

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

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

AND

[REDACTED] [REDACTED]
and
[REDACTED] [REDACTED]

**ORAL REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE A. BROWN**

COPY

Counsel for [REDACTED] [REDACTED] appearing by teleconference:

R. Neary

Counsel for [REDACTED] [REDACTED]

E. Raven
(agent for W.L. Scott, QC)

Place of Hearing:

Port Coquitlam, B.C.

Date of Judgment:

March 21, 2019

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[1] THE COURT: This is my oral decision on the hearing that took place last week on March the 13th, 2019. If a transcript is ordered I reserve the right to make editorial changes that will not affect my decision or the reasoning. I will start with an overview of the recent background.

[2] Mr. ██████████ and Ms. ██████████ are the parents of ██████████ ██████████ ██████████ born May 14th, 2008, and so ██████████ is 10 going on 11.

[3] Since 2012, the parties have entered into a series of consent orders providing for Mr. ██████████ to have parenting time with ██████████ Mr. ██████████ parenting time has increased from order to order. The most recent order from November 9th, 2016, provided that Mr. ██████████ have parenting time with ██████████ as follows: (1) from Monday to Wednesday mornings; (2) the first weekend of every month; and (3) every other Sunday at 3:00 p.m.

[4] On or about October 26th, 2018, Mr. ██████████ was arrested, charged with first degree murder and held in custody pending a bail hearing.

[5] On November 29th, 2018, Ms. ██████████ filed an *ex parte* Notice of Motion and application to terminate the November 9th, 2016 consent order. Ms. ██████████ appeared before Judge Dossa on Tuesday, December 4th, in family remand court and was assisted by duty counsel. I have reviewed the transcript of the proceedings. No evidence was heard. Duty counsel advised the court that Ms. ██████████ could serve Mr. ██████████ with her Notice of Motion while he was in custody. Judge Dossa granted Ms. ██████████ short leave to serve Mr. ██████████ and said, "I don't

know how quickly you'd be able to serve him in custody. You can come back next -- the 11th?" Ms. ██████████ said she did not know if she could serve him that quickly because of work and Ms. Maser offered to provide her with advice on process servers. The court was advised there was some urgency because Mr. ██████████ bail hearing was scheduled to commence on December the 7th.

[6] On that basis, an order was made suspending Mr. ██████████ parenting time and he was granted liberty to apply to set aside the order with seven days' notice to Ms. ██████████. By granting short leave to serve Mr. ██████████ it is clear that Judge Dossa's expectation was that Mr. ██████████ would get notice and the matter would be back before the court swiftly.

[7] Despite short leave being granted to Ms. ██████████ she did not arrange to have Mr. ██████████ served while he was in custody. According to her evidence, Ms. ██████████ had Mr. ██████████ served when he was released on bail on January the 10th, 2019.

[8] On January 11th, the next day, Mr. ██████████ applied to have the order set aside and what has followed are a flurry of applications by both parties.

[9] On January 29th, 2019, the parties appeared in court and a half-day hearing was set. To make best use of limited court time, the hearing was to proceed on the basis of affidavit evidence and a schedule for exchanging materials was ordered. As well, it was ordered that: (1) Mr. ██████████ would have FaceTime with ██████████ at least once a day; and (2) Ms. ██████████ would take steps to have ██████████ enrolled in

counselling as soon as possible and would provide Mr. ██████████ with the counsellor's name and contact information.

[10] Most recently, on February the 19th of this year, Ms. ██████████ filed a Notice of Motion returnable March the 13th and an application seeking, among other things, a declaration that she is ██████████ sole guardian, has all the parental responsibilities and that Mr. ██████████ only have parenting time if agreeable to ██████████. Also sought was an order that a views of the child report be prepared to determine ██████████ wishes regarding parenting time with his father.

[11] On March the 13th, 2019, the parties, with counsel, appeared before me. Mr. Scott, counsel for Ms. ██████████ sought an adjournment of the hearing pending the preparation of a views of the child report. The adjournment was strenuously opposed by Mr. Neary, counsel for Mr. ██████████ who argued that there needed to be an adjudication on the merits given that ██████████ had not had parenting time with his father for more than four months. I advised the parties that I agreed that a views of the child report should be ordered to help inform the issue of Mr. ██████████ parenting time. I directed that the hearing proceed with the focus being what, if any, parenting time with Mr. ██████████ is in ██████████ best interests on an interim basis until that views of the child report has been prepared and considered by the parties.

[12] At what turned out to be a full day hearing, it was argued by Ms. ██████████ that Mr. ██████████ should only have parenting time if and when ██████████ is ready and that it be professionally supervised. Mr. ██████████ position was that there is no basis for

supervised parenting time and that his parenting time should be restored and enhanced to make up for the time that ██████████ has not been with him.

[13] I will now turn to the parties' respective positions and their evidence in support, starting with Ms. ██████████

[14] Ms. ██████████ relied solely on her affidavit filed January the 17th, 2019 and was cross-examined on it by Mr. Neary. Ms. ██████████ was asked at the outset about her failure to serve Mr. ██████████ in a timely way, in accordance with the December 4th, 2018 order and Judge Dossa's reasons. Her response was that she was working full-time and Mr. ██████████ was in jail, so she did it as soon as she could, which turned out to be more than one month later.

[15] Ms. ██████████ was questioned about the term of the January 29th, 2019 order that she get ██████████ in counselling as soon as possible and provide Mr. ██████████ with the counsellor's name and contact information. Ms. ██████████ said that she had gotten ██████████ into counselling in early February, just a few days after the order was made. As for her failure to advise Mr. ██████████ about the counsellor, Ms. ██████████ answers ranged from she was not aware, she did not realize, and she did not recognize this term of the order. When it was put to her that she simply chose to not provide Mr. ██████████ with the name of the counsellor, Ms. ██████████ agreed.

[16] Ms. ██████████ was also asked about the term of the January 29th order that Mr. ██████████ have at least daily FaceTime with ██████████ why that had not been happening and why she had not complied with that term of the order. Ms. ██████████

said [REDACTED] was avoiding contact with his father and was choosing to not pick up the FaceTime calls. She has blocked Mr. [REDACTED] on her phone and said she left the FaceTime to happen between [REDACTED] and Mr. [REDACTED] and she was not involved in arranging it.

[17] Ms. [REDACTED] said that her main concern was her son's safety and wellbeing, given Mr. [REDACTED] arrest for murder and the stress and anxiety she says [REDACTED] has exhibited since then. She said [REDACTED] told her that he is not ready to see his father and that he is afraid to be with him and spend time at his home which is "in the middle of nowhere."

[18] Ms. [REDACTED] agreed that [REDACTED] has been at his father's house hundreds of times but not since the arrest. When asked if [REDACTED] was afraid of his father, Ms. [REDACTED] said he is afraid of the situation and that he is unsure and uncomfortable.

[19] Ms. [REDACTED] agreed that [REDACTED] has never said anything to her to cause concern that he was in danger when he was with his father and that, in the past, she trusted Mr. [REDACTED] with [REDACTED]. Then, at a later point in her evidence, she said she has always had concerns. She also said she was concerned for [REDACTED] in case there was retaliation against Mr. [REDACTED] in response to the murder charge.

[20] Ms. [REDACTED] affidavit sets out her longstanding knowledge of Mr. [REDACTED] affiliation with a motorcycle club, his criminal record and aspects of his lifestyle that she says cause her concern for [REDACTED] safety. It was put to her on cross-examination that even so, since 2012, she and Mr. [REDACTED] entered into

consent orders that provided for him to have more parenting time. Ms. ██████████ said that she felt financially pressured to agree to Mr. ██████████ wishes, although she agreed that by 2016, that financial pressure had stopped. She said she then felt other pressure, including that Mr. ██████████ knew she did not like going to court.

[21] Ms. ██████████ agreed that over the years Mr. ██████████ has been an involved father, attending ██████████ sporting events, parent/teacher meetings, taking him on vacations and often having parenting time beyond what was provided in their orders. Ms. ██████████ also said there were times that Mr. ██████████ did not follow the schedule and would cancel parenting time or disappear on holiday; but she also agreed that there were occasions that Mr. ██████████ took ██████████ during her parenting time to help her out.

[22] When the some 35 pages of photos of ██████████ and his father at Tab I of Mr. ██████████ affidavit were put to Ms. ██████████ she said many of those were taken when Mr. ██████████ dropped by when ██████████ was with her, as opposed to during his parenting time. There were also many photos that she agreed were taken during Mr. ██████████ parenting time, at various times throughout ██████████ life.

[23] Ms. ██████████ disagreed that Mr. ██████████ was very involved in ██████████ life prior to the 2012 order. She could not provide a response to questions regarding a table dated August 30th, 2012, at Tab F of Mr. ██████████ affidavit which was prepared by the director of ██████████ daycare back then and indicated dates and times that Mr. ██████████ dropped off and picked him up during 2011 and 2012. The table had been prepared for when the parties were in court in 2012 but Ms. ██████████ said she had

not seen it before and although she could not deny it, she also was not sure of its accuracy.

[24] In 2017, Mr. [REDACTED] was arrested in Victoria in [REDACTED] presence and the police returned [REDACTED] to Ms. [REDACTED]. Mr. [REDACTED] said she was told then by an officer, whose name she was uncertain of, that [REDACTED] should not be with his father because he could be in danger. Ms. [REDACTED] contacted the Ministry for Children and Family Development at that time and testified she was told there was nothing they could do because Mr. [REDACTED] had not been charged. When asked why she did not apply to court back in 2017 or earlier to vary the order if she was concerned for [REDACTED] safety, Ms. [REDACTED] responded that she thought there was nothing she could do about it. I do not accept this as credible given that the record reflects that at various times since 2012 Ms. [REDACTED] has had the benefit of legal counsel and by 2017, family court proceedings were not new to her.

[25] Ms. [REDACTED] was cross-examined on the statement in her affidavit regarding her communications with [REDACTED] principal. She said that she did not bring to court copies of the emails she said they exchanged. Similarly, she did not bring anything from [REDACTED] school counsellor, claiming a subpoena was required to release those, but then going on to say she did not actually ask about them. She also did not file anything from [REDACTED] counsellor at the Maple Ridge Youth and Wellness Centre, explaining that she did not get around to it.

[26] Ms. [REDACTED] also testified that she brought [REDACTED] to his family doctor when he was feeling unwell after hearing about his father's arrest. She said the doctor found

nothing physically wrong and referred ██████████ to the Youth Wellness Centre. No evidence from the doctor was filed.

[27] Ms. ██████████ said that seeing a counsellor has helped ██████████ deal with his stress and anxiety through calming exercises such as deep breathing. On re-direct, Ms. ██████████ confirmed that prior to Mr. ██████████ arrest, ██████████ was not exhibiting any signs of stress. So despite Ms. ██████████ saying she has always had her concerns regarding Mr. ██████████ spending time with ██████████ her evidence supports that it was not causing ██████████ stress prior to the arrest.

[28] Ms. ██████████ testified that ██████████ has missed school and has been struggling in school as a result of Mr. ██████████ arrest but did not provide attendance records or any reports from his teachers. She said ██████████ often complains about not wanting to go to school but she is usually able to convince him to go.

[29] Ms. ██████████ confirmed that she monitors ██████████ cell phone and as a parent, she said it is her right. She indicated that she had brought ██████████ phone to court but it was not examined.

[30] Ms. ██████████ denied that she does not want ██████████ to communicate with his father and insisted that she has told ██████████ he is free to call and text his father and that he does not want to.

[31] On re-redirect, Ms. ██████████ said that Mr. ██████████ has been contacting ██████████ nonstop and sending texts and photos. Entered as Exhibit 1 were text messages between January 24th and March 2nd, sent to ██████████ phone from the son of a

former girlfriend of Mr. ██████████ and from Mr. ██████████ Ms. ██████████ referred to some of the messages that made reference to family court and his charge and expressed concern that Mr. ██████████ was raising these adult matters with ██████████ She said these add to ██████████ stress, especially since some of the texts were sent in the morning before ██████████ went to school and upset him.

[32] I agree that communications with ██████████ by either parent should not make reference to the family court proceedings or the adult issues between the parties. I also agree there should not be texting about the criminal charge. However, given ██████████ age and what he would have seen and heard on TV and other sources about it, I do not find Mr. ██████████ text from February 25th at 7:30 a.m., to be inappropriate and as I read it, he is simply trying to reassure his son.

[33] Ms. ██████████ said she has had many conversations with ██████████ about his father and that ██████████ loves his father but has lots of fears and uncertainties about being around him because of the charge. Ms. ██████████ acknowledged that she knows Mr. ██████████ loves ██████████ and has spent a lot of time in ██████████ life. She says what has changed is that Mr. ██████████ has been charged with murder, that a lot of people know about it, including neighbours, students and staff at ██████████ school and are talking about it and that this has had a big affect on ██████████

[34] Ms. ██████████ disagreed with the proposition that some of ██████████ distress could be associated with not seeing his father. She said ██████████ is happy the way things are. Ms. ██████████ acknowledged that, as far as she knows, ██████████ has not expressed to

anyone other than herself and perhaps his counsellor (but he meets with his counsellor privately) that he does not want to see his father.

[35] I turn now to Mr. ██████████ evidence.

[36] Mr. Scott did not cross-examine Mr. ██████████ on his affidavit. It is unchallenged evidence before the court and speaks for itself. In addition to the exhibits I have already referred to, Mr. ██████████ affidavit includes the following exhibits.

[37] At Tab G, text messages between himself and ██████████ from January the 13th to February 2nd of this year. It was not confirmed if this is a complete record of all the texts between them during this time. In reviewing Tab G, it appears that many of Mr. ██████████ texts were not answered.

[38] At Tab H, the affidavit of Mr. ██████████ friend, Laurie Collins, in support of his application for judicial interim release.

[39] At Tab J was Mr. ██████████ parenting time calendar for the period 2016 to 2018.

[40] At Tab K, copies of all ██████████ report cards, some of which were signed by Mr. ██████████

[41] At Tabs L to P, copies of ██████████ schoolwork, art, dance recital program, martial arts and other certificates and achievements.

[42] At Tab Q, excerpts from the January 10th, 2019 Reasons for Judgment of Justice Ker on Mr. ██████████ application for judicial interim release and the terms of his bail.

[43] When Mr. ██████████ was cross-examined about the views of the child report, he agreed that ██████████ should be interviewed if it would help the situation. His response to whether his parenting time should be supervised was that he felt it was ridiculous and that he would hate sitting in a room with his son being supervised by a stranger.

[44] I will now move on to the submissions of counsel.

[45] Mr. Scott pointed out, quite rightly, that the issue to be decided is not what Mr. ██████████ wants or does not want. The same is true in respect of Ms. ██████████ wishes. The paramount concern for this court is what is in ██████████ best interests.

[46] The parties agree that there ought to be a views of the child report ordered so that ██████████ voice is heard and his wishes canvassed by a neutral party. As to who prepares that report, Mr. Scott proposed that a privately retained psychologist may be a better option in order to have it completed in a more timely way than if done by a Family Justice counsellor which he said could take a number of months. He said that if a psychologist is retained that person should be agreed to by the parties and the costs shared in proportion to their respective incomes. Mr. Scott was of the view that a psychologist could do the report within a month and he estimated the cost to be about two to three thousand dollars.

[47] Mr. Neary responded that, in his experience, the cost would be substantially higher. He also pointed out that, given the parties are not on speaking terms and because there has been no financial disclosure between them, agreeing on a psychologist would take extra time, as will reaching agreement on their respective financial responsibility.

[48] Mr. Scott indicated that his client is open-minded with respect to either option. He also proposed that the parents each have time with whomever does the report to share their perspectives.

[49] It was acknowledged on behalf of Ms. ██████████ that Mr. ██████████ is before the court as a father who had a significant role in his son's life up until he was charged with murder and that it is this event and the effect it has had on ██████████ that must be seriously considered in determining parenting time.

[50] Mr. Scott referred to s. 37(2) of the *Family Law Act* and the needs and circumstances of a child that must be considered when taking into account what is in their best interests. He made particular reference to s. 37(2)(g), the impact of any family violence on the child's safety, security or wellbeing and whether the family violence is directed toward the child or another family member.

[51] The term family violence is defined under the *Family Law Act* and includes attempted, or actual, physical and sexual abuse of a family member, and psychological or emotional abuse of a family member, including intimidation, harassment, coercion or threats, unreasonable restrictions on financial or personal

autonomy, stalking, damage to property or, in the case of a child, direct or indirect exposure to family violence.

[52] When Mr. Scott was asked to point me to evidence of family violence, he referred to what he described as Mr. ██████ constant texting and raising with ██████ the family and criminal court matters. He said Mr. ██████ was pressuring ██████ through his communications.

[53] Mr. Neary, in response, argued that there was no evidence of family violence and the submission that Mr. ██████ texts constitute family violence is without merit. He said an examination of the texts at Tab G of Mr. ██████ affidavit and Exhibit 1, make clear that they are expressions of love, missing his son and asking his son to call or text him. He argued that the text messages are not intimidating, harassing, coercive or threatening.

[54] Mr. Neary pointed to paragraph 24 of Mr. ██████ affidavit and said the text at Exhibit 1 sent on February 24th, 25th at 7:38, which was one of the concerning texts identified by Ms. ██████ is an example of what Mr. ██████ was attesting to - that it is an adult matter that ██████ need not be concerned with and that he is trying to convince his son he is not a bad guy.

[55] My difficulty with Exhibit 1 is that it does not appear to be a complete record of texts between Mr. ██████ and ██████ This is evident from Mr. ██████ text of January the 24th, 7:30 p.m., where he appears to be responding to a text from ██████ which is not included. It is also possible he is responding to a call or

perhaps a FaceTime with [REDACTED] but, clearly, [REDACTED] expressed in some way to Mr.

[REDACTED] that someone told him he would never see his father again and Mr.

[REDACTED] text was in response to that. Because it is not a complete record, it is

impossible to assess the nature and frequency of all of Mr. [REDACTED] texts with

[REDACTED] since his release from custody but, based on the evidence before me, and

looking at both Exhibit 1 and Tab G, the most texts that I count sent from Mr.

[REDACTED] in one day were on February 27th where he sent messages to [REDACTED] at

8:22 a.m., 11:09 a.m. and 2:19 p.m., and I do not agree that this is constant texting.

[56] I see no evidence whatsoever, either in content or frequency, that Mr.

[REDACTED] texts to [REDACTED] fall within any category of family violence.

[57] Mr. Scott argued that because [REDACTED] is not ready to spend time at his

father's home, in order to ensure [REDACTED] has the greatest level of comfort reuniting

with his father, that the parenting time pending the outcome of the s. 211 report

should be professionally supervised.

[58] In support of his position, Mr. Scott referred to the case of *S.J.S. v. Y.W.P.*,

a 2017 decision of our B.C. Supreme Court. This was a case where a mother

feared for her six-year-old child's safety when with the father as a result of the

father's gangster lifestyle. The child lived with her mother and grandmother and the

father had only limited and supervised parenting time given the mother's concerns.

One of the issues for the court to decide was whether the father's parenting time

should continue to be supervised. Mr. Scott referred to paragraph 31 and the

court's expressed concern arising from the claimant's testimony about her concerns

for the child's safety and security by prolonged exposure to the respondent's unlawful lifestyle and negative associations, as well as his hostile and occasionally violent behaviour towards her.

[59] Mr. Scott went on to note that, in contrast to Mr. [REDACTED] situation, in *S.J.S.*, despite the father's criminal history, he had undergone some significant changes and the police were no longer involved in the family's lives and in particular the father's. As well, social workers had closed their child protection file and the reports of the parenting supervisors were positive, all of which the court considered in making an order that the father have unsupervised parenting time.

[60] I note that this was notwithstanding a history of family violence including in the presence of the child and credible death threats made to the entire family, which required the child to go into hiding for a period of time with her grandmother or she would have been taken into care. So in my view, *S.J.S.* is distinguishable in a number of ways.

[61] In response to the submission that Mr. [REDACTED] parenting time be supervised, Mr. Neary also turned to case law and the factors that the court must consider in deciding whether to terminate access or order supervised parenting time.

[62] Mr. Neary pointed to the leading case, which is an Ontario decision of *V.S.J. v. L.J.G.*, that has been applied here in B.C. And so what was said in *V.S.J.* in 2004 was, at paragraph 128:

There is a presumption that regular access by a non-custodial parent is in the best interests of children. The right of a child to visit with a non-custodial parent, to know and maintain or form an attachment to a non-custodial parent is a fundamental right and should only be forfeited in the most extreme and unusual circumstances.

[63] In that case, Justice Blishen went on to set out guidelines for courts when they are faced with applications for access to either be terminated or only be allowed if supervised.

[64] Turning then to the B.C. case that applied *V.S.J.*, that is the decision of *F.K. v. M.K.*, which is a 2010 decision of our Supreme Court and was a decision of Madam Griffin prior to her move to the Court of Appeal. And what Justice Griffin said at paragraph 147, referencing *V.S.J.* and noting that:

... the court found that an order for supervised access, like termination of access, requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship.

[65] She then set out the factors that are most commonly considered by courts in terminating access:

1. Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear.
2. History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being.
3. Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent.
4. Ongoing severe denigration of the other parent.
5. Lack of relationship or attachment between noncustodial parent and child.

6. Neglect or abuse to a child on the access visits.
7. Older children's wishes and preferences to terminate access.

[66] At paragraph 149 the court looked to paragraph 143 of *V.S.J.* and said:

... the court stated that when terminating or restricting access, it is necessary for the court to weigh and balance numerous factors in the context of the child's best interests including:

1. The maximum contact principle;
2. The right of a child to know and have a relationship with each parent;
3. A limitation of a consideration of parental conduct to that conduct which impacts on the child;
4. The risk of harm: emotional, physical and sexual;
5. The nature of the relationship between the parents and its impact on the child;
6. The nature of the relationship and attachment between the access parent and the child; and,
7. The commitment of the access parent to the child.

[67] I agree with Mr. Neary's submission that the only two elements that are engaged here are the risk of emotional harm and, given his age, [REDACTED] wishes. That is why the views of the child report is critical to determine his wishes in as neutral a setting as possible.

[68] At this juncture, the only evidence before the court is what Ms. [REDACTED] says are [REDACTED] views. She has not submitted any evidence from any other source to support what she says, despite that she has had over one month to gather such supporting evidence.

[69] Mr. Neary also relied on *Philp v. Cummings and Main*, a 2018 decision of the B.C. Supreme Court where, as in this case, the mother took the position that contact with the children's father posed such a risk to them that his parenting time should be limited and only under supervision. The identified risks included violence between the parties and self-harming by one of the children which the mother said stopped when he was not seeing his father. Justice MacNaughton noted at paragraph 21 that, as in this case, the mother did not provide corroborating evidence to support her allegations. Justice MacNaughton said this at paragraphs 26 and 27, in respect of supervision orders:

... they should be made so as to serve the best interests of the children, having regard to the considerations specified in the Act and not for other purposes. This court discourages long term supervision orders but they can be ordered in circumstances where the best interests of the children require it.

[70] Justice MacNaughton went on to say on the record before her, she was not satisfied that there was any need for supervision in that case.

[71] She also said children have the right to have the appropriate contact with both parents, based on the factors in s. 37 of the Act. The relationship and attachment between Bowen (phonetic), who was one of the children, and his father does not require supervision which creates an artificiality to his ongoing relationship with his father. "There is no need on the record before me to protect Bowen from either physical, sexual or emotional abuse."

[72] The end result in the *Philp* case was that the court ordered generous and unsupervised parenting time.

[73] Mr. Neary argued that similarly here there is no evidence of physical, sexual or emotional abuse and Mr. ██████████ parenting time should be restored, enhanced and unsupervised in order to normalize the relationship with ██████████. He proposed that for three months going forward ██████████ spend one full week with each parent on an alternating basis and thereafter there be a return to the November 2016 parenting schedule.

[74] Mr. Neary urged the court to take judicial notice of the profound impact that not seeing an involved parent for more than four months, would have on a child. He said the court ought to reject Ms. ██████████ evidence when she says that ██████████ does not miss his father since she is the only source of that information and has come to court with nothing more.

[75] Mr. Neary raised concerns about Ms. ██████████ credibility and reliability, describing her evidence as evasive, goal-oriented and with nothing to back up her claims. He pointed to her failure to comply with the court orders and her evidence that she forgot or was too busy, her reluctance to even agree that Mr. ██████████ helped ██████████ with his homework until after persistent questioning, and that she says she has had concerns for a long time but provided no reasonable expectation why, if that was so, she entrusted ██████████ with his father for so many years.

[76] Mr. Neary acknowledged that there is no doubt that hearing of the charge would be stressful to ██████████ but argued that there is no evidence to support that ██████████ is afraid of his father or that Mr. ██████████ might harm him, or that ██████████ might be unsafe when with his father.

[77] In response to the safety concerns Ms. ██████████ raised about ██████████ being with his father since he has been charged with murder, Mr. Neary pointed to excerpts of Justice Ker's decision. At paragraph 90 she noted that Mr. ██████████ has been under intense surveillance since March 2016 and there is no evidence that he has engaged in any illegal activity during that time.

[78] At paragraph 71, she said that the surveillance officers observed a very close bond between Mr. ██████████ and his son.

[79] At paragraph 115 she described Mr. ██████████ as being devoted to his son.

[80] Mr. Neary says that it is noteworthy, and I agree, that the stringent bail conditions Mr. ██████████ was released under take into consideration and allow for his relationship with ██████████ to continue. For example, condition 18 limits Mr. ██████████ cell phone use and only allows him to contact certain listed individuals which include ██████████ and Ms. ██████████. Condition 16 prohibits Mr. ██████████ from having any visitors at his home during his curfew except for ██████████ and his friends, his sureties or others with the written permission of his bail supervisor. I agree with the submission that Justice Ker would not have allowed Mr. ██████████ to have

██████████ and his friends in his care if there had been any evidence that this would be unsafe.

[81] Other conditions that Mr. ██████████ must abide by that, in my view, ought to also address Ms. ██████████ concerns are those that restrict his travel, including to Vancouver Island, who Mr. ██████████ cannot associate or communicate with, the curfew he is bound by and also the weapons prohibition.

[82] I will now move to my conclusions.

[83] Mr. ██████████ stands charged with the most serious of offences but he is entitled to the presumption of innocence. In granting Mr. ██████████ release on bail, Justice Ker said this at para 171:

Release on first degree murder charges pending trial or appeals following conviction, in some of those cases, is not inappropriate when there are potential difficulties with the strength of the Crown's case and where a comprehensive and stringent release plan is provided. Mr. ██████████ case falls within this genre of case.

[84] The presumption of innocence is perhaps beyond ██████████ current level of understanding. It is also often lost on the public or simply given no heed, particularly in cases of serious offences such as this which are notorious and highly publicized.

[85] It is completely understandable that ██████████ is upset by the charge his father is facing and the reaction from those around him, including his mother. It is also not surprising that Mr. ██████████ feels the need to protect her son and has taken the steps

that she has by seeking relief from the court and also not facilitating contact between Mr. [REDACTED] and [REDACTED]. Not surprising, but also not lawful, that Ms. [REDACTED] has disregarded court orders to advance her interests. Although granted short leave, she took over a month to serve Mr. [REDACTED] which created delay in his ability to respond. Then she disregarded what were her obligations under the January 29th order and her evidence provided no reasonable explanation that I accept for doing so. Ms. [REDACTED] left the FaceTime to [REDACTED] when it was an order binding her as the adult to facilitate at least daily electronic communication with his father. Even if it is the case that [REDACTED] did not want to FaceTime, it was Ms. [REDACTED] responsibility to have him do so, just as she said she convinces him to go to school when he does not want to.

[86] On cross-examination, Ms. [REDACTED] refused to agree to virtually any proposition that did not support her position that, for now, [REDACTED] should not spend time with his father unless it is supervised and that [REDACTED] does not want to see his father.

[87] I found her evidence at times to be both internally and externally inconsistent. She was frequently vague and evasive, for example, on the issue of informing Mr. [REDACTED] about [REDACTED] counsellor, and her explanation why that had not happened. It was only with persistent questioning that she would provide more complete answers. This caused me to doubt Ms. [REDACTED] credibility as a whole.

[88] Also troubling was Ms. [REDACTED] failure to provide any evidence beyond what it is in her January 17th, 2019 affidavit, and no corroborative evidence to support her position.

[89] On the one hand, Ms. [REDACTED] says [REDACTED] should not have to see his father unless he is ready because he is stressed and confused and on the other, she proposes there could be visits if they were professionally supervised. I do not agree that the artificial setting of a supervised visit is in [REDACTED] best interests. In my view, it would add to [REDACTED] current confusion around his father and suggest to him that he is unsafe being around him, which I find is not supported by the evidence.

[90] Mr. [REDACTED] history and gang association is no mystery to Ms. [REDACTED]. The murder with which he is charged occurred in 2016 and despite Ms. [REDACTED] concern about possible retaliation, [REDACTED] has been with his father regularly since long before then without incident. According to Judge Ker's reasons, Mr. [REDACTED] has not been involved in criminal activity, as I have already noted, for at least the last three years. He has also been under constant surveillance and I suspect that surveillance continues. The whole point of surveillance is that it be done surreptitiously, as it has been done in the past without [REDACTED] knowledge, and I expect that will continue. Combined with the bail conditions, in my view, [REDACTED] is likely safer in his father's presence than ever before.

[91] Mr. [REDACTED] unchallenged evidence demonstrates that he has been a highly involved father in [REDACTED] life for many years. Ms. [REDACTED] reluctantly agreed to this as well. It is a positive step that Ms. [REDACTED] has gotten [REDACTED] into counselling as quickly as she did after the January 29th order to help him deal with what are undoubtedly a multitude of emotions over his relationship with his father, the impacts of the charge and not seeing his father now for almost five months, the

longest period in his living memory. I expect [REDACTED] is also struggling with loyalty to his mother, who is his main caregiver, and also to his father, given what has happened.

[92] On all the evidence, I am satisfied that at least on an interim basis, pending the outcome of the s. 211 report, that it is in [REDACTED] best interests that Mr. [REDACTED] parenting time be restored and that be on an unsupervised basis.

[93] Given that the parenting schedule that was being exercised prior to Mr. [REDACTED] arrest has been in place since November 2016 and was an expanded version of an earlier order, in my view, it is in [REDACTED] best interests that this schedule be reinstated to normalize the relationship between father and son. This is the schedule [REDACTED] was familiar with and there is nothing in the evidence before that I accept to suggest it was causing him any problems.

[94] I am mindful Ms. [REDACTED] has said [REDACTED] likes things the way they are and did not like going back and forth between his parents but this is not an unusual sentiment for children living in two households to express. For now, it is best for [REDACTED] if the adults continue to make these difficult decisions for him with the assurance that his views will be heard and I hope respected once the views of the child report have been prepared.

[95] In the interests of moving this matter along without further complication or potential disagreement between the parties and thus delay, the views of the child

report will be prepared by a Family Justice counsellor and so my interim order is as follows:

1. The *ex parte* order of December 4th, 2018 is vacated and the November 9th, 2016 parenting schedule is in effect, commencing this Sunday, March 24th, at 3:00 p.m., until further court order or agreement by the parties.
2. A views of the child report shall be prepared by a Family Justice counsellor to assess ██████ views on the parenting schedule. Ms. ██████ and Mr. ██████ will each offer to meet with the Family Justice counsellor should he or she find it of benefit to do so and they will make ██████ reasonably available to meet with the Family Justice counsellor.

[96] I am also going to make two conduct orders which, in my view, ought to be of benefit to ██████ during this time and based on the evidence I have heard from both sides in relation to conduct and communications.

[97] First of all, the parties will (a) put the interests of ██████ before their own interests; (b) encourage ██████ to have a good relationship with the other parent and speak to ██████ about the other parent and that parent's partner, if applicable, in a positive and respectful manner; and (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of ██████

[98] The parties will not (a) question ██████ about the other parent or time spent with the other parent beyond simple conversational questions; (b) discuss with ██████ any inappropriate adult, court, or legal matters; or (c) blame, criticize or disparage the other parent to ██████

[99] The final term will be that the parties shall attend at a family case conference after the completion of the views of the child report.

[100] I have two questions of counsel. What return date would you propose? I am thinking it ought to be in family remand court when you have a sense of when the views of the child report will be done so that you will be in a position to schedule a family case conference.

(DISCUSSION)

[101] THE COURT: Tuesday, April 30th, would be a family remand date, if that is agreeable to counsel.

(DISCUSSION)

[102] THE COURT: Madam Registrar, paragraph number 1 will say instead, the *ex parte* order of December 4th, 2018 is vacated and Mr. ██████ shall have parenting time with ██████ from March 22nd at 10:00 a.m. until March 24th at 10:00 a.m., after which the November 9th, 2016 parenting schedule will resume.

(DISCUSSION)

[103] THE COURT: He is going to be with Mr. ██████████ starting tomorrow, with Mom on the 24th. Mom is returning on Tuesday the 26th and then according to the schedule, it seems that he would then be with his father the following Sunday.

(DISCUSSION)

[104] MR. NEARY: That's right, Your Honour. That's correct. The 31st. So the November 9th, 2016 order ought to resume on March 31st.

[105] THE COURT: All right. Looking at the calendar and the order, I agree that is what ought to happen.

[106] In terms of the communications, given that there is an order in place that communication between Ms. ██████████ and Mr. ██████████ be by email, and I am told today that Mr. ██████████ has difficulties using email and that it is not workable, I am going to add a term that communications between the parents be by email or text message only for the purposes of discussing or making arrangements in relation to

██████████

(DISCUSSION)

[107] THE COURT: Ms. Raven has confirmed that she or Mr. Scott will prepare that order.

(DISCUSSION)

[108] THE COURT: Madam Registrar, did you add to the order the term that the views of the child report be done on an expedited basis?

[109] THE CLERK: Yes, Your Honour. I'll put that in the order and I do have it on the form.

[110] THE COURT: Thank you. The return date is April 30th, and so that is an appearance to confirm the status of the views of the child report.

(REASONS FOR JUDGMENT CONCLUDED)