter-in-law's food is extremely discourteous.
- (f) At the hospital, the Grandmother would not talk to the Mother except to say hello in passing. Neither the Grandmother nor any of her extended family offered to transport the Mother to the hospital. She made the two-hour bus trip to the hospital (and back) when members of the Grandmother's extended family lived ten minutes away from her. Neither the Grandmother nor the extended family called to see whether the Mother was okay.
- (g) Neither the Mother nor her family were permitted to be involved in the Father's funeral arrangements. The Mother and her family were given the wrong time for the prayer service. There was no evidence of any condolences from the Grandmother or the extended family, which comprised over 30 members.
- (h) Referring to the Father's death, the Grandmother told the Mother that she had lost nothing whereas the Grandmother had lost everything.
- (i) More importantly, one must consider the Grandmother telling the Mother that when (not if) she eventually got the Child into her custody, then the Mother would know what it is like to lose a child.
- (j) The Grandmother told the Mother that she did not want the Mother's family or the Mother around. She told the Mother's family to "... take her and keep her or get rid of her, she did not care".
- (k) The Grandmother's conduct after the funeral resulted in the Mother living in fear of the Grandmother's next move and having no trust at all in the Grandmother.

[351] Further submissions by the Mother include the following:

- (a) The Grandmother tried to get the Mother to sign off on a document the Mother did not agree to.
- (b) The Mother did not have the means to defend the Grandmother's Claim filed by the Grandmother and supported by the Grandmother's extended family numbering approximately 30 people.
- (c) Once the Consent Order was signed granting the Grandmother contact every second Sunday for three hours supervised by the Mother, the Grandmother did not follow the Order. She unilaterally brought third parties to the visits, despite the fact that she should not have done so. This shows a lack of respect for the Court Order.
- (d) Before his death, the Father interrupted the Grandmother's contact with the Child. Counsel submits that if Parents jointly make a decision that they do not want a grandparent to have contact with a child, the death of one guardian does not automatically springboard the right to bring an application for contact with that child.
- (e) The interruption of contact between the Child and Grandmother was a joint decision between the Father and the Mother. The guardians' decision should not be taken lightly and should not be overturned by the Court. The Father and Mother, the only people entitled to make decisions about the Child's life, decided on May 23, 2012 that the Grandmother was not going to dictate what the Child was going to do and not do.
- (f) The Grandmother's contempt of the spirit of the Court Orders is blatant. She insisted on having others present at her visits, including members of her extended family, despite a Court Order that named only her.
- (g) The Mother's counsel asks how the Mother can have any sense that her Child is going to be okay if she puts her in the hands of a grandmother that "knowingly disrespects" her and who is abusive to the Child's Mother.
- (h) Mother's counsel submits that continued contact by the Grandmother would be emotionally damaging to the Child. She refers to the negative things said to the Child by the Grandmother and the comments made in front of the Child by both Grandmother and her sister as being unacceptable. She submits that this case is not about cutting off contact to the Grandmother just to be spiteful or mean. The Mother genuinely has her daughter's best interests at heart.

[352] In regards to the "Leave" issue under S. 35 of the *FLA*, the Mother takes the position that Leave should not be granted to bring the application because the interruption in the Grandmother's contact with the Child, if any, happened before the Father's death. Alternatively, the Mother did not deny contact after the Father's death. She offered contact but the Grandmother did not like what was offered and wanted more.

[353] The Mother submits that the cases submitted for discussion are not under the *Family Law Act* and are therefore of no assistance.

- (a) Mother's counsel submits that *X.Z. v. D.V.* (cited below) is not helpful. It is not under the *FLA*. Under the previous legislation (*Provincial Court Act*) the test was also the best interests of the Child. That being said, S. 35 and particularly ss. 33(3) and (5)

have changed the rules concerning what tests need to be applied in granting contact to a grandparent.

- (b) Children and their parents have a right to be treated with respect.
- (c) How the Grandmother treats the Mother is going to have an effect on the Child.

[354] In conclusion, Mother submits that there should be an order for no contact by the Grandmother, neither *FLA* S.35(a) or (b) having been met. Further, the Mother submits that the potential negative effects of a contact order outweigh any positive effects contact might have.

Grandmother's Response to Mother's Position

[355] In response, the Grandmother submits as follows:

- (a) Credibility is an issue, as the evidence referred to by the Mother in argument was denied by the Grandmother and *vice versa*.
- (b) If the Leave provisions of the *FLA* were at issue, that should have been made clear at the outset, when the first Court Order was granted. Once the Court had entered the arena and granted a Contact Order, the question whether or not Leave was required, became moot.
- (c) The evidence is far, far short of demonstrating that the denial of contact between the Child and the Grandmother was reasonable.
- (d) It is not a question of whether or not there was a lack of respect or animosity between the Mother and the Grandmother. The question is whether or not it is in the Child's best interest that the Child continue to have or no longer have access [sic] to the Grandmother.
- (e) There is no evidence whatsoever, contrary to the Mother's submission, to show that continued access would be detrimental to the Child. There has been no psychological evidence to prove this.

CASE LAW

Applicant's Case Law

[356] Counsel for the applicant argued the following cases;

- (a) *A.H.T. v. E.J.P., 1994 ABCA 140* (the First AHT Case) is a Memorandum of Judgment Delivered from the Bench which involved the maternal grandparents' appeal of the Trial Judge's guardianship order and their application under the *Domestic Relations Act, R.S.A. 1980, c. D-37 as amended* for access to their two grandchildren.

The parents of the grandchildren were deceased. Guardianship of the grandchildren had been granted to the paternal uncle and aunt in preference to the maternal grandparents. The Alberta Court of Appeal made an interim access order and in doing so, stated the following:

[14] We recognize the advantage of children having contact with their grandparents, and through them, their heritage. These are important family values in our society and ones which we recognize add to a child's life. That is especially true in this case where the parents of these two young children are now deceased. These grandparents are one means of the infant children having some connection with their mother. However, we are very concerned with the [maternal grandparents'] ability to accept the decision on guardianship, and the fact that the [paternal aunt and uncle] will be the guardians of their grandchildren. Without this acceptance, there will undoubtedly continue to be a high level of mutual distrust amongst these parties, distrust which can do nothing in our view but further impair the ability of these parties to act in the girls' best interests.

(b) *A.T. v. E.P., 1995 ABCA 502* (the Second AHT Case) is a second Memorandum of Judgment involving the case referred to above (*A.H.T. v. E.J.P.*) From the date of the original guardianship application, the maternal grandparents had brought numerous access applications. It was clear that the grandparents had failed to accept the guardianship order in favour of the paternal uncle and aunt. That failure included conduct such as:

- (i) Complaining to the Calgary City Police Service alleging criminal conspiracy against the grandparents, lawyers, witnesses and judges involved in the litigation;
- (ii) Taking pictures of the children during an access visit less than two months after the trial, and then mailing them to approximately 200 people alleging the children were underweight and requesting an investigation; and
- (iii) Suing numerous Justice of the Court, lawyers, the Law Society and one of their own lawyers.

The Court of Appeal found that the grandparents were not yet capable of accepting their limited role in the children's lives and that their behaviour was undermining the guardians' position and having a negative impact on the best interests of the children.

The Court of Appeal rejected the guardians' application to cut off the grandparents' access for having failed in the one last chance given to them by the Chambers Justice. The Court stated:

[13] In our view, it is not a question of one last chance for the grandparents. It is a question of providing an opportunity for the children to maintain some contact with the grandparents who have had a major role in their young lives. We are satisfied that the

Chambers Judge recognized there was a relationship that should not be severed completely, and abruptly, when he made his order for continued access after finding that the relationship was not in the best interests of the children. We, too, are concerned with the impact of a total cessation of grandparent visits on these young children who have already lost two parents. It would be desirable to maintain some relationship with the children's maternal relatives, if that is possible.

The Court continued:

[14] Moreover, there is no evidence to suggest that a cessation of visits with the grandparents is more in the best interests of the children than their continuation.

[17] Nonetheless, we are concerned that a complete cessation of visiting rights would impact on these young children negatively, having regard to their situation. They know their grandparents. Grandparents can have a great role in children's lives, even if they have minimum contact.

[18] In summary, we recognize that the conduct of the P.'s is approaching that point where access ought to be denied. We do, however, recognize that it is desirable that the children not feel yet another loss. In our view, access should not be denied entirely at this time, but it must be kept at a minimum to allow the T's to function free of constant interference and anxiety.

- (c) *M.D.W. v. M.J.W.*, 1998 ABPC 106 is a decision of the Alberta Provincial Court under Section 32.1 of the *Provincial Court Act, R.S.A. 1980 c.P-20 as amended*. In granting the grandparents access the Court stated as follows:

[44] Having given due consideration to the arguments of both parties, I am of the view that a resumption of the access between [A] and [the grandfather] is in the best interests of these two children. I see the loss of the grandparents from their lives as a significant force for destabilization, a loss which should not have occurred at all. I see absolutely no evidence, expert or otherwise, to convince me that there has been any negative aspect to this long-term relationship whatsoever. What has caused the mother concern, I am satisfied, is based upon her own fears and vulnerabilities brought on by an unfortunate marriage characterized by violence. It is that violence which has damaged these children, not their contact with their grandparents.

I would distinguish this case on its facts. There, the Mother had arbitrarily cut off access to grandparents who had had a long and positive relationship with the children and had been a positive factor in their lives.

Here, the Mother has not cut off all contact with the paternal grandmother. It was the Father who had first of all significantly distanced himself from his own mother before his death. Afterwards, the Mother has facilitated some contact with the Grandmother who, along with her extended family, had cut off contact with the Mother and Child.

(d) *M.W. v. D.W., 2000 ABPC 144* involved an application by grandparents for access to their granddaughter under Section 32 of the *Provincial Court Act*. The relevant provisions of that *Act* are cited in paragraph 1 as follows:

(A) 32.1 (2) if a grandparent at any time is refused access to a child, the Court may on application make an order as it sees fit regarding the grandparent's right of access to the child.

Section 32.1 (4) read:

(B) In making an order under this section, the Court shall take into consideration only the best interests of the child as determined by reference to the needs and other circumstances of the child including:

- (i) the nature and extent of the child's past association with the grandparent; and
- (ii) the child's views and wishes, if they can be reasonably ascertained."

The father had died at age 33. The mother had refused access to the grandparents. The Court found that, but for the tragic death of the Father in an accident, the applicants would have continued to see their grandchild on a regular basis.

The Court made the following observations:

[35] The onus in determining this issue remains throughout on the applicants. Guardians do not have to prove that it is not in the best interest of the child.

[36] Guardians, most usually parents, have an overriding right to determine who has access to their children. That right is not unfettered.

[37] Section 32.1 of the *Provincial Court Act* provides for access by grandparents over the objections of guardians. It is not enough to say in answer to this application that the parents object. It is the case that a court should be reluctant to interfere with a custodial

parent's decision. It is not generally in the best interest of a child to be placed into circumstances of real conflict between the custodial parent and a non-parent. Chapman and Chapman (Feb. 15, 1993), Doc. Vancouver 92 - 3512 (B.C.S.C.) as cited in F. (N.) v. S. (H.L.) 1999 Carswell BC 1398.

[39] The reasonableness of the parents' position must be one of the Court's considerations. The likelihood of access inciting or exacerbating further conflict is another. The fact that conflict will be inherent in a grant of access over the objections of the parents is a given. The question must be, will that inevitable conflict outweigh the long term benefit to the child's healthy growth, development and the education so that the child will be better equipped to face the problems of life as a mature adult if access is ordered. Parental objections must be seriously considered, but must be set aside where the welfare of the child requires it. See *K.K. v. G.L. and B. J.L.* 44 R.F.L. (2nd) 113 a decision of the Supreme Court of Canada.

[40] Children who are estranged from their grandparents without cause are disadvantaged. That loss is magnified over their life time. That fact underlies this legislation.

[41] As the expert called in this trial opined, it is in every child's interest to have as many adults in their life as possible who love and connect with that child in a positive manner. Grandparents have a special role to play in this regard. Their access to a child must not be denied unreasonably, or arbitrarily. That access must not be accorded as a reward or denied as a punishment for the personal favour or disappointment of the guardians.

The grandparents had hurt feelings arising from the funeral arrangements for their son, the deceased father. The grandparents had let themselves into the mother's residence to get materials for the funeral service, when the mother was absent. The mother claimed the grandparents had made no attempt to help her since the death of her husband. Without the Wife's knowledge or permission, and while she was out of town, the grandparents had gone to the company's lawyers' office to ask questions about what needed to be done to safeguard a family company. The mother took exception to this and viewed it as an intrusion.

The Court found that the fact that these events were not cordial did not impact the ability of the grandparents to put aside business issues and contribute to the child's life in a positive manner. The Court states as follows:

[87] This child has a right to know her only whole set of Grandparents, her father's parents, and her only Opa. She has a

right to be protected from the strain in the relationship between her mom and her paternal grandparents. She has a right to be loved and doted on by these grandparents as she is by her mother's mom. To deny this child these people in her life is to have her lose not only her maternal grandpa, her dad and her brother, but her paternal grandparents and her father's roots all at once. That is not in her interest.

I distinguish this case on its facts. The Court found that, but for the tragic death of the Father, the grandparents would have continued to see the child. In the case at bar, the Father had curtailed his mother's contact with the entire family. There, the grandparents' estrangement was without reasonable cause. Here, the estrangement was caused by the Grandmother's intrusion into and lack of respect for the Parents in their role as guardians.

Respondent's Case Law

[357] Counsel for the respondent argued the following cases;

- (a) *Z.X. v. V.D.*, 2001 ABPC 174 is a Judgment of this Court dealing with an application by grandparents for access under section 32.1 of the *Provincial Court Act*. The father died in China of stomach cancer after having travelled there at the urging of his parents and sisters to seek alternative treatment for his stomach cancer after having been told by doctors in Calgary that he was terminally ill.

The grandparents had babysat the child two to three times per week over a three year period while the mother and father worked. After the father had died, the mother found out that he had deleted her as a sole named beneficiary on a \$100,000.00 life insurance policy and instead had named one of his sisters as the sole beneficiary. The mother had refused to accompany the father to China for alternative treatment so the sister had done so. Access between the grandparents and the child became difficult until it ceased altogether.

The grandparents' family made various allegations against the mother, including alleging she had difficulty telling the truth, and that she had forged the husband's signature on an \$8,000.00 retirement savings plan while he was in China in order to gain access to the money.

One of the father's sisters admitted to having made arrangements for the father's funeral in Calgary and for not having told the mother of those arrangements. She claimed, however, that the mother was aware of the funeral arrangements through her own visit of the funeral parlour.

The Court found that the husband had changed his will, his power of attorney, and his life insurance policy and had left the mother in dire financial straits. He had spent the last few months of his life without his

child and had become alienated from his Wife, who was not told about her own husband's funeral. Verbal insults and comments had flown across familial lines, and neither side was blameless. The Court was not surprised that animosity had quickly overwhelmed what once had been a loving a caring relationship between the grandparents and the mother.

The Court stated as follows:

[38] In the case of *A.B.B. v. A.M.L.*, 1998 ABPC 133 (*CanLII*), 1998 ABPC 133, [1998] A.J. No. 745 (QL) Cook-Stanhope J. was afforded the opportunity to comment on the then-new "grandparents' access" legislation set forth in Section 32.1 of the Act. At paragraph 81, the learned Judge stated:

In the present case the fallout from all of the conflicts within this extended family is an enormous degree of negativity that pervades the context within which contact between these children and their grandmother must be viewed.

[39] At paragraph 83 the Court went on to state:

In addition, where the application, if successful, has the possibility of disrupting the peace and harmony of the child's nuclear family, the court should exercise extreme caution in evaluating the potential effects of such access on the best interests of the children. In these circumstances, access should be permitted only in the clearest of cases where the positive effects of such access demonstrably outweigh the potentially negative ones.

The Court in *Z.X. v. V.D* concluded that the child's interests would be best served by denying the grandparents' access application. He found that the negative effects of access would outweigh the positive effects.

- (b) *W.A.D. v. D.L.S.*, 2005 ABPC 319 is my decision in an access application under Section 19 of the *Provincial Court Act, R.S.A 2000, c.P-31 as amended*. The wording of Section 19 at the time was essentially identical to the wording of Section 32.1 of the *Act* as cited above. Following *A.B.B.* (cited above) I denied access to interfering and meddlesome grandparents. I had no doubt that the peace and harmony of the child's nuclear family would have been shattered, had I granted the grandparents' application. In considering the *M.W.* case (cited above) I found that the child had become estranged with cause - the meddlesome interfering behaviour of the grandparents.

In the case at bar, the Grandmother's estrangement was caused by her own interfering and meddlesome behavior, and was precipitated by the Father distancing the family from her before his death.

[358] After the completion of the Trial, it came to the Court's attention that there was yet a third and final Memorandum of Judgment of the Court of Appeal (the Third *AHT* Case) filed March 15, 1999 in Appeal #97-17321 (*C.L.T and A.H.T. v. E.P. and G.P.*). The grandparents had never accepted the guardianship order in favor of the paternal aunt and uncle. Successive applications had gradually restricted the grandparents' access until it had finally been terminated.

[359] The grandparents had made it clear that they would not give up on their goal to obtain custody of the children. The Court, in dismissing the appeal with costs, found that the conduct the grandparents had pursued for years, and which they avowed to continue pursuing, to be contrary to the best interests of the children.

[360] I afforded counsel the opportunity to make further submissions regarding the Third *AHT* Case.

[361] I make the following further comments regarding the case law:

- (a) I distinguish the *AHT* trilogy of cases on their facts and their underlying legislation.
 - i. It is significant that in the *AHT* cases both parents were deceased. The Court initially had to decide whether to decide between competing guardianship by family members. Despite the grandparents' conduct the Courts attempted to maintain the grandparents' access to the children so that the children would maintain a connection with them.
 - ii. At the time of the Second *AHT* Case the onus was on the guardians to prove that it was in the best interests of the children to deny access. The Court stated at paragraph 14:

“Moreover, there is no evidence to suggest that a cessation of visits with the grandparents is more in the best interests of the children than their continuation.”
 - iii. Unlike the Second *AHT* Case the burden in the case at bar rests on the applicants to prove that the child's physical, psychological or emotional health may be jeopardized if contact by the applicant is denied.

Section 35 (5) of the *FLA* reads in part:

(5) Before the court makes a contact order, the court shall satisfy itself that contact between the child and the person for whom contact with the child is proposed is in the best interests of the child, including whether

- (a) the child's physical, psychological or emotional health may be jeopardized if contact between the child and the person for whom contact with the child is proposed is denied

- iv. Here, the Grandmother presented no evidence that the Child's physical, psychological or emotional health may be jeopardized if contact between the Child and the Grandmother is denied.
- (b) Although decided under the predecessor to the *FLA*, the case of *M.W. v. D.W.* contains a seminal point: "The question must be, will that inevitable conflict outweigh the long term benefit to the child's healthy growth, development and the education so that the child will be better equipped to face the problems of life as a mature adult if access is ordered." See comments below regarding the long-term impact on the Child and her personal development, were a contact order granted.
- (c) The Grandmother would distinguish this Court's decision in *W.A.D. and V.D v. D.L.S and J.J.S.* on the basis that whereas the grandparents in that case were meddlesome and interfering, the Grandmother in the case at bar was anything but meddlesome and interfering. The evidence does not support the Grandmother's contention that she had gone out of her way to instill respect of the Mother in the Child. That contention was not borne out by the evidence of the supervisors, either in their reports or in their oral evidence. In any event, the supervised visits took place long after the meddlesome and interfering behaviour exhibited by the Grandmother and while she was under supervision.
- (d) No case law was presented standing for the proposition that there is a right of access by grandparents to grandchildren. In *M.W. v. D.W.* the Court stated "This child has a right to know her only whole set of Grandparents." That is not tantamount to articulating a grandparent's right to contact, or *vice versa*.

ANALYSIS

[362] Aside from the visit supervisors I did not find the evidence of the Grandmother's witnesses compelling. The only one positioned in any meaningful way to be able to comment on the relationship between the Grandmother and the Parents was P.A. However, while she was able to comment positively on the relationship as viewed externally, she was not privy to the historical issues leading to the current situation, nor did she seem to be aware of the animosity or insulting behavior demonstrated by the Grandmother toward the Mother. She was also not privy to the comments and goings-on in the privacy of the Grandmother's home.

[363] While I accept that the Grandmother loves the Child, I have ignored the hearsay evidence given by H.B. regarding the relationship between the Grandmother and the Child. The witness admitted not knowing the state of the relationship between the Grandmother and Mother, and not having ever seen them interact together.

[364] Likewise, the witness S.K. admitted she had never seen the Child with the Grandmother, and likewise, did not know about the relationship existing between the Grandmother and Mother. She had never seen the Grandmother and Mother together nor had she observed any interaction between the two.

[365] The witness P.A.'s hearsay evidence included that the Father had described himself as being caught between keeping his mother and the Child's mother happy. I give no weight to that evidence.

[366] I accept the evidence of the visit supervisors, except for their opinion evidence. They were not qualified and therefore not entitled to provide opinion evidence.

[367] For example, the witness James Mitchell described the visits as “very successful”, based on the 200 – 250 visits he supervises a year. He was not asked to elaborate on what he meant by “very successful”. Furthermore, his opinion is in contravention of the witness’s own assertion that he was not present to form any opinions. The witness was not qualified as an expert. I disregard his opinion.

[368] The parties tendered hearsay evidence of statements made by the Father. That evidence was not challenged. While I have referred to that evidence I have ignored it in analyzing the issues.

Grandmother’s Credibility

[369] I did not find the Grandmother to be a credible witness. Her evidence was, at times, both internally inconsistent and inconsistent with that of her own witnesses. She embellished and often gratuitously denigrated the Mother. Lastly, while demonstrating a good memory in responding to questions from her own lawyer, she was often evasive in responding to the Mother’s lawyer and “did not remember”.

[370] There were many examples where the Grandmother did not deny an allegation but simply responded that she did not recall.

[371] For example, it was put to the Grandmother that on the day her son died she stated that she had lost everything that day, and the Mother had lost nothing. The Grandmother’s response was: “No, I don’t recall that.” She then reiterated that she had been in the Mother’s shoes herself, having become a widow in her twenties. The Grandmother added that she would never say something like that to the Mother.

[372] Rather than responding “yes” or “no” to the question, the Grandmother first claimed not to recall, and then provided a vague denial (that she would never say something like that to the Mother.)

[373] This is a witness who remembered everything in her favour, yet when potentially negative admissions were suggested to her, did not recall. An occasional inability to recall is understandable. A pattern of inability to recall, or repeated vague responses can significantly damage a witness’s credibility. This is what occurred here.

[374] Other examples of what the Grandmother could not recall included:

- (a) The Mother suggesting that the Grandmother’s contact take place in public places;
- (b) The Mother stating that she did not feel comfortable going to the Grandmother’s home for the latter’s contact;
- (c) The Mother telling the Grandmother she did not feel comfortable in the Grandmother’s home because going there brought back bad memories, having just lost her Husband and her daughter having just lost her Father;

- (d) When asked whether the Mother suggested to the Grandmother that they go to public places for the Grandmother's contact, the Grandmother responded "I don't remember. I don't recall that, ma'am."
- (e) When it was put to the witness that the Mother had made this suggestion rather than having to go to the Grandmother's home where she didn't feel comfortable, the Grandmother responded "I don't recall that, ma'am."
- (f) When it was suggested to the Grandmother that the Mother had said to her that she did not feel comfortable going to the Grandmother's home for visits because she had lost her Husband, her daughter had lost her Father and going to the Grandmother's home brought back bad memories, the Grandmother responded "I don't recall that discussion."
- (g) When it was suggested to the witness that despite the forgoing discussions, the Grandmother still insisted that contact would occur in her home, the Grandmother again responded that she did not recall anything of the sort.

[375] These responses are examples of where the Grandmother's memory, which appears impeccably good when being examined, "does not remember" events which could be potentially damaging to her case. Such responses further weaken the Grandmother's credibility.

[376] The Grandmother's evidence was, at times, vague or non-responsive. For example:

- (a) When it was put to the Grandmother that on the January 5th, 2013 visit she had come with her sister again, the Grandmother's response was "My sister came to my home. Yes, that's correct." This answer is non-responsive. The question was whether the sister had again attended a visit, not whether she had attended the Grandmother's home. Rather than acknowledging that her sister was present at the visit, the Grandmother tried to reframe the event as her sister simply coming to her home, as opposed to her attending a visit.
- (b) It was suggested to the Grandmother that on that same January 5th, 2013 visit the Grandmother and her sister had told the Mother that she was not a good mother and that she was the biggest mistake the family had ever made, the Grandmother responded "There was no reason to say anything to her like that at that time." Those words are not a denial and do not respond to the question posed.
- (c) It was suggested to the Grandmother in cross-examination that during the January 5, 2013 visit she had threatened to take the Child away from the Mother. The Grandmother responded "How could that be possible, ma'am" and asked how it would be fair for her to take the Child from the Mother when she herself had been in that situation. She goes on to state "I would never do that". The Grandmother's response was not a denial. It is interesting to note that she does not deny she would ever say that. She only says that she would never do that.
- (d) When it was put to her that the Child did not find it fun to answer the Grandmother's questions anymore, the Grandmother's response was to say that the reports would speak for themselves and that "I don't have to say after that what happened". The

Grandmother's non-response was consistent with her demonstrated view that she can do as she pleases.

- (e) It was put to the Grandmother that during the March 2, 2013 visit she had told the Child that she belonged to the Grandmother and that within a few days she would be with the Grandmother more. The Grandmother did not deny having made the comment. Her response was to ask "Would that be even possible?" This is another non-responsive question in response to a question.
- (f) The Grandmother's response to the suggestion that she had accused the Mother of killing the Father was non-responsive. It was not a clear denial. It was a question in response to a question, essentially asking how she could have said that when she herself had been in the same situation.

[377] The Grandmother's evidence was, at times, inconsistent. For example:

- (a) She first testified first that her relationship with the Mother was fine at the time of trial ("until today"). Then she admitted that it had soured at the end of May 2012. Finally, in cross-examination, the Grandmother denied ever having had any conflict with the Mother.
- (b) In relation to the daycare discussion of May 23, 2012 the Grandmother provided two different explanations of her intentions regarding daycare for the Child. She first testified that she had requested the Parents' driver's licenses and passport information because she wanted to put the Child in daycare. She then testified that she was simply looking for daycare for the Child. She did not explain why she needed the Parents' documents simply to look for daycare.
- (c) At one point the Grandmother testified that her brother and one of the Mother's uncles were to have made the prayer and funeral arrangements. She later stated that an uncle on her side of the family was supposed to be informing the Mother's side of the family.
- (d) In response to the suggestion that the Grandmother had thrown the Parents out of her house, the Grandmother's adamant denial includes the words "[H]ow can a Mother throw her son out when she knows he's dying at the end of May? You tell me. I kept them all this time we had been living together and [the Mother] claims I threw my son out when I know he's dying." Besides the Grandmother's response being an question in response to a question (and therefore evasive) it is inconsistent with the Grandmother's own testimony elsewhere. She had no reason to believe, at the end of May 2012, that the Father was dying. She believed the Father and Mother to be on a holiday in B.C. at the time. She would not have known that he was dying until some time after his hospitalization, which she believed to have been on June 9, 2012.
- (e) The Grandmother's credibility is further weakened by evidence on a key point from her own witness which was inconsistent with her own. The Grandmother's witness S.C.'s understanding regarding the relationship among the Grandmother, Father and Mother that "... everyone got along great" is not consistent with the Grandmother herself testifying that her relationship with the Mother soured in May 2012.

[378] In her testimony, the Grandmother gratuitously denigrated the Mother. Examples included:

- (a) In describing the household the Grandmother testified that the Mother's few duties in the house included doing a few chores "which were never done".
- (b) When she did acknowledge that her relationship with the Mother deteriorated in May 2012, the Grandmother laid the fault at the feet of the Mother, claiming that the deterioration was because the Mother didn't want to work.
- (c) When asked to confirm that she did not allow the Mother or her family to assist with the funeral arrangements, the Grandmother responded "They didn't even ask". It was astounding to hear that this young widow would have had to ask her Mother-in-law to be able to assist with her late Husband's funeral arrangements. In one short sentence the Grandmother confirmed that the Mother was not consulted regarding the funeral arrangements, and at the same time, denigrated the Mother by sniping that she "didn't even ask".

[379] Gratuitous denigration is not determinative of credibility. However, when one party gratuitously denigrates the other she gives the impression that she has to rely on character assassination to bolster her case.

Mother's Credibility

[380] I found the Mother to be a credible witness. She was forthright in her testimony, consistent and did not embellish. She was not shaken in cross-examination. Her testimony was internally consistent and did not contradict that of her witnesses.

[381] The mother did not gratuitously denigrate the Grandmother. She used few adjectives to describe the Grandmother. Instead, she simply described events and repeated conversations in a calm manner, leaving the listener to draw his or own conclusions.

[382] A telling example of the Mother's manner was her response to the question of what had happened to the jewelry she had given to the Grandmother for safekeeping. The Grandmother had given three explanations of what had happened to the jewelry (that she had given it to her sister, that the Parents had sold it, and that she simply didn't have it). When asked what she thought had become of her jewelry, the Mother paused then simply replied "I don't know".

[383] Whatever her suspicions about what the Grandmother may have done with her jewelry, the Mother kept them to herself. She did the same when Grandmother reported to the Parents that the home had been robbed and the Mother's wedding ring and one other small ring were the only items stolen. The Grandmother refused to make an insurance claim. The Mother did not articulate any criticism of the Grandmother, despite the suspicious circumstances surrounding the alleged robbery.

[384] In view of my credibility finding, I accept the Mother's evidence, much of which was uncontroverted.

[385] According to the Mother, the Grandmother's parting comment to her on the occasion of the Mother retrieving her possessions from the Grandmother's home was that the Mother should

wait to see what the Grandmother was going to do next. This evidence was not disputed by the Grandmother.

[386] We have now seen what the Grandmother did next. She engaged in one short conversation with the Mother and requested contact to the Child. The Mother indicated her willingness to meet in a public place to discuss the request. Because of the Grandmother's insistence that the meeting be in her home the meeting did not take place. The Grandmother ended up making unreasonable demands in the form of a purported Access Agreement and when her demands were not met, she filed a Claim for contact less than three months after her son's death.

The Grandmother's Lack of Respect for the Mother

[387] The powers of a Guardian have been listed elsewhere in these Reasons. The Grandmother has repeatedly shown disrespect towards the Mother, both as the Wife of her late Husband and in her role as sole guardian. The Child has witnessed many of these occurrences.

[388] The Grandmother denied lacking respect for the Mother. Her actions spoke the opposite. Some examples included:

- (a) The Mother was excluded from participating in making funeral arrangements for her own deceased Husband, and was misinformed regarding the time of his funeral prayer service. The lack of respect shown her by the Grandmother while residing in the Grandmother's residence before her Husband's death continued after his passing.
- (b) The Grandmother assigned the Mother a secondary role at the hospital after the Father's admission. The Grandmother and extended family attended every day. In order to accommodate the Grandmother and extended family, the Mother attended early every day and left in the early afternoon to make way for the Grandmother and extended family.
- (c) The Mother was misinformed about the time of the prayers, and therefore she and her family arrived late. Instead of being apologetic about this oversight, the Grandmother blamed another family member. It is inconceivable that the Grandmother allowed the prayer service to begin without the Father's widow being present.
- (d) Notwithstanding the discussion regarding the Mother's discomfort in attending the Grandmother's home, the Grandmother still insisted that court-ordered contact with the Child be exercised there.
- (e) The Grandmother refused to provide a booster for the Child until three visits before trial, on the basis that some minister had told her it was not necessary. It was only after a supervisor insisted that the Grandmother finally complied. This issue demonstrated that the Grandmother was not going to be told by her Daughter-in-Law what to do or not to do in regards to the Child. Regardless of whether it was required by law or not, if the Mother, as guardian, wanted the Child to be transported in a booster seat, she should have been transported in that fashion.
- (f) During the December 22, 2012 visit, when the Child tried to hold the Mother's hand, the Grandmother pushed her back and told the Child that she was there to visit the

Grandmother, not to hold the Mother. This is a Child being denied the comfort of holding onto her Mother while witnessing her Grandmother failing to respect the Mother's role.

- (g) None of the family members present spoke to the Mother during the December 22, 2012 visit, other than to say "Hi". The Child witnessed how her mother was treated on this occasion.
- (h) The Child witnessed an incident during the January 5, 2013 visit where, in response to the Child asserting that she now went by the Mother's family name, the Grandmother and her sister became angry and told the Mother that they did not accept her as the Child's mother and that the Mother was not the one who had brought the Child into this world and that they did not accept the Mother as the Child's mother.

[389] While the issue of the Child's best interests is discussed more fully below, I note that this exchange regarding the Grandmother and her sister's volatile response to the Child using the Mother's family name took place in front of the Child, as did many of the Grandmother's disrespectful actions and words. The ultimate denigration of the Mother was to deny her maternity. It was certainly not in the Child's best interests to witness her Mother denigrated in her presence.

[390] What is in the Child's best interest is to see her Mother respected as a mother. I have no doubt that the Grandmother's denigration of the Mother in the presence of the Child would continue, were the Grandmother to have the Child in her care at the present time.

[391] That denigration and lack of respect for the Mother was understandably not evident during the Grandmother's supervised visits, but continued supervised contact is not an option. Supervision of contact is a temporary condition, ordinarily in place until the underlying problem has been addressed. Here, the underlying lack of respect can only be learned and meaningfully demonstrated outside the context of a court order.

The Grandmother's Superior Role and the Mother's Inferior Role

[392] There was ample evidence at trial of the Grandmother's view of her superiority over the Father and Mother. Included are the following:

- (a) The Grandmother described the Mother as having "duties" to perform in the household. This was not an agreement among adults about how to share responsibilities. The Grandmother's description, in effect, corroborates the Mother's description of her subservient role in the household.
- (b) The Grandmother's insistence on sitting in the front seat of the family vehicle was a concrete example of the fact that in this family, the Mother belonged in the back seat. Like a child, she was to be seen but not heard.
- (c) The Father was not spared the Grandmother's overbearing role. In her own words, "[T]he only responsibilities I had given [the Father] was to pay the telephone bill and the cable bill and the gas bill." It is very clear that it was the Grandmother who doled out the duties and responsibilities in the household.

- (d) The Grandmother refused to allow the Mother to work in her uncle's gas station at \$11.00 an hour.
- (e) The Grandmother refused to allow the Mother to take her own Child on a trip to India, threatening that if she did, she would not be allowed back into the home.
- (f) In testifying regarding her belief that the Father and Mother had gone to British Columbia at the end of May 2012 the Grandmother's choice of words was most interesting. Her exact words were "[A]s I said, I allowed all - I wanted him to enjoy his life." She started off saying that she was "allowing" her 30-something-old son to do something, and then switched topics. The use of the word "allow" demonstrated the Grandmother's perception of her dominant role. The Grandmother also demonstrated that her focus was only on her son, with no mention of the Mother.
- (g) While the Father was in hospital, the Grandmother "let" the Mother drive the Father's car. The vehicle belonged to both Parents and should have been the Mother's to drive whenever she wanted. The Mother did not need anyone's permission to drive it.
- (h) The Grandmother's description of the Child's first birthday party is another example of the Grandmother's self-focus. She shared a home with the Parents and Child at the time. There is no evidence that the Mother and Father were even involved in the decision to have a party for the Child. The Grandmother's description is that "I had a big party ... I wanted to celebrate and I thought that was the best way to show [the Child]". (Emphasis added.)
- (i) The Grandmother's ostensibly benign suggestion that the Mother find a part-time job reflects the Grandmother's clear impression of her position as a decision maker regarding the Child ("... and I could have my Granddaughter – we could put her in a daycare ..."). It foreshadows the May 23, 2012 incident which led to the Father, Mother and Child leaving the Grandmother's residence for good.
- (j) The first night the Grandmother visited her son in the hospital, she informed health care personnel to call her if there was any problem during the night. The Grandmother provided no evidence that she had discussed with the Mother whether anyone other than the Mother should be called if there was a problem.
- (k) Neither the Grandmother nor any member of the extended family acknowledged that the Mother had any role whatsoever to play while the Father was in hospital. They came and departed whenever they wanted. They did not offer transportation to the Mother. Again, the Mother was assigned a subordinate role in her own family.
- (l) While at the hospital, the Grandmother testified that "[T]here were a couple of times she [the Mother] had some problems and I brought her outside and I said you talk to me one on one". This is telling evidence from the Grandmother regarding her dominance in the relationship with the Mother. She did not suggest or offer to have a discussion outside; she "brought" the Mother outside. She did not ask the mother to

speak to her one on one. She commanded “you talk to me one on one”. This is a directive from a superior to an underling.

- (m) The Mother asked the Grandmother’s permission to be able to stay at the hospital on the Father’s “last night”. The Grandmother’s response was that it was perfectly alright for the Mother to stay and that, as the Wife, she did not have to ask the Grandmother. Obviously, the Mother considered the Grandmother to be in charge, and it apparently did not occur to the Grandmother that the Mother asked permission because she thought she had to.
- (n) The Grandmother would not turn over the Father’s vehicle to the Mother unless the Mother paid \$5000 for it. The Mother did not have the money, so she simply signed it over, as demanded by the Grandmother.
- (o) It was suggested to the Grandmother that after her son’s death, she denied the Mother any information regarding her Husband’s estate. In response, the Grandmother claimed this not to be true and said “I’ve given her a letter stating all the facts and she has signed to that effect, that she had received the letter.” The response clearly indicates the Grandmother’s view of herself having the superior role. The only information she gave the Mother regarding her Husband’s estate was a letter setting out certain details, which the Mother apparently signed. In the Grandmother’s view, this was sufficient. She gave no indication or recognition that the Mother was entitled to see to the administration of the Father’s estate.
- (p) The Grandmother allowed the funeral prayer service to begin in the absence of the Mother which leads one to conclude that in the Grandmother’s view, all the important people were present and the Mother was not one of them.
- (q) When the Mother went to retrieve her possessions from the Grandmother’s home after the Father’s death, the Grandmother would not allow her to take any pictures of the Child other than two pictures which were in the garage.

[393] The May 23, 2012 discussion regarding daycare ties in with the Grandmother’s evidence regarding the disagreement regarding whether the Mother should find a part-time job. As quoted earlier, the Grandmother suggested that the Mother find a part-time job

“...and I could have my granddaughter – we could put her in a daycare so she could help me financially at home. And that’s the time the problems started and she thought I was trying to throw her out of the house. I really couldn’t carry anymore, the financial burden, so all I requested her was to [sic] if she could find a part-time job.” (Emphasis added)

[394] The Grandmother’s choice of words belies her view that she (not the Parents) somehow had the right to decide to place the Child in daycare, no matter what the Parents wanted. Although she immediately changes to “we” being able to place the Child in daycare, the Grandmother had already articulated her view that the daycare decision was hers to make.

[395] Taken individually, the foregoing comments may not be particularly telling. When viewed together, they lead to the conclusion that the Grandmother acted as if she were the primary decision-maker in the home, including decision making relating to the Child.

[396] The Grandmother argued that she never tried, and never would try to usurp or interfere with the Mother's guardianship and child-rearing responsibilities over the Child. That assertion is simply contrary to the evidence presented at trial. The Grandmother's insistence on obtaining documentation from the Parents so that she could enroll the Child in daycare is a clear attempt to usurp the rights of the Parents.

[397] The May 23, 2012 incident was so significant that it was the straw which caused the Husband to finally move his family out of his mother's home.

[398] Even when faced with proof that after May 28, 2012 the Mother and Father were not on vacation in British Columbia, and instead had checked into a hotel in Calgary, the Grandmother insisted that they had been on vacation because that is what her son had told her. She would not acknowledge the fact that the Father had purposefully misled her, and that he must have had reason to do so. She could not accept the fact that he had finally decided to support his Wife rather than his mother.

[399] Following the death of the Father, the Grandmother would not accept that the Mother was independent, capable of making decisions regarding her life and capable of exercising the powers of a sole guardian. She was upset that the Mother did not return her telephone calls.

[400] No adult is obligated to accept telephone calls or to return telephone calls. The Grandmother did not allow sufficient time to pass following the death of the Father to properly assess whether the Mother improperly denied her contact with the Child. Instead, she rushed to Court and filed a Claim on October 31, 2012, less than three months after the Father's death in August 7, 2012. The Grandmother showed absolutely no sensitivity to the possibility that the mother might have had any difficulty dealing with her Husband's death, and absolutely no sensitivity to the need to give the Mother some time to adjust to life on her own, out from under the Grandmother's iron rule.

[401] There is ample evidence that the Grandmother's view of her own superiority was evident by her unilateral decisions made during her visits with the Child, including:

- (a) Deciding the venue of the visits and who should be in attendance, including a 24-year-old stranger to the Child. She did not discuss this with the Mother in advance. She showed no concern for the Child by having this stranger appear. She had absolutely no right to have anyone else in attendance, whether extended family or a stranger. It was she who should have sought clarification and possible amendment to the Court order, rather than leave it to the Mother to bring the matter back to Court if she didn't like what the Grandmother dictated.
- (b) The Grandmother had insisted on additional parties being present right from the start before there was any evidence or suggestion that the Mother would say or do anything inappropriate.
- (c) The 24-year-old young man attended four visits in total. The Grandmother acknowledged that the Mother was not comfortable with his presence but the

Grandmother simply put the subject off by saying the parties could talk about it later. There is no evidence the Grandmother made any such attempt.

- (d) When the supervisor, Shelley Cheshire, mentioned to the Grandmother that the child G. was not supposed to be present during visits, the Grandmother responded that G. had attended the previous visit and that if the Mother wanted to discuss it, “[S]he could discuss it with her counsel.”

The Father Distancing Himself from the Grandmother

[402] The Father significantly distanced himself from the Grandmother on May 28, 2012. This was the day he and the Mother permanently departed the Grandmother’s home. The Father told the Grandmother that the Parents and Child were going on a vacation to British Columbia that day. Instead, they remained in Calgary, checked into the Comfort Inn, and stayed there until June 11 when the father was hospitalized.

[403] This distancing by the Parents is crucial in the story of this family because it demonstrates that before the Father’s death, the Parents had decided to pull away from the domineering Grandmother. It was the Father who, with the Mother’s agreement, interrupted the Grandmother’s contact with the Child more than a month before his death.

[404] The Grandmother testified that her extended family had no contact with the Child after May 2012. The Father obviously wanted to keep his family’s whereabouts unknown to both the Grandmother and extended family after May 28, 2012. It was only on his admission to the hospital on June 11, 2012 that he was agreeable to allowing the Grandmother to learn of his whereabouts. That was a short, yet significant, period of time. Once again it confirmed the Father’s intention to distance his family from the Grandmother.

[405] P.A. gave a hint at some problems in the relationship between the Grandmother and Father when she related a comment the Father had made to her “...I love my mom a lot, I – don’t know what we are going to do because I want to keep my Wife happy. I want to keep my mom happy. I’m in a very tough spot and my mom has been amazing to me.” Those words, coupled with the Father’s decision to lie to the Grandmother and extended family about his whereabouts after May 28th, 2012, indicate that the Father was caught in the middle between his mother and his Wife. He ultimately sided with his Wife, as evidenced by the Father checking his family into a motel and lying to the Grandmother about their whereabouts.

[406] When the Father found himself back in the hospital in late June 2012, a couple of days after having been discharged, he did not want the Mother to immediately inform the Grandmother. He recalled the Grandmother’s words to him a few days earlier where she predicted his early return to hospital. He told the Mother that the hospital was where the Grandmother wanted him to be, and said “[S]o I don’t want to call her right now, ‘til I’m ready to call her”. It is obvious at this point that the Father was estranged from his mother, and that he had maintained his distance from his mother. He finally told her of his hospitalization to spare his wife the criticism of his Mother and her extended family.

[407] On June 24, 2012 the Mother took the Child to the hospital to celebrate her birthday with the Father with a small cake. The Mother asked whether the Father wanted the Child to speak

with the Grandmother and the Father responded “No”. This confirmed that the Father had cut off contact with the Grandmother not only for himself, but also for the Child.

[408] When the Father finally decided to inform his mother and extended family of his further hospitalization, he did so because he believed that if he did not, the family would accuse the Mother of preventing him from speaking to his family. He therefore decided to call the Grandmother before it was too late. Again, this confirmed the deteriorated relationship between the Father and Grandmother.

Alleged Denial of Contact

[409] It is difficult to comprehend how the Grandmother could allege a denial of contact in light of the discussion between her and the Mother the day of the Father’s death. The day of the Father’s death, the Mother offered to try one more time to have a relationship with her. She asked whether the Grandmother wanted the Mother and the Child to stay with her for a while.

[410] The Grandmother’s declined, and stated that that day she had lost her son while the Mother had lost nothing. She then blamed the maternal grandparents and the Mother for killing her son. She told the Mother to just go and be with her parents, and to take the Child with her.

[411] This incident factors into whether or not the Mother denied contact with the Grandmother. It shows that the Mother, immediately after the Father’s death, offered to reconcile with the Grandmother, who responded with a most hurtful comment regarding the Mother having lost nothing while she, the Grandmother, had lost her son.

[412] The Grandmother’s only evidence regarding the Mother’s alleged denial of contact with the Child after the Father’s death consisted of the following:

“I tried to call my daughter-in-law [the Mother] several times but she never answered my call because I wanted to see my granddaughter.”

[413] There was no evidence tendered regarding when the calls were placed, to which number, whether a specific message was or could be left; or even that the Grandmother dialed the Mother’s correct telephone number.

[414] Before the filing of the Grandmother’s Claim for contact, the Mother had indicated her willingness to facilitate contact between the Grandmother and the Child, whereupon the Grandmother insisted the Mother sign an onerous Access Agreement which went far beyond the discussions between the Mother and Grandmother and purported to impose conditions on the Mother’s moral comportment.

[415] Grandmother argued that until at least late May 2012 there was nothing but love and respect between the Grandmother and the Mother. This assertion flies in the face of the evidence presented and in the face of the Grandmother’s own testimony that the relationship had soured by then.

[416] The Grandmother argued that never once did she say anything derogatory about the Child’s Mother or, in any event, in front of the Child. This may have been true during the supervised visits but was certainly not the evidence I have accepted.

[417] The Grandmother framed the ultimate question to be whether the relationship between the Grandmother and the Child should be severed. Conversely, one might ask whether a relationship which was severed by the son should be respected by his mother.

Findings of Fact

[418] I make the following findings of fact:

- (a) On or about May 23, 2012 the Grandmother delivered an ultimatum to the Father to choose between herself and the Mother.
- (b) When given the ultimatum by the Grandmother to choose between herself and the Mother, the Father choose the Mother, and the Parents decided on May 23, 2012 to vacate the Grandmother's home.
- (c) The Parents permanently vacated the Grandmother's home on May 28, 2012.
- (d) In vacating the Grandmother's home on May 28, 2012 the Father significantly distanced himself, the Mother and Child from the Grandmother before his death.
- (e) The Father's actions after vacating the Grandmother's home after May 28, 2012 confirmed the Father's intention to distance himself from the Grandmother.
- (f) The relationship between the Grandmother and the Parents had been severed by the time the Father died on August 7, 2012.
- (g) The Grandmother's contact with the Child was interrupted by the Father before his death.
- (h) The Grandmother's contact with the Child was not interrupted by the death of the Father.
- (i) It was the Grandmother who precipitated any severing of her relationship with the Child.
- (j) The Father did not inform the Grandmother of his second hospitalization until several days following admission.
- (k) Following the Father's death, the Mother was open to the Grandmother having contact with the Child.
- (l) The Grandmother had at least one opportunity to see the Child after the Father's funeral, namely the day the Mother retrieved some of her personal belongings from the Grandmother's home.
- (m) The Mother did not deny the Grandmother contact with the Child following the Father's death.
- (n) The Mother's actions in contesting the Grandmother's application do not constitute a denial of contact.

- (o) The Mother's actions in refusing to sign the purported Access Agreement do not constitute a denial of contact.
- (p) Immediately after the Father's death, the Mother offered to reconcile with the Grandmother but the Grandmother refused, and stated that the Mother had lost nothing while she, the Grandmother, had lost her son.
- (q) After the Father's death, the Mother offered the Grandmother reasonable contact with the Child.
- (r) After the Father's death, the Mother was agreeable to meeting with the Grandmother to make arrangements for the Grandmother to have ongoing contact with the Child.
- (s) After the Father's death, the Grandmother's insisted that any meeting with the Mother to discuss contact take place in the Grandmother's home. This insistence prevented a meeting from occurring at that time.
- (t) The mother accommodated the Grandmother's demands for contact primarily because she could not afford the cost of litigation.
- (u) The Grandmother's purported agreement regarding "access" is an example of the Grandmother attempting to take advantage of the Mother's weak position (financially and otherwise) and to impose upon her unrealistic and inappropriate restrictions.
- (v) The Mother's refusal to sign the purported Agreement does not constitute a denial of contact.
- (w) The Grandmother repeatedly showed a lack of respect for the Mother, particularly in her role as the sole guardian of the Child.
- (x) The Child has routinely witnessed the Grandmother's lack of respect for the Mother.
- (y) The Grandmother unilaterally and wrongfully decided that her visits under the November 22, 2012 Contact Order would occur in her home, over the objections of the Mother and her lawyer.
- (z) The Grandmother unilaterally and wrongfully decided that it was her right to have whomever she wanted in attendance at her visits with the Child, despite the Mother's objections and those of her counsel.
- (aa) The Grandmother was the primary decision-maker in the household up until the departure of the Parents and Child on May 28, 2012.
- (bb) The Grandmother's extended family was a controlling influence on the Father and Mother. They pressured the Father and Mother to participate in family events by making them feel guilty for not attending, and implying that the Mother and Father's marriage (and therefore indirectly the Mother) were responsible for the Father's disinclination to attend.

[419] There seemed to be an insinuation in the Grandmother's evidence that someone coached the Child regarding what she was supposed to do or not do during visits.

[420] When the supervisor Shelley Cheshire was asked whether the Child appeared to have been coached in any manner, the witness responded that "There were a few times during the visits that that crossed my mind." I note that this witness says both that the Child appeared to be herself for the most part and, at the same time, says that it crossed her mind that the Child had been coached. She obviously did not come to a firm conclusion on the subject, was not qualified as an expert, and was quite properly was not asked to form an opinion on the question.

[421] There was no evidence that anyone coached the Child to do or say anything. I find that the Mother did and said nothing to negatively impact on how the Child was to behave during the Grandmother's contact with her.

Analysis of Issues

Does the Grandmother Require Leave of the Court to Make a Contact Application?

[422] The Grandmother's application is for a contact order under S. 35 of the *FLA*. Subsection (2) stipulates that leave of the Court is required to bring a contact application, unless one is a guardian, a parent or one who has stood *in loco parentis* to the child. A further exception applies to certain grandparents, pursuant to s.35(3) of the *Act* which reads:

S. 35(3) A grandparent of a child does not require the leave of the court to make an application under this section if

(a) the guardians are the parents of the child and

(i) the guardians are living separate and apart, or

(ii) one of the guardians has died, **and**

(b) the grandparent's contact with the child has been interrupted by

(i) the separation of the guardians, or

(ii) the death of the guardian. (Emphasis added.)

[423] In this case, the Mother is the sole guardian of the Child because the Child's only other guardian, the Father, is deceased. The Grandmother would not require leave of the Court to make a contact application if her contact with the Child was interrupted by the death of the Guardian.

[424] I have found that the Grandmother's contact with the Child was interrupted by events which preceded his death and which constituted an intentional severance of the relationship between the Father's family and the Grandmother. The Grandmother's contact with the Child was not interrupted by the Father's death. I conclude that the Grandmother requires leave of the Court to apply for contact with the Child.

Should the Grandmother be Granted Leave of the Court to Make a Contact Application?

[425] The Grandmother did not apply for Leave of the Court to make her contact application. However, the parties clearly proceeded upon the basis that Leave was not required. Alternatively the trial proceeded on the basis that Leave had implicitly been conceded. It would be unfair to the Grandmother to dismiss her Claim at this point because of her failure to seek Leave.

[426] I do not accept the Grandmother's submission that the granting of Interim Contact Orders renders the Leave issue moot. Those Orders were granted in a busy docket court, without reference to or a finding regarding the Leave issue.

[427] Despite the fact that the trial proceeded on the basis that counsel had conceded Leave, the Court always has the jurisdiction, and the requirement, to apply the Law. The question of Leave is to be determined based on the evidence

[428] I will therefore continue my analysis and consider whether Leave should now be granted. The applicable subsection of the *FLA* is 35(4) which reads:

S. 35(4) In determining whether to grant leave under subsection (2), the court shall consider the best interests of the child, including

- (a) the significance of the relationship, if any, between the child and the person for whom contact with the child is proposed, and
- (b) the necessity of making an order to facilitate contact between the child and the person for whom contact with the child is proposed.

[429] There is no question that there was at one time a significant relationship between the Child and the Grandmother. The two resided under the same roof for a large portion of the Child's life. The visit reports portrayed a loving relationship, although tinged with some unease on the part of the Child.

[430] I must also consider the necessity of making an order to facilitate contact between the Child and the Grandmother. In my view, it is not necessary to make a contact order. The Grandmother provided very little evidence of a denial of contact. The Mother demonstrated her willingness to provide contact to the Child by the Grandmother. Rather than agreeing to discuss the issue in a neutral setting, as requested by the Mother, the Grandmother filed a Claim for contact with the Child, less than three months after her son died.

[431] In determining whether the granting of leave is in the best interests of the Child, I rely upon my analysis below where I conclude that it is not in the best interests of the Child to grant any kind of contact order in favour of the Grandmother. It follows that it would also not be in the best interests of the Child to grant Leave to make the application in the first place.

[432] I would not grant Leave to the Grandmother to bring a contact application.

Is it in the Best Interests of the Child to Grant a Contact Order in Favour of the Grandmother?

[433] If I am wrong in my conclusions regarding whether Leave of the Court is required or should be granted, I shall now consider whether it is in the best interests of the Child to grant a contact order in favour of the Grandmother.

[434] I am mindful that a contact order in favour of a grandparent would represent a significant intrusion into the rights of the Child's sole guardian.

[435] Among those rights which would be eroded are the following:

- (a) The right to decide the Child's place of residence. A contact order would inhibit the guardian's right to solely decide where the Child should reside. A contact order would seriously impede the Mother's right to relocate, for example;
- (b) The right to make decisions regarding the Child's cultural and spiritual upbringing. A contact order in favour of the Grandmother would repeatedly place the Child under the Grandmother's control and facilitate in her continuation of the oppressive cultural practices under which the Mother was raised and which she experienced while living in the Grandmother's home; and
- (c) The right to decide with whom the Child is to live and with whom the Child is to associate. A contact order would be a significant infringement of the Mother's right in this regard, as the Court would make the decision.

[436] According to the Mother's counsel, not eating your daughter-in-law's food is extremely discourteous and the most significant sign of disrespect by the Grandmother for the Mother. In my view, the most significant sign of disrespect shown by the Grandmother was not allowing the Parents to make their own parenting decisions.

[437] The Grandmother has improperly assumed some of the rights reserved to guardians. The most blatant examples are her insistence on enrolling the Child in daycare, and her insistence on inviting others to be in attendance during visits, over the Mother's and her lawyer's objections and without the endorsement of a Court order.

The Grandmother's Purported Access Agreement

[438] I turn now to the document prepared by the Grandmother and forwarded to the Mother after the meeting at Tim Horton's. It clearly sets out what the Grandmother sought at the time, and provides insight into the Grandmother's perspective.

[439] This ten-page document includes the following terms, with my comments bracketed:

- (a) The Mother "...shall be and is hereby vested with the permanent care, custody of the child [sic] [the Child] of this marriage". In fact, as the sole guardian the Mother had already been vested with the permanent care and custody of the Child. The wording of this subparagraph makes it appear that the issue had not been settled, and that only upon signing the agreement would Mother be vested with rights which the Grandmother was somehow in a position to confer.
- (b) The Child would primarily reside in the home of the Mother and the Grandmother would have reasonable access "... it being the general philosophy of both Grandmother and Mother that contact by both of them with [the Child] is in their

best interests and consistent with their continuing welfare”. This is a clear statement by the Grandmother that she views her contact with the Child to be in her own best interests and consistent with her own continuing welfare. It entirely ignores the best interests and continuing welfare of the Child. It also places the Grandmother and Mother on the same footing (“...contact by both of them with [the Child] is in their best interests and consistent with their continuing welfare”. (Emphasis added))

- (c) Grandmother is to have “visitation” with the Child Mondays and Wednesdays for a few hours.
- (d) In regards to weekend access, “... as the Mother has asked that at present she does want [the Child] with her during her sleep time, the Grandmother has agreed to accommodate this request by having visitation with [the Child] every Saturday from 9am to 9:30pm.” (Emphasis added.) By referring to the Mother “asking” and the Grandmother “agreeing to accommodate” the Mother’s request, it is clear that the Grandmother considered herself in an equal if not superior position to the Mother in regards to the accommodation of such requests.
- (e) Both Grandmother and Mother “are encouraged” to attend and participate in the extracurricular activities of [the Child] and that immediately upon receipt of practice and/or game schedules and “other scheduled activities” the mother would be required to forward a copy to the Grandmother. This wording further purports to put both Grandmother and Mother on the same footing and purports to impose an onerous reporting requirement on the Mother.
- (f) Both Grandmother and Mother shall have reasonable access to [the Child] on her birthday. Here again the Grandmother purports to put both herself and the Mother on an equal footing.
- (g) Regarding other information concerning the Child, “The Grandmother shall be entitled to full information pertaining to the health and education of [the Child] on a timely basis. The Mother shall promptly notify the Grandmother in the event of serious illness of [sic] or injury to [the Child].” Serious illness or injury are then defined to include any illness or injury which confines the Child to bed for more than two days. [This would mean that, for example, if the Child were bedridden with the flu for more than two days the Mother would be obligated to inform the Grandmother. To not do so would contravene the Agreement. One has great difficulty comprehending why a guardian would agree to do that for the balance of the Child’s childhood.]
- (h) Both parties are to have “... the right to be notified by the school of any parent/teacher conferences so that both parties can attend. Both parties shall be placed on the school, church, medical, and extracurricular activity mailing list.” This is a further example of a non-guardian seeking to be on an equal footing with a guardian.
- (i) The document purports to lay down rules regarding the Mother’s moral comportment. Specifically, “The Mother shall not have an overnight guest of the opposite sex to whom the Mother is not related by blood or marriage while [the

Child] is present.” This term is truly astonishingly. It is clear that the Grandmother wishes to control even the intimate aspects of the Mother’s life, and further purport to impinge not only the Mother’s guardianship rights but also her rights as an adult to act as she sees fit.

- (j) The document would require the Mother to reserve the designation “Grandmother” for the applicant (the paternal grandparent) only. The Grandmother seeks this exclusive designation despite the fact that the maternal grandparents reside in Calgary.
- (k) The document would require the Mother to provide at least 90 days’ notice of any intention to relocate “outside the state of residence”. The document goes on to speak of the law which will govern “... who bears the burden to allow relocation should the parties not agree”. This clause represents a further attempt to intrude on the rights of the sole guardian who, at law, is solely responsible for where the Child resides. It also contemplates future litigation and provides insight into the extent of the Grandmother’s sense of entitlement.

[440] There was no evidence that that the Mother consented to the significant intrusion into her life and into her role as the Child’s guardian which the document would have precipitated. The Mother’s refusal to sign the document can in no way be taken as a denial of contact to the Child.

[441] A guardian’s rights must not be lightly interfered with. A court will do so where that is in a child’s best interests.

[442] In considering whether to grant a contact Order, subsection 35(5) of the *FLA* reads:

S. 35(5) Before the court makes a contact order, the court shall satisfy itself that contact between the child and the person for whom contact with the child is proposed is in the best interests of the child, including whether

(a) the child’s physical, psychological or emotional health may be jeopardized if contact between the child and the person for whom contact with the child is proposed is denied, and

(b) the guardians’ denial of contact between the child and the person for whom contact with the child is proposed is unreasonable.

[443] There is no evidence that the Child’s physical, psychological or emotional health may be jeopardized if contact between the Child and the Grandmother is denied.

[444] To the contrary, the Grandmother’s testimony demonstrated that her exercise of contact may have had, for whatever reason, a deleterious effect on the Child. The Grandmother testified that the Child “... thinks like an adult now because the way things are going on”, which the Grandmother acknowledges to be a “shame”. At some point, the Grandmother wrote to the Mother questioning whether it was “fair” what they were putting the Child through.

[445] In considering whether the Mother’s alleged denial of contact between the Child and the Grandmother is unreasonable, I have already found that the Mother did not deny the Grandmother contact.

[446] In light of the paucity of evidence, I am not satisfied that the telephone calls allegedly placed by the Grandmother to the Mother constituted a request for contact. There was at least one discussion between the Grandmother and Mother regarding contact. The Mother clearly indicated she was open to contact by the Grandmother. The discussion broke down because the Grandmother insisted that the meeting take place in her home, when she knew or ought to have known that that location caused the Mother great discomfort.

[447] A review of all of the testimony does not reveal specific evidence of the Mother ever denying the Grandmother contact.

[448] If I am wrong in my finding that the Mother did not deny the Grandmother contact, or if somehow opposing the Grandmother's application for contact is seen as a denial of contact, I will now proceed to analyze the issue solely on the basis of whether it is in the best interests of the Child to grant a contact order in favour of the Grandmother.

[449] The question is not whether it is in the Child's best interests to see her Grandmother. The question is whether it is in the Child's best interests to grant a contact order in favour of the Grandmother.

[450] One cannot determine whether contact by a grandparent is in a child's best interests without looking at the context. This may be why no authority has been provided for the proposition that there is a blanket right on the part of grandparents for contact or access to a grandchild.

[451] Grandparents of children in a household where the parents reside together do not have a right to see their grandchildren. There is no right of access to or contact with grandchildren which somehow crystallizes upon the death of a parent or the separation of the parents.

[452] I do not disagree that children should know their grandparents, where appropriate. That ordinarily happens in a context of mutual respect, whether the parents are living together or not.

[453] Where respect is lacking on the part of the grandparent, an order for contact will serve to reinforce and perpetuate the disrespect. That cannot be in the Child's best interests.

[454] I have found that the Grandmother has repeatedly demonstrated a lack of respect for the Mother, often in the presence of the Child. That is not in the Child's best interests.

[455] The Grandmother does not see herself as aggressive and overbearing and does not believe she presents in such a manner. In fact, that is exactly how she came across in the evidence. She is not one to be trifled with.

[456] P.A. and other family members attended visits after the swearing of the Mother's November 13, 2012 affidavit, knowing that the Mother did not want them to be present. The Grandmother and members of her extended family have demonstrated that they will do as they wish unless very narrowly circumscribed. I find that the granting of a contact order in favor of the Grandmother will be a recipe for continued conflict between the Grandmother and her extended family and the Mother. The Child will be witness to that conflict. That would not be in the Child's best interests.

[457] It was not in the Child's best interests to have witnessed much, including the following:

- (a) Her Grandmother brushing back her hand when the Child reached out for her Mother during one of the Grandmother's visits. This act would promote a view of her Mother as being somehow in a diminished role;
- (b) Seeing her Parents dominated by her Grandmother, all of which contributed to the Child's world view. What she needs now is to see is her Mother standing on her own two feet, making her own decisions without the subjugation of her Mother-in-Law and without the interference of a Court order. This will be crucial to the shaping of the Child's own image as a daughter and future mother;
- (c) Seeing her Mother being powerless to do anything in response to her Mother-in-Law's actions. As stated above, what the Child now needs is to see her Mother standing on her own two feet;
- (d) Witnessing everything going on in the family before, during and after her Father's death, including the demeaning comments made by the Grandmother and her extended family in the Child's presence.
- (e) What she needs is to have her Mother shown respect by all those who have shown the opposite.

[458] One impact of the court-ordered contact on the Child is that the Mother has been unable to take the Child for swimming lessons. She has not felt she could do so because of Court-ordered visits on Saturdays. This is an example of the impact of court-ordered contact on the guardian's ability to make decisions regarding activities she feels are in the Child's best interests.

[459] What is best for this Child is for her Mother to be able to register the Child in whatever activities she feels are best for the Child, without having to worry about consulting a non-guardian because of the possible impact on the Grandmother's contact schedule.

[460] A contact order, in these circumstances, would send a message to the Child that her Mother is not capable of making decisions in the Child's best interests. It would reinforce the Grandmother's mistaken belief that because the Mother lived in the Grandmother's home, under her dominion, the Grandmother should continue to have a say in the Child's life. These messages would negatively impact the Child's perception of motherhood, and would not be in her best interests.

[461] The fact that the Mother was cross-examined on exactly why she had changed the Child's surname to her own, following the Father's death, showed ignorance, disregard, or disrespect for the Mother's role as the Child's sole guardian. The Grandmother viewed the change as a sign of disrespect to the Father's family. The Mother's explanation, that it was simply to avoid having to constantly carry documents to prove the Child was hers, made perfect sense.

[462] A sole guardian is entitled to make all such decisions, without having to explain to anyone.

[463] A court order providing even minimal contact would be, for the Grandmother, the thin edge of the wedge, and would lead to subsequent variation applications as the Grandmother would continue to seek more and more contact. The purported Access Agreement she drew up shows the Grandmother's vision of her involvement in the life of the Mother and Child.

[464] A succession of Court applications would not be in the Child's best interests.

[465] What is best for this Child is to see her Mother lead her life out from under the domination and aggression of the Grandmother, exercising fully the powers of a guardian, without restriction.

[466] This Child has been raised in an atmosphere where the Mother's role was greatly diminished by an overbearing, demanding Grandmother. What the Child needs is a period of separation from that Grandmother. If and when the Child sees the Grandmother it will be because her Mother, not her Grandmother and not some external authority, has decided it is appropriate. This will go a long way to mold the Child's sense of self, and her perception of a Mother's role.

[467] Much of the Grandmother's past behavior and demonstrated lack of respect for the Mother have been witnessed by the Child and are life lessons the Mother will have to rectify. Until the Mother determines otherwise it would not be in the Child's best interests to expose her to unsupervised contact with the Grandmother and the risk of further ill-considered comment on the part of the Grandmother.

[468] The imposition of court-ordered contact would endorse the Grandmother's oppressive behavior and pave the way for the ongoing oppression of the Mother by the Grandmother which surely will disenable her from providing a positive role-model for the Child. That would not be in the Child's best interests.

[469] It is only in the absence of court-ordered contact that the Grandmother will have an incentive to treat the Mother respectfully as an equal, not an inferior. Witnessing that respect would assist the Child in developing into a confident woman, worthy of respect. That would be in the Child's best interests.

[470] I concur with my colleague Cook-Stanhope JPCA where she states at paragraph 83 of *A.B.B. v. A.M.L* that:

In addition, where the application, if successful, has the possibility of disrupting the peace and harmony of the child's nuclear family, the court should exercise extreme caution in evaluating the potential effects of such access on the best interests of the children. In these circumstances, access should be permitted only in the clearest of cases where the positive effects of such access demonstrably outweigh the potentially negative ones.

(Emphasis added.)

[471] The Court in *Z.X. v. V.D* found that negative effects of access would outweigh the positive effects and concluded that the child's interests would be best served by denying the grandparents' access application. Aside from ensuring on-going contact between the Grandmother and Child, and ensuring the Child continues to know her Grandmother, there would be few positive effects to granting a contact order in favor of the Grandmother. The negative effects listed above would far outweigh the positive effects.

[472] On the facts of this particular case, I do not find it to be in the Child's best interests for Grandmother to have court-ordered access or contact.

[473] The Child will continue to know her Grandmother if the Grandmother begins to show the respect the Mother deserves.

[474] The Grandmother (and incidentally her extended family) has it within their means to routinely see the Child – at family celebrations and gatherings. Instead of including the Mother in these events (as they had customarily done in the past), the Grandmother and her extended family have recently excluded them, except for an invitation to one wedding celebration which occurred after the death of the Father but before the filing of the Grandmother’s claim.

[475] When asked what sort of contact the Mother would see as appropriate for the Grandmother, the Mother responded that if the Grandmother would change her attitude, not repeat past behaviour, and have a normal relationship with the Mother’s family, the Grandmother would be able to see the Child. In the Mother’s words “... I always tell her that, you are [the Child’s] grandmother, I will never stop you.”

[476] The Grandmother argued that the Mother is agreeable to her having continued contact with the Child, and the Mother therefore must realize that such continued contact would be beneficial to and in the Child’s best interests. The Grandmother overlooks the fact that the Mother’s willingness to facilitate contact was premised on the Grandmother demonstrating respect for the Mother in her role as guardian.

[477] The Grandmother argued that her bond with the Child was very strong, and should be maintained in the future. This is a valid argument. Whether in fact there is future contact depends entirely upon the Grandmother’s behaviour and whether she can show respect for the Mother.

[478] Once the Grandmother demonstrates respect for the Mother as guardian, she will have the opportunity to see the Child. That is the Mother’s view of future contact by the Grandmother. I am satisfied of the Mother’s sincerity, although my decision is not influenced by her stated intention.

CONCLUSION

[479] The Grandmother’s application is dismissed. All prior Orders are set aside. Leave is granted to speak to Costs on a date arranged by counsel within 30 days.

Heard on the 25th, 26th, 27th and 28th of November, 2013

Dated at the City of Calgary, Alberta this 10th of April, 2014

V.T. Tousignant

A Judge of the Provincial Court of Alberta

Appearances:

R. Dudelzak, Q.C.

for the Applicant

D. Castle

for the Respondent

Corrigendum of the Judgment
of
The Honourable Judge V.T. Tousignant

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