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# Huron-Perth Children's Aid Society v. A.A., 2024 ONCJ 404

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# W A R N I N G

The court hearing this matter directs that the following notice should be attached to the file:

This is a case under Part V of the *Child, Youth and Family Services Act, 2017*, (being Schedule 1 to the *Supporting Children, Youth and Families Act, 2017*, S.O. 2017, c. 14), and is subject to subsections 87(7), 87(8) and 87(9) of the Act. These subsections and subsection 142(3) of the Act, which deals with the consequences of failure to comply, read as follows:

> **87.—**(7) *Order excluding media representatives or prohibiting publication.*— Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,
>
> **. . .**
>
> (*c*) prohibiting the publication of a report of the hearing or a specified part of the hearing.
>
> (8) *Prohibition re identifying child.*— No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.
>
> (9) *Prohibition re identifying person charged*.— The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.
>
> **. . .**
>
> **142.—**(3) *Offences re publication.*— A person who contravenes subsection 87(8) or 134(11) (publication of identifying information) or an order prohibiting publication made under clause 87(7)(*c*) or subsection 87(9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than three years, or to both.

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# ONTARIO COURT OF JUSTICE

CITATION: *Huron-Perth Children's Aid Society v. A.A.*, 2024 ONCJ 404
DATE: 2024-08-12
COURT FILE No.: Stratford FO-21-704

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**BETWEEN:**

**Huron-Perth Children's Aid Society**
***Applicant***

**-AND-**

**A.A.**
***Respondent***

**-AND-**

**K.H.1**
***Respondent***

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Before Justice K.S. Neill
Heard on June 26-30; August 10, 17, 18, 24; September 25-27; October 12, 23; November 9, 29; December 19; 2023; February 22, 2024
Reasons for Judgment released on August 12, 2024

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**Arakua Lamptey ..... counsel for the applicant**
**Alexander Hodder …….……counsel for the respondent A.A.**
**David Winninger ……..……..agent for the respondent K.H.1**
**Esra Samii ……..……. counsel for the Office of the Children's Lawyer, legal representative for the children H.H. and D.H.**

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**Neill J.:**

Overview:

[1] The matter before the court involves a Protection Application commenced by the Huron-Perth Children's Aid Society ("the Society") on July 27, 2021 with respect to two children: H.H. born [...], 2015 ("H.H.") and D.H. born [...], 2016 ("D.H."). At the time the Protection Application was commenced, H.H. was almost 6 years old and D.H. was 4 years old. When this trial commenced, H.H. was 8 years old and D.H. was 6 years old. There is a very lengthy history of this litigation, including 28 court appearances from August, 2021 to June, 2023 until this trial commenced. The trial was conducted over 18 days from June 26, 2023 to February 22, 2024.

[2] The main issues in these proceedings were disclosures of sexual harm by the children against their father, the veracity of these disclosures, and the conflict between the parents that has affected the children. In the two years since the Protection Application commenced and as the evidence has evolved, the Society changed its position from seeking findings of actual and risk of physical and sexual harm against the father, to actual emotional harm pursuant to s. 74(2)(f) due to post-separation conflict between the parents.

[3] Since the parents separated in 2019 and throughout these protection proceedings, the children have always been in the primary care of their mother, now subject to society supervision. What has changed throughout these proceedings is the father's access to the children.

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Background:

[4] At the time of trial, the father was 32 and the mother was 33. The father is an only child. His parents separated when he was young, and he has a good relationship with both of them. His father ("R.A.") has a new partner, D.O., and his mother ("W.A.") has a new partner, J..

[5] The mother's parents are separated. Her mother, C.H., is in a relationship with R.. The mother has 2 sisters, K.H.2 and K. and numerous stepsiblings. The mother is particularly close with her sister K.H.2. The mother is close to both of her parents. She talks to them daily and they see each other weekly.

[6] The children have good relationships with all of their grandparents.

[7] The mother has been diagnosed with Behcet's disease, which is a rare disorder that causes blood vessel inflammation. The mother no longer works and is now on ODSP. The father did not finish high school and has worked at numerous jobs over the years.

[8] The parties met in 2012 and commenced a relationship shortly thereafter. They were married in May 2018. During the parties' relationship, the mother generally stayed at home with the children while the father worked. The mother explains that there were two sides to the father: a loving, snuggly, fun side; and a controlling, jealous side that was emotionally and physically abusive. The mother indicates that the father would often put her down and speak to her like she was "stupid". They frequently argued and the father has hit her on several occasions. The mother acknowledged that the children heard the parents argue even when they were young.

[9] Both parties drank fairly heavily during their early relationship. The father acknowledges that some days he drank 12 beers a day but denied that this was an issue. Although the father reported to Dr. Sas during her assessment that he was a "functioning alcoholic" at times, at trial he denied this. The father denied that even drinking 2 beers amounted to "consuming alcohol" in his mind as it did not give him a "buzz".

[10] According to the father, the parents' relationship was good before they had children. After they had children, things changed. Their relationship was strained because the mother believed that the fact that the father consistently watched pornography as a form of "cheating".

[11] Both parties admit that their relationship was toxic. Both have assaulted the other,

but most of their conflict was verbal and emotional.

[12] In 2013, the father was convicted of possession of a Schedule 1 substance. The father explains that this was for Tylenol 3s that were prescribed to him by a dentist. He received a conditional discharge and was put on probation for a period of 9 months.

[13] After H.H. was born, both parties reduced their alcohol intake. At times, the father would still get drunk, and the mother would drink socially.

[14] In addition to watching pornography, when they were first dating, the father would be on dating websites and would have sexual conversations with other women. In May, 2014, both parents were drinking, and the mother found the father messaging women. They argued and the mother hit the father, smashed his phone and his PlayStation. The father called the police, the mother was charged, and she eventually plead guilty to the assault. The mother was granted a conditional discharge, was put on a one-year probation order and had to complete anger management courses.

[15] In 2017, the father was excited as he had visited his father R.A. to ask him to be his best man at his wedding. They had a few beers together. On the way home from R.A.'s house, the father was driving too fast down a country gravel road, went off the road and totalled his car. The father believed that he was charged with leaving the road in an unsafe manner, but his criminal record indicated that he was convicted of driving while his license was suspended, and a charge of speeding was withdrawn.

[16] The parties separated and reunited on several occasions. After their separation in March, 2019, they never really reconciled. They attempted a reconciliation in or about December, 2019. The mother had trust issues with the father and knew his passwords and would often check his phone. Around this time, the mother found pictures on the father's phone of "daddy-daughter" pornography. She went into the father's Google account to search the father's search history. The mother typed in "porn" and the websites for daddy-daughter porn came up. The mother challenged the father about these websites and the father denied that he had searched them. The mother was so upset that she sent the pictures to the father's mother, W.A..

[17] In 2020, the parents attended a Kiss concert together and after the concert they went to a bar. Both parents had been drinking. The father's truck was parked at a mall outside of Toronto, so they took the GO train to his truck. The mother was upset that the father should not be driving due to his alcohol consumption. The father states that the mother became aggressive and was yelling at him to the point that he "snapped" and slapped her. The assault was witnessed by a GO security guard and the security guard contacted the police. The father was arrested, held in jail for the night and there was a no-contact order in place between the parties for a period of time. As a result of this incident, the father states he received a conditional discharge and was placed on probation, including a term that he complete the PARS program, which he did. A copy of the father's criminal record was filed but does not include any reference to this charge of assault. Regardless, the father admits to hitting the mother during this incident and spending the night in jail. He now states that he regrets hitting the mother.

[18] The mother states that she contacted the paternal grandfather, R.A., the night the father assaulted her. R.A. told her to not get the police involved and to just get home. About a week later, R.A. also told the mother to say that she made up the incident. However, the assault was witnessed by a security guard and the father acknowledged

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that he hit the mother.

[19] Essentially after the incident at the Kiss Concert, the parties finally separated. Due to the no-contact condition, the father initially resided with a friend and then moved in with his mother, W.A., where he continues to reside.

[20] In February, 2021, the father was charged with impaired driving but plead to a charge of careless driving. He had his license suspended for a year, paid a fine and had to take the Back on Track program. He was placed on a period of probation and attended counselling, which the father found helpful.

[21] After separation, the father had the children in his care every weekend and the mother had the children in her care during the week. The father's parenting time moved to 3 weekends a month and a mid-week overnight was added. At one point, the parties attempted a 2-2-3 shared parenting arrangement. The mother states that the children did not like this arrangement, as it was too much time away from her.

[22] As explained further by the family doctor, Dr. Thimm, both children have a working diagnosis of also having Behcet's disease. Symptoms of Behcets include oral and vaginal ulcers, skin lesions, rashes and joint pain.

The Child Protection Litigation History:

[23] In March, 2021, D.H. made a disclosure to her mother of sexual and physical harm by her father, which was investigated by the society and the police, but no charges were laid. In May, 2021, D.H. made a similar disclosure of sexual abuse by her father to a society worker which was again investigated by the police, but no charges were laid. In July, 2021, D.H. again made disclosures of sexual harm by her father, which was investigated by police and charges were subsequently laid against the father.

[24] As a result of all of these investigations, on July 27, 2021, the Society commenced a Protection Application seeking findings that the children were in need of protection due to actual and risk of physical and sexual harm pursuant to s. 74(2)(a)(i); (b)(i); (c) and (d) of the *Child, Youth and Family Service Act*. ("CYFSA"). The Society sought a 6-month order placing the children with the mother subject to society supervision with access to the father at the discretion of the Society as to supervision, frequency and duration.

[25] In her Answer dated September 1, 2021, the mother was seeking as. 102 custody order with either no parenting time to the father or that the father's parenting time be supervised by the Society. In the father's Answer dated September 28, 2021, he was also seeking a s. 102 custody order with supervised parenting time to the mother.

[26] When the matter was first before the court on August 9, 2021, the father had just been criminally charged with sexual assault and sexual interference with respect to D.H. A temporary without prejudice order was made placing the children with the mother subject to supervision terms with access to the father in the discretion of the Society. An order for the involvement of the Office of the Children's Lawyer ("OCL") was made and Ms. Samii was appointed as counsel. As the matter proceeded to trial, Barbara Dyszuk was appointed as her clinical assist.

[27] Since these proceedings began, the focus of temporary orders has been regarding a s.98 assessment, and the father's access. The following substantive orders were made

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prior to trial:

- **October 28, 2021:** Following an argued Temporary Care and Custody Hearing, a temporary order was made placing the children with the mother subject to society supervision, with access to the father at the discretion of the Society but at a minimum of twice weekly for at least 6 hours per week, which access could be supervised by society staff or others approved by the society which may include the requirement for 2 supervisors per visit. The father was permitted to attend the children's school or sport functions and there was an order that the father not use any physical discipline on the children. The order further provided that once the children engaged in counselling, the Society shall reassess the father's access to determine if it can be increased.

- **May 16, 2022:** The father brought a motion to increase his access to a minimum of twice weekly for at least 12 hours each week. Since the temporary order of October 28, 2021 and to May, 2022, the father's access had been on Saturdays and Sundays for 3 hours each day with 2 family member supervisors present.

- However, after D.H. made a further disclosure of sexual harm in April, 2022, the father was criminally charged with a release condition that he have no contact with the children unless it was pursuant to a family court order made after that date. Therefore, on May 16, 2022 a temporary without prejudice order was made that the father's access to the children shall be at the discretion of the Society as to supervision, duration and location, until the motion could be fully argued.

- **July 19, 2022:** The father brought a motion for an assessment pursuant to s. 98 of the CYFSA with respect to the children's allegations of sexual abuse and whether or not their allegations had been coached or influenced by a third party. The father proposed that Dr. Lousie Sas complete the assessment. When the motion was argued, no party was opposed to Dr. Sas completing the assessment. The issue in dispute was the responsibility for paying for the assessment. On July 19, 2022 the s. 98 order was made that:

  (a) The children and the parents shall participate in an assessment with respect to the children's allegations of sexual abuse and as to whether those allegations have been coached or influenced by a third party.

  (b) The Society shall pay for the retainer to have the assessment commenced.

- **August 4, 2022:** For the reasons outlined in my decision, an order was made that the father shall be responsible for 25% of the cost, and the Society shall be responsible for 75% of the costs of the s. 98 assessment. I further ordered that should the father not have the ability to pay his 25% share of the costs, the Society will pay the father's portion on his behalf, and the father will enter a repayment plan with the Society to reimburse the Society for his portion of the assessment

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costs.

- **August 9, 2022:** An order for particulars of the s. 98 assessment was made in accordance with a consent endorsement, including the questions posed to Dr. Sas about the credibility and reliability of the children's disclosures and whether or not they were coached or influenced to make the disclosures.

- **September 1, 2022:** The father's motion for increased access brought in May, 2022 was fully argued. After the sexual assault allegations were made in April, 2022, and charges laid, the father's access moved back to the Society offices to be once weekly for 1 ½ hours supervised by Society staff.

  As the father's visits were positive, the children disclosed feeling safe in visits, and for the reasons outlined in my decision dated September 1, 2022, the following temporary order was made:

  1. The father's access with the children, D.H. and H.H., shall be at the discretion of the Society as to time, location, duration and supervision, and shall be a minimum as follows:

     (a) Commencing August 13, 2022 each Saturday and Sunday for 3 hours each visit;

     (b) Provided visits are positive, commencing the week of September 3, 2022 for 2 visits each week for 6 hours each visit, including an additional visit for 3 hours on September 5, 2022;

     (c) Such other times as approved by the Society.

  2. Unless otherwise directed by the Society, the visits will be supervised by one supervisor approved by the Society and who has agreed to and signed the safety plan with the Society for visits.

  3. With the consent of the father, during visits with the children he shall wear or have near him a body camera to record each visit. The father has agreed to save a copy of the visits on his own computer.

- **May 11, 2023:** On March 24, 2023, the mother brought a motion to reduce the father's access due to recent concerning behaviours and statements made by the children. Following receipt of Dr. Sas' assessment in April, 2023, and her recommendations for the father's access, the mother brought a second urgent motion on May 5, 2023 requesting that there be no overnight access visits with the father without the consent of the children as recommended by Dr. Sas. At that time, the Society was proposing another expansion of the father's access, which the mother and Ms. Samii for the OCL opposed. The father had not been able to file responding materials to the mother's motion at that point. The

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> court ordered on a temporary without prejudice basis that the father have access for 3 weekends each month but not overnight and that access continue to be subject to the conditions in the September 1, 2022 order.

[28] Argument of the mother's motions regarding the father's access on a temporary basis did not proceed as the father did not have an opportunity to respond, and the trial commenced on June 26, 2023.

[29] Therefore, the temporary order regarding the father's access dated May 11, 2023 is the present access order in place.

[30] Mid-trial on October 18, 2023, the father brought a formal motion for contempt claiming that without a reasonable excuse, the mother failed to produce the children for access on July 9, 2022 and May 27 and May 28, 2023.

Position of the Parties at Trial:

*Findings:*

[31] At trial, all parties agreed to the finding that the children have suffered from actual emotional harm but differ on why the children have suffered such harm. The Society argues that the children's emotional harm is as a result of the parties' post-separation conflict that has been exasperated by the children's disclosures of sexual harm. The father argues that the children have been emotionally harmed due to the mother's encouragement, either intentionally or unintentionally, of the children to make the false disclosures of sexual harm against him. The mother agrees that the emotional harm is due to the conflict between the parties but also argues that there are grounds to make the original findings sought by the Society of actual physical and sexual harm perpetrated by the father. The OCL was not taking a firm position on findings but would accept the Society's position.

*Disposition:*

[32] All parties agree that a supervision order is warranted: either with the children placed with the mother or the children placed with the father.

The Society:

[33] The Society still sought an order that the children remain in the mother's care subject to a 6-month supervision order and that the father have access on alternate weekends from Friday after school until Sunday at 6 p.m. and subject to the father's work schedule, and a mid-week visit for a minimum of 4 hours. The Society still supported semi-supervised access to the father with some short periods of unsupervised access.

The father:

[34] The father acknowledges that the children have two loving homes available to them. But he argues that it is in the children's best interests to be placed with the father. The father believes that the mother is trying to alienate the children from him because of her determination that he not have access with the children. The mother made false reports to the police about the father touching D.H., which stopped his access with the children. The father did not have a specific position on the mother's access and would

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leave it in the court's discretion. In the alternative, the father wanted a more shared parenting arrangement.

*The mother:*

[35] The mother agrees to have the children continue to be placed in her care subject to society supervision for a period of 12 months on terms requested by the Society. However, it is her position that the father should not have access, particularly overnight access, until he completes counselling. Further, there should be no overnight access until the children request it, and if they do, and the father completes counselling, his access can move to alternate weekends with shared holidays and subject to certain other terms.

*The OCL:*

[36] Ms. Samii indicated that she could not take a position on behalf of the children as they have been inconsistent with their wishes. However, she is clear that the gravity of the alleged abuse has rested heavily on the children, and they are strongly influenced by the circumstances. The children have regressed in their behaviours and their general well-being and growth have been heavily impacted by this situation. Ms. Samii agreed that the Society's position was the most balanced approach in this case, as the children are strongly bonded with their mother.

<u>The Trial:</u>

[37] Initially, the admissibility of the children's statements was a contentious issue. On April 25, 2022 an order was made that the issue of the admissibility of the children's statements will be subject to a blended *voir dire* and all of the evidence from the trial will be used at the conclusion of the trial to determine ultimate admissibility and weight to be given to the statements.

[38] At the conclusion of the trial, it was clear that all parties wanted to admit the children's statements, although for different purposes. A further order was made on consent that the statements made by the children to third parties may be admitted into evidence satisfying the criteria of necessity and threshold reliability, with the issue of ultimate reliability to be determined on the basis of the totality of the evidence heard at the trial.

[39] A total of 30 witnesses testified at the trial.

[40] Dr. Sas testified as the court's witness and was subject to cross-examination by all parties.

[41] The Society's 18 witnesses included: the intake worker, Jennifer Hunter; former family service worker Maddison Spriggs; present family service worker Rose Kling; covering family service worker, Allison MacKay; Manager Krista Van Den Berge; access supervisors Roxanne Murray and Sara Brown; the children's physician Dr. Jeremy Thimm; the children's counsellors Darlene Poulen, Jenny Kelp, Amanda Holler and Lena Wodnicki; the mother's counsellor, Heather Blowes (and Jenny Kelp); investigating officers; Staff Sgt Jeff McGregor; Detective Heather MacRae; Detective Paul McCallum; Constable Ryan Federman; and Detective James Jardine.

[42] The society workers submitted affidavits for their evidence in chief.

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[43] The father's 5 witnesses included: Detective Soontiens; his mother W.A.; his step-mother D.O.; his father R.A. and himself.

[44] The mother's 5 witnesses included: Her mother, C.H.; her sister K.H.2; her friend K.B.; and the principal of the children's school Adrienne Jacques; and herself.

[45] The OCL, Ms. Samii called one witness, her clinician, Barbara Dyszuk.

[46] Over 42 exhibits were entered as evidence, including document briefs, affidavits, and videos from police interviews and video and audio recordings of the children's statements.

**Evidence at Trial:**

[47] In addition to the background of the parents' relationship outlined above, the following is the witnesses' evidence at trial.

Involvement of Heather Blowes:

[48] In June, 2020, the mother was referred to a registered psychologist, Heather Blowes, by the Stratford Family Health Team due to anxiety and stress related to her separation. Copies of Ms. Blowes records were filed in evidence.

[49] From June, 2020 to March, 2023, the mother attended approximately 25 psychotherapy sessions with Ms. Blowes. Ms. Blowes also took urgent calls from the mother from February 3 to May 11, 2021 which were outside of her regular sessions. Notes of these calls were also filed.

[50] Ms. Blowes indicated that the mother was dealing with high levels of stress due to her relationship with the father and trying to co-parent. When the mother first started her sessions with Ms. Blowes, she still had feelings for the father and Ms. Blowes was assisting the mother to emotionally separate from him and set healthy boundaries. The mother reported to Ms. Blowes on February 2, 2021 that she felt "scared all of the time" and was "constantly worried something bad was going to happen".

[51] On March 6, 2021, the mother left an urgent message for Ms. Blowes, which Ms. Blowes returned the next morning. The mother advised that D.H. had tried to put her fingers in the mother's bottom, and D.H. disclosed that her father had put his fingers in D.H.'s bum. D.H. told her father that it hurt and to stop. The mother also reported that D.H. put her boy doll's penis in her mouth, and that she believed the father had a porn and sex addiction. That day, Ms. Blowes reported all of this to the Society. D.H. never said anything to her directly. Ms. Blowes did not question the mother about D.H.'s disclosure and she believed that the mother was sincere. In Ms. Blowes' experience, the mother had always acknowledged her own issues, which led Ms. Blowes to believe the mother. Ms. Blowes had no reason to doubt the mother or that she fabricated D.H.'s disclosure but felt that she was worried about her children.

[52] On March 7, 2021, the mother reported to Ms. Blowes that the father and paternal grandmother had showed up at her house that day, denying that the father had done anything wrong and stating that D.H. was lying. Ms. Blowes also reported this incident to the Society.

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[53] After D.H.'s disclosure, the mother disclosed her own past abuse to Ms. Blowes, but Ms. Blowes did not believe that the mother's past abuse affected her judgment. Ms. Blowes believed that the mother was more affected by D.H.'s disclosure due to the father's history of watching pornography.

[54] D.H.'s disclosure ended the mother's emotional attachment to the father, and Ms. Blowes' sessions with the mother then focused on the mother protecting the children. The mother discussed her anxiety about having to send the children for access visits with the father; wanting others to take the children's accusations seriously and the mother's panic if the abuse continued. In Ms. Blowes' opinion, the mother had an elevated level of anxiety and was fixated on having the children protected. She was very negative about the father and had nightmares that the father would kill both of the girls. The mother did not want the father to be able to see the children as the mother is convinced that he had sexually abused them. The mother repeatedly told Ms. Blowes that she does not feel heard, that the "system is not fair" and does not believe that the girls are being protected. The mother told Ms. Blowes that she feels completely overwhelmed by the situation.

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The mother's own sexual abuse:

[55] The mother confirmed at trial that she was sexually abused by her step-grandfather when she was young but did not disclose it at the time. She discussed this abuse in her therapy with Ms. Blowes and finally as an adult disclosed this abuse to her mother. The step-grandfather had abused other children. The mother told Dr. Sas that she remained angry for years because she was not protected by her mother or grandmother from him. The mother was also molested by a step-brother who was 3 to 4 years older than her.

First Police Investigation: D.H.'s initial disclosure to the mother:

[56] On or about March 6, 2021, when the mother was laying down with D.H. to try to get her to go to sleep, D.H. put her finger in the mother's bum. D.H. told the mother "That's how daddy plays with me". The mother was in shock and did not know how to handle the situation. She started to record D.H. on her phone as she knew that the father would deny it.

[57] Three audio recordings of conversations between D.H. and the mother were submitted into evidence that were all taken on the same day in March, 2021. It is difficult to understand D.H. on the recording but on the recordings the mother repeats what she thinks D.H. says that "daddy put his finger in my bum". When the mother asks when this happened, D.H. says "when I was sleeping". On another recording, D.H. says that "daddy put his finger in my bum hole". When the mother asked when he did that D.H. says "I don't remember". When the mother asked how many times daddy did that, D.H. says "lots of times". D.H. told her father to stop "you are hurting my bum" and he said "fine". The mother asked D.H. if she was telling the truth and if she asked daddy if he did this, would he say yes? D.H. answers "yes".

[58] These are very short audio recordings and at times it is difficult to understand D.H.'s words due to her poor speech. There is no context as to why D.H. made these disclosures to the mother.

[59] After D.H.'s first disclosure of her father putting his finger in her bum, the mother texted her therapist, Ms. Blowes, and then called her the next morning. The mother also

contacted W.A. and told her of D.H.'s disclosures. W.A. told the mother that it was "bullshit", and that W.A. and the parents would just handle it.

Intake Worker Jennifer Hunter:

[60] The Society first became involved on March 7, 2021, when the mother's therapist, Heather Blowes contacted the Society to report D.H.'s disclosure. Thereafter, a joint investigation with the police commenced. Jennifer Hunter was the assigned intake worker, and she conducted the investigation with Constable Soontiens.

[61] On March 8, 2021, Constable Soontiens interviewed the mother and both children, with Ms. Hunter observing.

[62] Ms. Hunter spoke with the father on March 9, 2021 and the father advised that he would only meet with her and not the police. As this was a joint investigation, Ms. Hunter would have to share all information with the police. Ms. Hunter contacted D.H.'s doctor, Dr. Thimm and was advised that D.H. had been seen by Dr. Thimm on March 9, 2021 and there were no physical signs of sexual abuse.

[63] On March 10, 2021, Ms. Hunter interviewed the father, who advised her that:

- He was not sure why D.H. would say that he put his finger in her bum when she is asleep. He does bathe D.H. and his mother bathes H.H.

- The children toilet on their own, but he checks that D.H. has wiped properly by her bending over and spreading her buttock cheeks to ensure there is no feces.

- The father shares a bed with D.H. If she is not already in his bed, she wakes up in the middle of the night and cries to sleep with him.

[64] On March 11, 2021, the mother advised Ms. Hunter that the police would not be pursuing charges and expressed concerns that everyone was pushing D.H.'s disclosures "under the rug".

[65] At that point, the Society had no position on the father's access. The mother advised that she would not be permitting access to the father as she did not believe access was safe. However, this was not what the Society directed. The mother also removed the father as a person approved to pick up the children from school. The mother asked Ms. Hunter to write a letter advising why the Society was taking this position regarding the father's access, which Ms. Hunter could not provide. The mother told Ms. Hunter that she knew that the father would "do this to the children". The mother reported that the father was physically, mentally and sexually abusive towards her in the past. No particulars of this abuse were provided.

[66] On March 16, 2021, Ms. Hunter met privately with the children. D.H. put her fingers in her ears and appeared to not want to talk. When questioned if anyone had touched her private parts, she said that only her sister had when they play. The paternal grandmother expressed no concerns about the father to Ms. Hunter.

[67] On March 23, 2021, Constable Soontiens left a message for Ms. Hunter that he

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believed that any disclosures by the children would be tainted by the mother, and that the mother could be putting ideas in the children's heads.

[68] The Society found that the investigation regarding D.H.'s disclosures of sexual harm were inconclusive as D.H. did not make the disclosures to Ms. Hunter or the police; there was no medical evidence of the harm; and the recordings submitted by the mother of D.H.'s disclosures were not clear. Therefore, the Society was uncertain exactly what had occurred.

[69] Ms. Hunter testified that the mother did not appear happy about the outcome of the Society's verification. Ms. Hunter did not express an opinion on whether the father's level of watching pornography was a concern as she did not know if it interfered with his daily life.

[70] Although the concerns were not verified, the Society did not close its file and transferred the file to ongoing services.

Detective Constable Soontiens:

[71] Detective Constable Soontiens testified. He has been a police officer for 24 years and was a detective in the Family Violence project for 6 years during which he received special training in domestic violence. He has taken courses on interviewing.

[72] He conducted individual interviews with both children and the mother on March 8, 2021.

[73] Videos of the interviews by Det. Soontiens with the children on March 8, 2021 were played in court and entered as exhibits, along with transcripts of his interviews with the children and the mother.

[74] Det. Soontiens interviewed H.H. first. H.H. was very happy and chatty during the interview. She seemed very intelligent and used mature language for her age.

[75] In H.H.'s interview she indicated that:

- Her father now lives with her "Gram" and she visits her father at her Gram's house. When she is bad for Gram or daddy, they might get a "spank bum" or go in the corner.
- Gram moved her bed into her room so when she is at Gram's house she sleeps in Gram's room. She used to sleep in a room with D.D. but if there is a monster in her bed, D.H. won't hear it because Gram only hears things in the night.
- Her dad sleeps in the basement. At Gram's, D.D. sleeps in her room but sometimes she wakes up and goes into daddy's room.
- H.H. said no one has ever touched her vagina or "bum bum" and she had no concerns about anyone touching them.
- H.H. said that her sister has never told her about anyone touching her in the wrong way.

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[76] In D.H.'s interview, she was only 4 years old at the time, and difficult to understand due to her speech delays. At times, Det. Soontiens repeated what D.H. had said to confirm that he understood. D.H. was constantly moving around during the interview and at one point was upside down on a chair.

[77] In D.H.'s interview, she indicated that:

- Her father lives with Gram and she visits him there. At Gram's she sleeps in her playroom and her dad sleeps downstairs. She also said that she sleeps in dad's bed.
- When she has a bath, Gram, daddy and H.H. help her.
- She confirmed that her dad smacked her bum before, but her dad has not done anything else that she is concerned about.
- When asked if ever her sister, mother, father or Gram hurt her, D.H. said "no".
- D.H. disclosed that when she gets in trouble at Gram's house, she gets her "bum smacked", but that nothing else happens to her bum. She then said that just her mom smacks her bum.
- When asked "did you tell your mom about your bum the other day?" D.H. answered that "dad put something in my bum while I was sleeping, then I just went back to sleep, that's it".

[78] In his interview with the mother, she confirmed that H.H. has never said anything to her about her father doing anything inappropriate. The mother said that D.H told her that daddy put his finger in her bum, that it hurt, and for him to stop, and that he's silly. The mother acknowledged that she did not know exactly the sentence that D.H. said because her words get jumbled up. D.H. said she did not remember when this happened but that it happened a lot.

[79] Regarding the statement that D.H. made that her dad put something in her bum while she was sleeping, at trial Det. Soontiens did not recall D.H. making this statement and could not make out in the video that this is what D.H. said, as a lot of what she said in the interview was "indiscernible".

[80] Det. Soontiens confirmed that although D.H. was difficult to understand at times, on the clear answers she provided there were still no reasonable and probable grounds to lay charges. It was put to Det. Soontiens that there were approximately 9 denials of abuse by D.H. during his questioning of her. Det. Soontiens confirmed that this was part of the totality of the evidence and all of the denials by D.H., along with H.H.'s denials, which led him to conclude that there was no clear evidence in the children's interviews that D.H. was abused by her father. At trial, he confirmed that he was satisfied that he made the right decision not to lay charges.

[81] During his investigation, the mother provided him with screenshots of the sites that the father allegedly accessed for pornography, which images were admitted into evidence. Det. Soontiens indicated that there were no dates attached to the images; the age of the woman in the images could not be identified and genitalia was not the focus in

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the photographs. He consulted with someone in the child exploitation unit of OPP and it was determined that these images were not child pornography. He confirmed that he did not ask to see the father's cell phone or pursue a warrant for access to it.

[82] Det. Soontiens did not interview the father but only briefly spoke with the father on the phone to confirm that the police did not put any restrictions on his access with the children.

[83] Constable Soontiens subsequently left a message with the new society worker, Maddison Spriggs that the mother was "hell-bent" on having charges laid against the father. At trial, he advised that this was a poor choice of words and understood why the mother would be upset and would want the father to be charged. He understood that the mother would be worried and that there was stress on the family due to this situation. Even though he said these words to Ms. Spriggs, at trial he confirmed that nothing concerning stood out for him in his interview with the mother and he believed that she was genuine.

[84] When a subsequent complaint was laid against the father a few months later, the new worker, Maddison Spriggs asked him to re-interview the children but it was determined that another officer would be assigned. Det. Soontiens confirmed that in his opinion, it was not a good idea to re-interview a child about the same event and is damaging to a child.

The Screen Shots of Pornography:

[85] The mother testified that she has an iPhone, and the father always had an iPhone. The father had given her his password to his Google account. In 2019, she searched the father's Google account on her phone to find his search history and found "daddy-daughter" sex searches and the pictures of these images were entered into evidence.

[86] The mother provided these screenshots of the "daddy-daughter" pornography to both Ms. Hunter and Det. Soontiens. The father denied to Ms. Hunter that the screenshots of these searches were from his phone or from him. He acknowledged that he watched pornography 10 to 13 hours a week but denied watching child pornography. He also denied this at trial.

[87] The father states that he has not owned an iPhone for numerous years and has a Samsung phone. As the mother had accused him of cheating on her while they were together, he gave the mother the password to his phone but not to his Google account. You would need the password to the Google account to access it on another phone. At trial, the screenshots of the "daddy-daughter" sex searches were put to the father and he did not recognize the links on the screenshots. The father argues that if the mother retrieved these screenshots by logging into his Google account, the screenshots could have been manipulated by the mother. The father indicates that the mother never presented these screenshots to him while they were together.

[88] Det. Soontiens indicated that he determined these images were not child pornography.

Confrontation after the initial disclosures:

[89] Approximately 2 days after the initial disclosure was made by D.H. in March, 2021,

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W.A. and the father went to the mother's home to speak with her and the girls about the situation.

[90] The mother explains that W.A. and the father "just showed up" at her home. The father was angry and told the mother that she had "fucked up", and that she should have just spoken with him. He denied the allegations. W.A. then asked D.H. about what happened and D.H. said that "daddy put his finger in my bum". It was the mother's evidence that W.A. then asked D.H. if that was a "little lie or a big lie" or a "big story or little story", which W.A. denies.

[91] W.A. explains that she was alarmed by the allegations and wanted to console

D.H. She did not think it would be concerning to talk to the children about it at that time. However, she claims she did not speak with D.H. about it but spoke with the mother about the allegations.

[92] The father denies that W.A. asked D.H. if it was a "big lie or a little lie". However, in cross-examination, he admitted to speaking with the mother alone inside while W.A. was outside with the children. Therefore, he was not privy to what W.A. said to the children while he was speaking with the mother.

[93] The father understands why the mother reported the matter to the police but believes that she should have addressed D.H.'s disclosure with him first.

<u>The First Society Family Service Worker Madison Spriggs:</u>

[94] The file was transferred to Ms. Spriggs from Ms. Hunter in April, 2021. Ms. Spriggs was the assigned family service worker from April, 2021 to February, 2022.

[95] Ms. Spriggs had monthly home visits with both parents. Ms. Spriggs did not observe any concerns with the home conditions in either home. Ms. Spriggs observed hat the children were closely bonded with the mother.

[96] During Ms. Sprigg's 10-month involvement with the family, the mother made numerous reports to Ms. Spriggs of her concerns regarding the children and their contact with their father including:

- On 17 occasions, the mother reported concerns to Ms. Spriggs about the children's flair-ups with Behcet's, nightmares and other negative reactions that she attributed to their contact with the father. The mother also reported having nightmares herself about the children being sexually harmed by their father.

- The mother reported on several occasions that the children's negative reactions stopped when their access with their father was suspended.

- On multiple occasions, the mother sent Ms. Spriggs photographs of the children experiencing Behcet flair-ups. The mother reported that D.H. would have Behcet flare-ups after every visit with the father. Ms. Spriggs consulted with the children's physician Dr. Thimm, who confirmed that the children's flare-ups can be affected by stress, but he

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could not say that they were related to the father's access.

- The mother sent Ms. Spriggs at least a dozen recordings of the children expressing that they did not want to attend for access with their father and of the children disclosing sexual harm by the father. Ms. Spriggs acknowledged that these recordings were challenging as she did not hear what was said leading up to the disclosure or the questions that the children were asked, and on some recordings, it was difficult to understand D.H. due to her speech delays.

- On at least 10 occasions, the mother reported to Ms. Spriggs that the children continued to disclose being sexually harmed by their father or fear of being sexually harmed.

- On multiple occasions, the mother reported concerns that the father and paternal grandmother have inappropriate conversations with the children about their disclosures in an attempt to get them to recant. On several occasions, Ms. Spriggs directed both parents not to speak with the children about the Society or police involvement.

- On 8 occasions from April, 2021 to January, 2022, the mother reported that D.H. exhibited sexualized behaviour, including attempting to put her fingers in H.H.'s bottom; pretending to put a finger in a teddy bear's bottom; and poking a Barbie's hand near H.H.'s bottom. The mother reported that D.H. has said that she would lick H.H.'s bum hole during a bath. The father also reported observing D.H.'s sexualized behaviour including biting a doll's penis.

Second Police Investigation and Disclosures by D.H.:

[97] On May 25, 2021, during a home visit with the mother present, D.H. stated unprompted to Ms. Spriggs that her daddy put his fingers in her bum, and that it happened "this weekend". When Ms. Spriggs tried to ask more questions about this disclosure,

D.H. just continued to play and changed the subject. D.H. expressed no worries about attending her father's home for visits. Ms. Spriggs then met privately with D.H., and she disclosed again that daddy put his fingers in her bum, but she would not answer any further questions.

[98] Ms. Spriggs reported D.H.'s disclosure to the Stratford Police and a joint investigation commenced.

Detective Ryan Federman:

[99] On May 27, 2021, Detective Federman interviewed D.H. at the Society offices. The transcript of the interview was filed, and Detective Federman testified. He was assigned this case after Detective Soontiens to take a fresh perspective on this matter. He reviewed Detective Soontiens' investigation before he met with D.H. to understand the history. It is very common for him in his position to interview children and he tries not to ask leading questions or use suggestive language in his questioning.

[100] Detective Federman acknowledged that D.H. was difficult to engage in a

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conversation and she had difficulty staying on topic. Due to D.H.'s speech issues, she was also difficult to understand. He confirmed at the beginning of his interview with D.H. that she understood the difference between a truth and a lie, which she did by providing examples.

[101] Detective Federman asked D.H. specifically about her disclosure to Ms. Spriggs during the following exchange:

- Federman: "I am concerned about you told Madison the other day." and D.H. said "that he put his finger in my bum".
- Federman: "Does that hurt when daddy does that?" D.H. would not answer and was distracted.
- Federman: "Why did you say that to Madison about daddy?" D.H. answered "because he always kisses me" and "hugs me". When asked if that bather's D.H she said "yeah".
- Federman: "Does anything bother you that daddy does?" - D.H. answered "no".
- Federman: "Does daddy do anything that hurts you?" - D.H. answered "no".
- Federman: "Can I just ask you if you can tell me more about daddy touching your bum". D.H. answered "daddy smacks my bum", and "kicks my bum with his flip flop. He smacks my bum with his flip flop".
- Federman: "Does daddy touch your bum?" - D.H. answered "no".
- Federman: "how come you told Madison earlier this week that? D.H. answered "Yeah, I don't know".
- Federman: "Is anyone hurting you at all D.H.?" - D.H.: "Uhh uhh."
- Federman: "No? do you promise you would tell me if they were?" - D.H.: "Yeah."

[102] Detective Federman spoke with the mother after D.H.'s interview to explain that there was no disclosure by D.H. which would lead to reasonable and probable grounds to proceed with charges. The mother was upset by Detective Federman's conclusion and politely debated with him about what the police would need for charges to be laid. In Detective Federman's opinion, the mother was frustrated but understood the position of the police. He appreciated that any mother who has the best interests of her child at heart and was trying to protect her child would react this way.

[103] Detective Federman also spoke with the father on May 27, 2021. The father denied the allegations of sexual assault. The father was concerned that the mother was manipulating D.H. to make these disclosures and that could be child abuse. The father did not believe that D.H. could make up these disclosures on her own and the only reason D.H. would say these things is somebody told her to say them. The father also denied the search history on the phone from dating daughter websites that the mother provided to the police.

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[104] Detective Federman spoke with the paternal grandmother, W.A.. She adamantly denied that the father had the opportunity or the character to do what he was alleged to have done. In her opinion, the father was a great father.

[105] In the end, Detective Federman was satisfied that a reliable disclosure could not be obtained from D.H. D.H. gave contradictory answers to his questions and could not provide any context. Without a context, a parent touching a child may not be for a sexual nature. Detective Federman concluded that there were no reasonable grounds to believe that these allegations happened.

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Third Police Investigation: Disclosure by D.H.

[106] On June 21, 2021, D.H. again, unprompted, told Ms. Spriggs that her daddy put his finger in her bum 5 days prior in her father's bedroom. This disclosure happened in her mother's presence and not privately with Ms. Spriggs. D.H. said that her mother told her to tell Ms. Spriggs this information. The mother acknowledged that she did not know if D.H. was referring to the initial incident or if the sexual abuse was happening again. She understands that D.H. does not have a good sense of time due to her young age. There was no police investigation regarding this disclosure.

[107] However, on July 20, 2021, the mother's sister, K.H.2, reported to the Stratford Police that D.H. made a disclosure of sexual harm during a Facetime call she had with the mother that morning. Thereafter, another joint investigation with the Society and the police was commenced.

K.H.2:

[108] K.H.2 ("K.H.2") is the mother's older half-sister. For the past 13 years, she has resided in the Sudbury area. She and the mother are close and speak almost daily and she visits the mother approximately 6 times a year. She is a strong support for the mother.

Disclosure by D.H.

[109] On July 20, 2021 at approximately 8 a.m. she was Facetiming with the mother who was sitting on her porch. D.H. and H.H. were playing outside in the background. She heard the mother tell the children that they had to go visit their father that weekend, and

D.H. said "I don't want to go. Daddy hurt me". D.H. was playing with her dolls, and the mother told her to stop what she was doing, so K.H.2 assumed that what she was doing was inappropriate, but K.H.2 did not see what D.H. was doing. D.H. then said, "well that's what daddy does" and that "daddy put his fingers in my bum". K.H.2 knew that

D.H. had made this disclosure previously but this was the first time that she heard it directly from D.H.

[110] Shortly thereafter, K.H.2 made a report to the Stratford Police and spoke with Sgt McGregor. The mother did not ask her to contact the police.

[111] The audio of K.H.2's report to Sgt McGregor was played in court. K.H.2 reported to Sgt McGregor that:

- A few months ago, her niece, D.H. had disclosed to the mother that her father was touching her by putting his fingers in her bum and

hitting her and "overall mistreating her". The mother contacted the police and the CAS got involved. The father now has supervised access with his mother present.

- D.H. told her that her daddy touched her, putting his finger in her bum, and hitting her again this past weekend. When she told her Gram her Gram did not believe her and they spoke with D.H. about how it was bad to lie and that she shouldn't lie.

- The girls should not be with their "abuser". D.H. has already told the police, told the CAS, told her therapist that her daddy is touching her, and no one seems to be protecting her from her abuser.

- D.H. says the same thing every time and she doesn't understand why nothing is being done. This guy has a DUI charge, and assault charge against the mother. He is not a great member of society at all and he's literally getting away with this.

[112] Sgt McGregor explained that he knew about this case, and that the burden of proof had not been met to lay criminal charges. K.H.2 stated that if there was no criminal charge then he would still have access to the children to "manipulate and abuse them". K.H.2 says that she "does not understand why a little girl in a therapist's office picked out her father as the monster and that daddy touched her and then you guys don't have enough. How is it okay to not protect her?" K.H.2 asked Sgt McGregor several times what it would take for a charge to be laid, and Sgt McGregor would not give her an answer.

[113] K.H.2 was clear at the trial that she was not happy that the father had not been charged before she made her report. When it was put to her at trial that her sister had been charged with assaulting the father she was surprised as she was unaware of this. She knew the parents had a volatile relationship on both sides but did not know the details. She explained that the mother was "reactive to the conditions of the abuser". The mother also explained that there was a period of time when she and K.H.2 did not speak, and this could have been around the time that she was charged.

[114] K.H.2's statement to Sgt McGregor was entered into evidence after Sgt McGregor had already testified so he did not have the opportunity to comment on it. However, I do not find that this has affected the outcome of the court's findings.

<u>Detective Sgt Jeff McGregor:</u>

[115] Sgt Jeff McGregor testified. He was a Detective Sergeant with the Stratford Police at the relevant time. He had taken courses in forensic interviewing but was unaware of the standards of training when interviewing children. However, he was aware that the techniques for interviewing children are very different, and a person must be cautious not to ask leading questions. He has interviewed children many times as a police officer.

[116] On July 20, 2021, K.H.2 reported to him that D.H. disclosed to her that morning over Facetime that her father had touched her inappropriately on the bottom that weekend. Sgt. McGregor was aware of the previous sexual abuse investigations regarding the father.

[117] Sgt. McGregor first contacted Ms. Spriggs and spoke with her about the Society's

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involvement with the family and they agreed to do a joint investigation with respect to this disclosure. He also reviewed the notes from Detectives Soontiens and Federman. He understood why Det. Soontiens did not have grounds to lay charges. He also knew that it was not good practice to interview anyone multiple times, especially someone so young.

[118] Sgt. McGregor then contacted the mother. He questioned why the mother did not call the police directly. The mother explained that she had been through this before with reporting D.H.'s disclosure to the police and the Society and sounded frustrated. The mother stated that she would have discussed D.H.'s disclosure in her meeting with her society worker that week.

[119] Sgt. McGregor interviewed the mother first. She advised that earlier that day, while she was Facetiming with her sister, K.H.2, in the background D.H. was playing with her dolls inappropriately. K.H.2 told D.H. not to do that and D.H. told her aunt that her daddy put his finger in her bum and "gyna" again; that she told her "Gram" and she got in trouble because Gram did not believe her. The mother advised that D.H. had tried to put her fingers in the mother's bottom too while they were lying in bed together. D.H. also disclosed that the father hit her in the back. When Sgt. McGregor asked the mother "In your heart, do you think something happened to your daughter", the mother started to cry and stated that "with the father's past and how he's been with me. He's sick." Overall, Sgt. McGregor found the mother's reaction and demeanour to be appropriate.

[120] Sgt. McGregor listened to a few audio recordings the mother had taken of the mother questioning D.H.

[121] Sgt. McGregor also interviewed D.H. He confirmed that D.H. understood the difference between a truth and a lie and this was the truth. He was cognizant of not asking leading questions. He looked for signs of coaching such as verbatim comments from a 4-year-old. This is why he interviewed the mother first.

[122] Sgt. McGregor told D.H. that he spoke with her aunt K.H.2 today. When Det. McGregor asked D.H. what she spoke with her aunt about, D.H. immediately said "dad put his finger in my bum. This happened at his house, and he put his finger in my hoo hoo too." (which is D.H.'s word for vagina). When Sgt. McGregor tried to confirm with

D.H. that her dad put his finger in her bum and hoo hoo, D.H. just stated "I can leave now. I want to see a movie". D.H. stated that what her dad did was a "bad touch" as it hurt.

[123] When asked when this happened, D.H. said, "my birthday", which would have been in November, and this was July. She also then stated that it happened at her mom's house, and then at Gram's house in his bedroom. D.H. confirmed no one else was in the room when it happened.

[124] When Sgt. McGregor asked D.H. again where her father touches her, D.H. put her finger in her anus and then on her vagina over her clothing. If D.H. had just repeated the disclosure he would not have laid charges as the phrase had been put to D.H. so many times before. It was her actions of putting her finger in her anus and vagina that turned the case for him and had a ring of truth for him. Sgt. McGregor was also taken by a "look" that D.H. gave to him during his interview with her when he asked her if her father touches her. He said that she locked eyes with him, which is rare in an interview with a child.

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[125] Sgt. McGregor confirmed that he had no problems understanding D.H.

[126] Sgt. McGregor obtained from the mother some articles of clothing that D.H. had recently worn at her father's that had not been washed and made arrangements for D.H. to be seen at London Health Sciences for a sexual assault medical investigation. The results of this investigation were that there was no trauma noted to D.H., but this did not rule out that a sexual assault had taken place.

[127] On August 15, 2021, Sgt. McGregor contacted the father to advise that he had grounds to arrest him for sexual assault and sexual interference and wanted to speak with him. The father wanted to consult with a lawyer but attended at the police station to be interviewed later that day. Sgt. McGregor said that the father was not uncooperative, was never rude or adversarial. The father denied the allegations. When Sgt. McGregor explained that D.H. had made the actions of putting her finger in her anus and vagina, the father agreed this was concerning and he could not explain it. The father was visibly upset when Sgt. McGregor said he had to put terms on him restricting his contact with the children. Although Sgt. McGregor suggested that the father take a polygraph test, the father declined after obtaining legal advice.

[128] Sgt. McGregor did not get the sense that either parent had an ulterior motive in this case.

[129] Sgt. McGregor knew that there had been two previous investigations on disclosures by D.H. He was unclear if this was the same event or a different event that D.H. was disclosing.

Results of the Investigations:

*The Society's Investigation:*

[130] When the police decided to pursue criminal charges against the father after this third investigation, this is when the Society decided to commence a Protection Application.

[131] On August 26, 2021, Ms. Spriggs and her manager verified that it was more likely than not that D.H. was sexually abused by the father. Even though Ms. Spriggs acknowledged that D.H. was more difficult to interview due to her speech impediment, Ms. Spriggs found D.H.'s disclosures to her to be credible.

[132] In or about February, 2022, the Crown made the decision to withdraw the charges against the father not because D.H. was not believable but because there was not a reasonable prospect of conviction and taking into consideration the trauma the court process may have had on D.H.

The Fourth Police Investigation: Disclosures by H.H.:

[133] On December 6, 2021, the mother reported to Ms. Spriggs that H.H. disclosed that her father sexually harmed her.

[134] The mother submitted an audio of H.H. talking to her about having fun in the basement with daddy and then daddy made her feel uncomfortable by touching her vagina and she did not like that. H.H. said that it happened "a year ago" and spoke about

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riding her scooter at the time so the mother believes this was the spring/summer between 2019 and 2020 when this happened.

[135] Another joint investigation with the Society and the Stratford Police commenced. This disclosure occurred around the time that the father's access with the children was going to expand to be in the community, which expansion of access was put on hold.

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Detective Paul McCallum

[136] Detective Paul McCallum is a detective in the criminal investigation department with the Stratford Police. On or about December 16, 2021 the Society reported an allegation by H.H. of sexual assault and he was assigned to investigate this. He interviewed both the mother and H.H. December 16, 2021 at the Society offices.

[137] Det. McCallum was aware that this was the fourth investigation regarding the father. He reviewed the prior investigations to obtain background information.

[138] At the start of the interview with H.H., Det. McCallum asked H.H. questions about the difference between the truth and a lie. He stated that H.H. spoke very well and was clear. H.H. disclosed to him that while in the basement at her grandmother's house, her father brushed his hand over her private area and that made her feel uncomfortable. H.H. said this happened when she was 4 years old. When Det. McCallum asked H.H. several times how it made her feel uncomfortable, H.H. did not know. He interviewed H.H. for approximately 45 minutes and could not get any more information from her. He did not explore the type of touching that occurred.

[139] Det. McCallum also interviewed the mother. The mother seemed visibly upset and concerned for her daughter. The mother explained that recently H.H. had blurted out that "dad touched her private parts" in the grandmother's basement when she was 4 years old.

[140] As H.H. did not expand on her disclosure, Det. McCallum did not find that he had reasonable and probable grounds to lay charges and advised the mother of his findings. The mother was upset by this news but was polite.

[141] At trial, the father indicates that there were many times when he touched H.H. outside her pants perhaps to wipe off something, such as crumbs, dirt or hair. He also explained that sometimes both children complain of vaginal pain, and he gives them a cold cloth to put on their vagina to soothe them. Although H.H. used the word that this made her feel "uncomfortable", the father does not believe she knows what this means and perhaps the professionals interviewing her used this word which she adopted.

[142] On January 28, 2022, during a private interview, H.H. disclosed to Ms. Spriggs that her father touched her vagina when she was in her father's basement, and it made her uncomfortable. She said this occurred a year ago when she was 4 or 5 years old. H.H. said that she had forgotten about this incident, but remembered when she had a dream about talking about it and then she told her mom about the dream. When Ms. Spriggs asked H.H. if she knew what the word "uncomfortable" meant, she advised that she did not. H.H. disclosed that she did not want to have access with her father alone due to what he did to her and to D.H.

[143] H.H. repeated this disclosure to Ms. Spriggs during a private interview on February

18, 2022. H.H. said this was the only time that her father touched her private parts. However, H.H. stated that she still liked going on visits with her father.

*Results of this Investigation:*

[144] Although the police did not lay charges, Ms. Spriggs and her manager verified that it was more likely than not that H.H. was sexually abused by her father based on H.H.'s clear disclosure and the context that H.H. provided when the abuse occurred.

Other audio recordings of D.H.'s disclosures

[145] In addition to the audio recordings of D.H. from her initial disclosure in March, 2021, another audio recording was submitted that was made by the mother within the last year. D.H. is complaining about pain in her bum, and the mother asks her "what does the pain in your bum feel like?" D.H. answers "like when daddy put his finger in my bum". There was another audio recording where D.H. simply says that "daddy hit my back".

[146] When the mother has asked D.H. about the pain in her bum, D.H. explains that there are 2 types of pains: a stinging pain on the outside of her bum and a pain in the inside. The mother has taken D.H. to a GI specialist and they have not determined what the inside and outside pain is. D.H. gets these pains a lot at nighttime or after visits with the father, and the mother queries whether this is a trauma response to what D.H. has experienced.

End of Ms. Sprjggs' Involvement:

[147] Ms. Spriggs' involvement ended in February, 2022. She was the only worker to verify that the father had sexually abused both D.H. and H.H. on one occasion each, which decisions were made jointly with her supervisor, Mr. Schmidt. Ms. Spriggs understood that the mother was displeased when criminal charges against the father were not laid and at times asked that the children be re-interviewed. The Society would only re-interview the children when a new allegation came forward.

[148] Ms. Spriggs indicated that at that time, even though criminal charges were withdrawn, this did not change the Society's position as they verified that it was more likely than not that both children were sexually abused by the father.

[149] Ms. Spriggs acknowledged that although the Society initially sought a finding of actual physical harm, the evidence of physical harm to D.H. was not conclusive. Ms. Spriggs did not believe that at the time the Society commenced the Protection Application there was evidence of emotional harm. However, she acknowledges that the evidence could have evolved afterwards due to the post-separation conflict between the parents.

Involvement of Rose Kling:

[150] Ms. Kling took over this file as the Family Service Worker in February, 2022. Ms. Kling has worked in the field of child welfare for over 22 years and has been a society worker with the Huron-Perth Children's Aid Society for over 15 ½ years.

[151] The mother indicated that she "loved" Ms. Spriggs; she was calm and listened to the girls. The mother believed that Ms. Spriggs and Ms. Kling were like "night and day". The mother believes that Ms. Kling is manipulated by the father and when reports are

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made to her Ms. Kling just "talks to the abuser and nothing is done". The mother states that "that is what abuser's do: when you stand up to them, they make your life hell". She believes that Ms. Kling is not doing her job properly or listening to her or the girls.

[152] Ms. Kling would meet approximately monthly for home visits with the mother. She found the mother's home to be clean and appropriate toys for the children. She would also meet with the children during these home visits. Ms. Kling observed that the children were very attached to their mother, often sitting on her lap or cuddling with her during Ms. Kling's visits. Ms. Kling would also see the children acting out and having temper tantrums. For the majority of the time, the children listened to their mother's redirection. However, at times they did not listen to their mother and would scream and be aggressive and not calm down when their mother intervened.

[153] The mother reported to Ms. Kling numerous concerns about the father and his family:

- On at least 15 occasions, the mother reported that the children did not want to go on access visits with the father or did not want to see him. The mother repeatedly reported that the children were fearful of their father.

- From May, 2022 to June, 2023, the mother reported almost on a monthly basis and sometimes numerous times each month that the children had negative reactions regarding visits with their father, including nightmares, behavioural issues after visits, and flare-ups from Behcets. She reported that the children's behaviour improved when they went for longer periods of time not seeing their father.

- On numerous occasions, the mother reported that the father was not being properly supervised by his parents during his access visits, including that the paternal grandmother was having inappropriate conversations with the children. Ms. Kling would follow up with the father and paternal grandmother about the mother's reports, and they denied any inappropriate conversations. Ms. Kling reminded the father to be mindful of what he says.

- The mother would express her dissatisfaction with the father's visits being expanded. In November, 2022, the mother spoke with Ms. Johnson, the mental health counsellor at the children's school with concerns about the father's access and inquiring about suspending the access. Ms. Johnson reported the mother's concern to Ms. Kling.

- The mother continued to report the children making disclosures about abuse by their father, but Ms. Kling did not know if these were new disclosures. Ms. Kling discussed with the mother the negative impacts of multiple interviews on the children.

- The mother would send Ms. Kling photographs of drawings by the children identifying their father as a monster, or negatively depicting their father. She would also send Ms. Kling recordings of the children expressing fear of their father or resisting going to access visits. In March, 2023, the mother sent Ms. Kling a video of D.H. expressing that

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she wanted visits at the Society and hated her father.

- The mother would send Ms. Kling photographs of the children's symptoms of Behcet's disease. In December, 2022, Ms. Kling had to ask the mother to stop sending these photos out of concern for the explicit nature of the photographs.

[154] On November 24, 2022, the mother reported a concern that D.H. told her she saw pornography, including child pornography, on the father's phone. This issue was also addressed by Dr. Sas in her assessment. When asked by Dr. Sas what she saw on daddy's phone, D.H. said that she saw a little girl touching her vagina with the daddy watching and a little boy doing the same thing and his daddy was watching. D.H. said her dad was being rude by watching this in the car. On November 25, 2022, Dr. Sas made a report about this to the Society under her duty to report. Ms. Kling interviewed the children privately and separately on December 1, 2022 and neither child disclosed seeing any inappropriate or pornographic images on the father's phone. The father denies that he had child pornography on his phone and explained that he had shown D.H. a picture on his phone of his girlfriend. This concern was not verified by Ms. Kling.

[155] On November 30, 2022, Ms. Kling received a report from "CyberTip.ca", which is a tip line for reporting online sexual abuse and exploitation, advising that the mother had made a report to them expressing concerns that the father filmed himself molesting D.H.and concerns that the father was watching child pornography. As these reports were similar to the previous matter already reported, the Society decided not to investigate this.

[156] The mother acknowledges contacting CyberTip as D.H. told her that the father took a video of him putting his finger in D.H.'s bum and she was concerned that he would distribute this video. In cross-examination, the mother stated that she made the report to CyberTip as the police would not take action against the father without proof, and she believed that if she reported it to CyperTip, they would look into it. She states that she would report what the children were saying to anyone who would listen to her.

[157] The father also reported concerns to Ms. Kling about the mother, including:

- That the mother was attempting to alienate him from the children and would interrogate and coach the children.

- In June, 2022 the father was concerned that the mother told the children he was not allowed to attend at their home. The mother acknowledged to Ms. Kling that she told the children that their father would not attend at their home in response to D.H. expressing fear that he would. Ms. Kling indicated that it was possible that in this circumstance the mother's fear was being projected onto the children.

- The father expressed frustration regarding the mother planning activities for the children during his access time.

<u>Fifth Police Investigation - Disclosures by both H.H. and D.H.:</u>

[158] On May 3, 2022, the mother reported to the Society that the children disclosed sexual abuse of D.H. by the father during a supervised visit on April 30, 2022. A joint

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investigation with the police was commenced.

Detective Heather MacRae:

[159] Detective Heather MacRae was assigned to investigate the disclosures of the children from the incident on Saturday, April 30, 2022. She has been a police officer with the OPP and Huron Detachment for 29 years. She took a course in 2007 in investigating offences against children. She has also interviewed hundreds of children in the course of her duties. Detective MacRae reviewed information regarding the previous charges in relation to D.H. to get some background to the case. She interviewed the children and the mother at the Society offices on May 5, 2022.

[160] D.H. was interviewed first alone and was very active in the interview room. She described an incident in the bedroom at her grandfather's home when her father pulled down her pants and grabbed at her vagina. H.H. was in the doorway of the bedroom and D.H. saw her and asked for help. Detective MacRae described D.H. as "silly" and saucy at times. At times her speech was not clear, but she tried to clarify when asked.

[161] Detective MacRae then interviewed H.H. H.H. advised that D.H. and the father were in a bedroom upstairs at her grandfather's home. She saw D.H. standing with her pants down and her father grabbing at D.H.'s vagina and D.H. was saying "no", swatting her father away and moving backward. H.H. was standing in the doorway of the room and when D.H. saw her D.H. said "help", the father yelled "no". H.H. went downstairs, hid under a blanket, watched YouTube videos and cried.

[162] H.H. explained that her grandfather and nanna were supposed to be supervising the visit, but they went out shopping, leaving the children alone with the father. The father and D.H. remained upstairs until the grandparents returned home.

[163] Detective MacRae explained that H.H. was alone with her during the interview.

H.H. was quite communicative and drawing in her notebook as she was speaking with the Detective. She had 4 drawings in her notebook referencing what she had seen during the interaction between D.H. and her father. Detective MacRae took photocopies of these drawings. One drawing was of two people, being D.H. and the father, with bubbles overtop of them with the words "stop", "no", "help". One drawing was of the blankets on the couch where she went to lay down afterwards and one drawing of H.H. on the couch crying. There was another drawing of the girls being driven home with H.H. crying in the backseat. H.H. explained to Detective MacRae what was in the drawings. H.H. told Detective MacRae that she made the drawings on May 3, 2022 and she came to the interview with drawings, but Detective MacRae also noted that she was drawing during her interview with her, so could have made some of the drawings during the interview. Detective MacRae did not ask H.H. why she made these drawings or if someone helped her.

[164] H.H.'s drawings were part of the Crown's disclosure and not the Society's disclosure. On consent, they were entered as an exhibit pursuant to a court order which stipulated that the drawings shall not be disclosed to anyone other than the parties/counsel in these proceedings.

[165] Neither child could give Detective MacRae a specific day when this incident occurred.

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[166] H.H. also disclosed to Detective MacRae an incident that had happened about a year ago at her grandmother's house when the father touched her vagina.

[167] Detective MacRae found H.H. to corroborate what D.H. told her, was consistent and quite compelling, especially given the drawings. Detective MacRae understood that children can be highly suggestible, and she is careful how she phrases questions. In this case, she had no concerns about the children's credibility, and they were consistent with each other.

[168] Detective MacRae also interviewed the mother. The mother advised that she noticed a recent behavioural change in D.H., but Detective MacRae could not recall the specifics of these changes. The mother indicated that when the grandparents came home from shopping that day, they gave the children each a toy and the mother took pictures of these toys. The mother believed that the paternal grandfather would not be honest about leaving the girls alone with the father as the paternal grandfather had asked her to lie about a historical assault against her by the father. Detective MacRae felt that the mother presented as concerned and worried about her daughters' safety. She found the mother to be believable and sincere.

[169] As a result of her interviews with the children, Detective MacRae had reasonable and probable grounds to lay charges of sexual assault against the father for the incident involving D.H. and the historical incident involving H.H. Detective MacRae contacted the father to explain her position about laying charges for both the historical assault on H.H. and the new assault on D.H. The father agreed to turn himself in, was charged, and released on bail conditions.

[170] Detective MacRae advised of the other steps she took in her investigation after the father had been formally charged. She believed that the grandparents may have gone to Walmart in Goderich to obtain groceries and the toys purchased for the girls. She obtained the surveillance video from Walmart for this day, but the quality of the video was poor and people were wearing masks, so it was difficult to identify anyone. She also spoke with the paternal grandfather and asked him for an interview and his bank records for that day. After obtaining legal advice, the paternal grandfather declined making a statement to police and indicated that he would provide an affidavit and bank records to the father's lawyer.

[171] Detective MacRae did not speak with the paternal grandmother and did not follow-up to obtain bank or credit card records from the grandparents.

[172] In cross-examination, Detective MacRae indicated that even if the paternal grandfather had provided a statement that he never left the children alone with the father, this would not have changed her view to charge the father as she believed the girls' evidence. However, she agreed that it may have been an error at the time to not contact the paternal grandfather as the person supervising the father's access before laying charges against the father.

[173] Regardless, Detective MacRae believed that something happened to the girls and believed their evidence.

[174] The father denies that he went into the home with the children and confirms that his father and step-mother, R.A. and D.O. did not leave the home that day. He indicates that R.A. and D.O. are always present when he is with the children.

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*Results of this Investigation:*

[175] As a result of this police investigation, the father was charged with two counts of sexual interference and two counts of sexual assault in relation to both children. Subsequently, the Crown Attorney decided that the charges should be withdrawn. Although Detective MacRae agreed with the Crown's decision, she still believes that the children's disclosures had a "ring of truth".

[176] Detective MacRae, the Crown Attorney and a support person from the victim witness program met with the mother to explain the reasoning why the charges were going to be withdrawn. Detective MacRae indicated that the mother was upset by this outcome.

[177] Ms. Kling and her manager, Ms. Van Den Berge met for a verification conference regarding these disclosures on April 24, 2023. They believed that the children's statements contradicted each other in the police interviews and given that the paternal grandparents filed affidavits and bank statements as evidence that they did not leave the home during the visit, the investigation was determined inconclusive. Ms. Kling advised that the Society also considered Dr. Sas' comments that D.H. was not always truthful.

<u>The grandparents as Access Supervisors:</u>

[178] Both D.O., the paternal step-grandmother ("D.O.") and R.A., the paternal grandfather ("R.A.") testified.

*D.O.:*

[179] D.O. is the father's step-mother. She has been in a relationship with the paternal grandfather, R.A., for 10 years. For approximately one year in 2022, she was an access supervisor for the father when there was an expectation for two supervisors for the father's access. She stopped supervising the father's access when there was the requirement for only one supervisor so only R.A. supervised the visits.

[180] She signed an Agreement of Access Expectation with the Society on December 2, 2021, which included a term that she or R.A. must directly supervise the father's contact with the children and to have an eye on and be within earshot of the father and the girls for the entirety of the visit. They also agreed to ensure that the father does not participate in toileting, bathing or changing of the children or any activity that would entail their genitalia being exposed. A copy of this Agreement was filed. At trial, D.O. confirmed that she understood the expectations of this agreement and there was never a time when either she or R.A. did not have an eye on the supervision of the father during a visit.

[181] When she and R.A. supervise a visit, R.A. picks up the children and the visits occur at their home. They have a light breakfast and do activities with the children throughout the day, including making them lunch. The father did not participate in bathing or changing the children while they supervised.

[182] The father's access no longer occurs in their home.

[183] She is aware of the allegations of inappropriate touching by the father during the weekend of April 30, 2022 which was supervised at her home. She is surprised and troubled by these disclosures. She did not speak with the police regarding the allegations.

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She confirms that both she and R.A. never left their home during this access visit. They did all go outside in the yard together to work in the yard for a period of time. If the girls went inside, they would have gone inside alone. However, she does not recall the girls going inside that day while they were out in the yard.

[184] She confirmed that she and R.A. have a 2-storey home, with only 2 bedrooms upstairs. However, the father was never upstairs alone with the children without supervision. She does not recall if the girls changed into spare clothes that day, but they do have spare clothing for them at their house.

[185] She filed an affidavit sworn May 13, 2022, attesting to the fact that she made no cash transactions on April 30, 2022. She also attaches a copy of the transactions from her one bank account from April 29 to May 10, 2022, showing no transactions were made on April 30, 2022.

[186] She is prepared to continue to supervise the father's visits and will abide by any terms of supervision set by the court. She is prepared to report any incident to the Society. However, she indicated that she did not believe that supervision was required as she did not believe the allegations against the father. Further, she stopped supervising visits after these allegations due to the police involvement and concerns that it may affect her working in a long-term care facility. Although she did not believe the children's disclosures were true, she never challenged the children regarding their disclosures as she was told not to, and the children never discussed the disclosures with her.

*R.A.:*

[187] The paternal grandfather, R.A., testified regarding general information about the father and specifics regarding his role as a supervisor.

[188] Regarding the father in general, R.A. testified that:

- He has a great relationship with the father.
- He acknowledges that at times the father can be strict with the girls, but not inappropriate. R.A. does not see a change in the children's relationship with the father since the disclosures.
- On the night that the father assaulted the mother after the Kiss concert, R.A. acknowledges that he asked the mother to change her story so that they could get home. However, he did not realize that the father had been charged. The mother told R.A. that she was fine and to make it less complicated he told her to say that it did not happen.
- He acknowledged that it was possible that the father had an alcohol problem at some point.

[189] He supervised the father's visits at his home from 10 a.m. to 2 p.m. approximately 12 to 20 times. He has a small house and there is never a time when he could not see the father, except for brief bathroom breaks. He also signed the Agreement of Access Expectation with the Society on December 2, 2021 and confirmed that he abides by this agreement. He will continue to supervise the father's access if required and would put door alarms in his home if requested to do so.

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[190] Regarding the children's access with the father, R.A. indicated that:

- The children do not appear fearful of their father.
- The children have enjoyed the visits with their father and often say that they want to stay longer. The girls tell their father that they love him. The children have never said that they want to go back to their mother's during their access visits.
- He has never heard the father speak to the children about their disclosures or suggest that they are lying. A few times in the past 2 years, one of the children has made a comment about "before you hurt us", and the father just remains quiet.
- The father does not wear the body camera on him, but it is close to him even when they go out to the park.

[191] He provided specifics of the access visit that he supervised during the weekend of April 30, 2022. His affidavit sworn May 13, 2022 was filed. He confirmed that he picked up the children in Stratford and drove them to his house. For 1 ½ to 2 hours, they all went outside while he did yard work and while the father played with the children. Either he or D.O. remained in sight of the father throughout the visit except for brief bathroom breaks. While they were outside, D.H. briefly went into the home by herself for about 15 to 20 minutes, but the father was never unsupervised with the children. D.H. just remained inside by the patio door on the couch and she was visible from outside but could have gone upstairs. R.A. was positive that the father did not go into the house without them.

[192] He and D.O. did not leave the home at any time that day except to return the children after the visit. They did not go shopping on that day. He attached to his affidavit his bank and credit card records for April 29 to May 6, 2022, and there were no transactions on April 30, 2022. He also confirmed that he made no cash transactions that day. He attempted to get information from Hondalink, the tracking system on both his car and D.O.'s car, and his iPhone tracking system to prove his whereabouts from 11 am. to 2 p.m. that day without success.

[193] Sgt MacRae contacted him to make a statement on May 12, 2022, but he refused as the father had already been charged by that point, and he had already provided information to the father's lawyer about this visit.

[194] R.A. does not believe the disclosures of the children from April 30, 2022.

[195] R.A. states that the girls do not talk a lot about their mother during access visits or state that they miss her or want to contact her. In R.A.'s experience, the girls exaggerate small things, but not big stories to the degree of these disclosures.

Sixth Police Investigation - Disclosure by D.H.:

[196] Ms. Kling was on holidays from July 21 to August 8, 2023. During that time, another report of sexual abuse by the father was made to the Stratford Police. A covering worker, Allison MacKay took over the investigation.

Allison MacKay:

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[197] Ms. MacKay testified. She is employed by the Huron Perth Children's Aid Society, presently as a Family Service Worker. She had previously been a family visiting worker and supervised 2 of the father's visits with the girls in July, 2022.

[198] In July, 2022 she supervised 2 visits between the father and the children, which were 1 hour and 15 minutes each. In Ms. MacKay's opinion, these visits were positive: the father arrived on time; the children easily engaged with him; the father followed the lead of the children and engaged in creative play with them. Ms. MacKay witnessed the children initiating physical contact with their father through hugs, kisses or getting into his lap with no discomfort or fearfulness. At one point in the visit, Ms. MacKay asked D.H. to get off her father's shoulders as she was fearful D.H. would fall. The father was resistant to this re-direction, but Ms. MacKay had no concerns with the father's access.

[199] On or about August 2, 2023, Ms. MacKay received a voicemail from police about the mother's report. The mother reported that D.H. was complaining of pain in her vagina, and there may have been blood in the toilet after D.H. used it. The mother had assumed it was a symptom of Behcet's disease. However, D.H. looked her mother in the eye and said that she wanted her father to be dead. This prompted the mother to make the report to the police.

[200] Ms. MacKay consulted with her manager, and they decided to hold off on any investigation until they knew the findings of the police. However, Ms. MacKay observed Detective Jardine's interviews that occurred on August 3, 2023. Ms. MacKay noted that D.H.'s tone at the beginning of the interview was almost monotone and repeated the phrase "daddy put his finger in my bum and vagina". Ms. MacKay noted that when asked about when the incident occurred, D.H. gave two different time frames: once in her old house when she was a toddler, and then when she was in Gram's house. The mother told Detective Jardine that she did not believe that the Society or her worker were taking these disclosures seriously for the past 2 ½ years. The mother was pleased that Ms. Kling would not be involved in these interviews.

[201] In Ms. MacKay's opinion, the mother appeared sincerely worried, was forthcoming with information, and was emotional when answering questions. Ms. MacKay believed that the mother was trying to be protective by reporting these matters to the police.

The mother:

[202] The mother indicated that at the end of July, 2023, D.H. was complaining about pain in her vagina. The mother questioned if D.H. was getting ulcers in her vagina from Behcet's but D.H. said that daddy put his finger in her vagina again. The mother did not contact Ms. Kling as she "does not listen to me anyway" so she contacted the police directly. She took D.H. to the hospital to be checked but D.H. did not want to be checked, so she did not press the issue.

Detective Sgt James Jardine:

[203] Detective Sgt James Jardine is employed with the Stratford Police in the criminal investigations division. He has taken numerous courses on interviewing, including how to interview children. He understands that children are suggestive by nature and like to please people, so it is important to ask open-ended questions.

[204] On August 2, 2023, he was assigned to conduct the investigation regarding the

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report made by the mother on July 30 to police.

[205] Detective Jardine interviewed D.H. alone. D.H. was shy at first but quickly opened up. In general, Detective Jardine was able to understand what D.H. was saying. At the beginning of the interview, he confirmed with D.H. that she knew the difference between telling the truth and a lie. Then, D.H. abruptly made a statement that "dad put his finger in my bum and vagina". She said this a few times. Detective Jardine described D.H.'s demeanour as a "matter of fact", and she pointed to her bottom and vagina. Detective Jardine asked questions about when and where this took place. Initially, D.H. suggested that it was a historical incident; that it happened at their previous house when her mother was there and made reference to when she was a baby or a toddler. When asked further questions about when this happened, D.H. said that she knew it was summer and she was going into grade 2 in the fall.

[206] Detective Jardine also spoke with the mother, who confirmed that D.H. had made the disclosure about her vagina hurting about 5 days after her most recent visit with her father. Detective Jardine did not contact the father.

[207] Over the next several days, Detective Jardine reviewed the interviews and reviewed the family's involvement with the police. He noted that D.H.'s words used in this investigation and the time frame she described was already canvassed by Sgt MacGregor in the 2021 investigation. Therefore, he concluded that D.H. was disclosing the same incident again as she did in the 2021 investigation, so did not pursue the investigation further.

[208] Detective Jardine noted that the mother reported that D.H. made the disclosure to her 5 days after her visit with her father, which was on July 23, but did not report the matter to police until July 30, 2023. The mother also stated that it could have happened during the father's visit on the weekend of July 15, 2023.

[209] It appears that the police advised the mother on July 30, 2023, to have D.H. examined at the hospital. The mother did bring D.H. into the emergency department at Stratford General Hospital on July 31, 2023, to be examined for possible sexual assault. These records were filed as an exhibit. There was no sexual assault kit completed and the records do not indicate physical evidence of sexual assault.

[210] Detective Jardine believed that the mother was appropriately concerned as a parent regarding D.H.'s disclosure and was not preoccupied with the father.

*Results of the Investigation:*

[211] Given the conclusions by the police, the Society did not investigate this recent concern. When questioned why the Society did not review footage from the father's body camera from access visits, Ms. MacKay indicated that the police did not request this and as they were not pursuing the investigation, they did not request this either.

[212] The mother asked Ms. MacKay if the father's access would proceed on the August 5/6 weekend. Ms. MacKay explained that as it was court-ordered access that was supervised with no overnights, the father's access would continue as safety measures were in place. The mother was not pleased with this and called the father a "molester".

[213] Generally, when an investigation regarding concerns with respect to the father

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occurred, the Society would suspend the father's access during the investigation, which did not happen in this case. Of note is that the mother wanted to take the children to see her sister in Sudbury for an annual fair on the August 5/6 weekend. The mother asked Ms. Kling about one month prior to the fair if she would change her access weekend with the father, and her request was denied. The mother ended up having a Behcet's flare-up that weekend so could not have travelled anyway.

[214] K.H.2 confirmed that the mother liked to be involved in a festival in Sudbury over the August long weekend and would frequently come to Sudbury to visit on that weekend. She is aware that the mother wanted to come to Sudbury this past long weekend in 2023.

[215] The father argues that it is concerning that this disclosure by D.H. occurred just before a weekend when the mother wanted to have the children in her care but could not.

Krista Van Den Berge:

[216] Ms. Kling's supervisor, Ms. Van Den Berge testified. She confirmed that the main concern of the Society at this point is the emotional harm to the children due to the conflict between the parents as seen through their behaviours. It is her opinion that there is no risk of sexual harm at this time, and there are safety plans in place for the father's access.

[217] The mother made a complaint about Ms. Kling in March, 2023 that Ms. Kling was not taking the mother's concerns seriously, and due to the lack of communication between the mother and Ms. Kling. At Ms. Van Den Serge's request, she interviewed both children individually and privately on March 29, 2023. Ms. Kling had interviewed the children quite a number of times and it may be helpful to have someone new interview the children about their time with both parents.

*Interview with D.H.:*

[218] Ms. Van Den Berge met with D.H. privately. She explained to D.H. that her job was to talk to children to see how things were going at home and if there was anything they were worried about. Ms. Van Den Berge noted that D.H. had difficulty differentiating between a truth and a lie and could not promise to tell her the truth. However, Ms. Van Den Berge did not feel this was atypical for a child her age.

[219] When asked if she liked visiting daddy's house, D.H. said "no because daddy hurt me", and that daddy put his "finger in her bum and vagina". She said that this happened when she was in bed with dad and that everyone was sleeping including H.H. and her mom. D.H. said that she did not tell anyone that it happened but "mom had a camera in a stuffie, so mom saw the camera and found out about it". D.H. confirmed that the stuffie was in her bed. D.H. also said that it happened to H.H. too and she knew this as H.H. had a stuffie with a camera in it too. D.H. confirmed that this never happened again. The information about a camera in a stuffie was a new disclosure, and Ms. Van Den Berge did find this odd.

[220] D.H. said that grandma and grandpa keep her safe during visits. D.H. denied that either parent talked to her about visits.

[221] Ms. Van Den Berg deemed this to be historical disclosure and did not open an investigation. She understands, however, why Ms. Spriggs verified a risk of sexual harm.

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*Interview with H.H.:*

[222] Ms. Van Den Berge met with H.H. privately. She also explained to H.H. that her job was to talk to children to see how things were going at home and if there was anything they were worried about. When asked if there was anything that worried her about her visits with her father she said, "dad hurt her" and that he put his "finger in her vagina" and this happened at "Gram's house" in daddy's room". H.H. said this never happened again.

H.H. said that Grams does not keep her safe at visits as Gram told her that daddy did not hurt her. H.H. said she did not want to go on visits with her father as it gave her anxiety. When Ms. Van Den Berge asked her how she knew that she had anxiety, she said that her tummy was hurting but she had no fever and her mother told her that it was probably anxiety about going to visit dad.

[223] Ms. Van Den Berge confirmed the Society's concerns that the mother continues to make allegations against the father by any means she can, for example through the CyberTip report and numerous emails to Ms. Kling. It is her opinion that the volume of these allegations creates a risk of emotional harm to the children.

W.A.:

[224] The paternal grandmother ("W.A.") testified. During the parents' relationship and until just after D.H.'s initial disclosure, she had a close relationship with the mother. The mother trusted and confided in her.

[225] W.A. acted as a mediator between the parents after D.H.'s initial disclosures and Society involvement. When access visits at her home were suspended in or about August, 2021, she had little contact with the mother. Now she communicates with the mother by text several times a week and makes arrangements if there are changes to access. She rarely talks to the mother about the father but does relay messages between them. She has been very involved in the children's lives particularly after the parents separated as the father's access visits were generally at her home. W.A. attends the girls' sport and school activities even when the father does not feel comfortable attending, or he is at work. The mother also sends W.A. the children's report cards to provide to the father.

[226] The father has resided with her since March, 2021. They reside in a bungalow in St. Marys. There are 2 bedrooms on the upper floor and a full basement with a playroom. The father's bedroom is in the basement. The grandmother believes that the father will continue to reside with her for the foreseeable future until he is more financially stable. She is willing to have the father reside with her for as long as necessary and will always support him in whatever he needs. She will continue to supervise his visits if that is the expectation. W.A. works full-time outside of the home but has flexible hours and can work from home. She is able to get the children from school and could assist with mid- week visits. She will also facilitate contact between the children and their mother.

*Disclosures of Sexual Abuse:*

[227] It is clear that W.A. does not believe her son abused the children, which she confirmed in cross-examination. In text messages to the mother from 2021, W.A. asked her "why would (the father) admit to something he would never do?" and "this is simply untrue and didn't happen, but this does not mean the girls are liars it simply means it is

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untrue". W.A. believes that when the father asked for increased access with the girls, that further criminal charges were laid. She believes that the children have said different things to different people and that they are being influenced.

[228] W.A. agrees that if true, the children's allegations of sexual abuse are serious. Before the allegations, D.H. would generally sleep with the father and H.H. would sleep with W.A.. W.A. agreed that there was an opportunity for the sexual abuse to take place when D.H. was sleeping with her father but she has no personal knowledge of anything occurring. She does not fault the mother for being protective of the children, involving the police, and believing the children's disclosures.

*Allegations that W.A. said the children did not tell the truth:*

[229] Although W.A. initially stated that the children have never disclosed any sexual harm to her, in cross-examination she confirmed that in August, 2023, D.H. told her that she hated her and that "daddy put his finger in her privates, and it hurts but you don't listen". W.A. did not engage in this conversation as directed by the Society.

[230] As indicated, W.A. denied asking D.H. after her initial disclosure in March, 2021 if it was a "lie" or a 'story". However, W.A. acknowledged once when D.H. recounted to her the disclosure that her father had touched her, W.A. asked her "is that the truth or a bad story"? W.A. said that D.H. responded that it was a "bad story" and that "mommy said to say it".

[231] W.A. also recalled a time when she was downstairs with both girls, and H.H. got upset with W.A. as she told H.H. not to just take something from her sister. H.H. then told W.A. "You don't believe me Gram just like you don't believe D.H. You think we are lying". W.A. was clear that she did not engage in this conversation as she knew she was not supposed to.

[232] W.A. was emotional when addressing this issue at trial. She believes that all of this has affected her relationship with the children and is hurt by the allegation that she told the children they had lied.

[233] On a few occasions, H.H. has told Ms. Kling that her paternal grandmother did not believe her, and this upset H.H. Ms. Kling has addressed this with W.A., and W.A. had denied that she had told the children they are lying. Ms. Kling believes that W.A. has always followed the safety plan for access and recently the children have not expressed concerns about their grandmother telling them that they are lying. In Ms. Kling's opinion, W.A. is trying to be supportive of the children and validate how they are feeling but does not agree that the father inappropriately touched them.

*The father's access:*

[234] W.A. has been a supervisor for the father's access since the Society's involvement in 2021 and continues to be a supervisor. She was formally approved as an access supervisor in December 2021. She signed an agreement with the Society outlining the expectations for her supervision of access visits, including to be in eye and earshot of the father when he is with the children and to make the Society aware of any challenges with the children. She confirmed that she has always complied with the Society's expectations, and the father has never asked her to disobey the agreement. She would intervene if the father ever put the children at risk and would report the issue to the Society.

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[235] She discloses to the Society workers what happens during the father's visits and on approximately 7 occasions she was contacted by the Society to determine if she and the father were present during an access visit. She agreed to put alarms on her doors if that was an expectation of her.

[236] W.A.'s friend J. resides with her on alternate weekends, is involved in visits, and has been approved as a supervisor by the Society. He also plays and does activities with the girls.

[237] She explains that for visits she picks up the girls at 8:30 a.m. at their home and they are back to her house by 9 a.m. The girls eat and they spend time with her, and then the father takes over the visit. The father does activities with the girls, makes their lunch, they often play outside in the afternoon at the park, bike ride and play on the trampoline. Then by 5 or 6 p.m., she takes them home. If there is an overnight visit, W.A. does the bathroom routine with the girls, the father brushes their hair, and the girls sleep in W.A.'s room. At times, D.H. would like her father to get her out of the tub. As overnights are not consistent at this time, she does not put the girls' bunkbeds in her bedroom, but the girls sleep on mattresses on her floor. Once regular overnights start again, she will move the bunk beds back into her bedroom.

[238] During visits, the children do not show fear of their father. They are happy to see him and run to him at the beginning of visits. In general, the children come willing for visits, and only rarely do they say they want to stay with their mother. She recalls H.H. not coming for one visit and that when the children do not want to come it is actually D.H. who is actively resisting coming for the visits. The girls express to her that they want to stay overnight. On one occasion, W.A. saw the mother encourage the children to go to the visit.

[239] When the children complain about pain in their vagina, she gives them a cold cloth. The father does not do this, however.

[240] She has observed the girls to have temper tantrums when they are trying to get their father's attention; at times when they have to go back to their mother's, or if they are really tired. However, they are easily calmed.

[241] W.A. acknowledged that at times, the father can be strict with the girls and W.A. has addressed this with him. She has observed some of the father's anger issues in her presence, but never in front of the children. W.A. has seen the father spank the children when they were young. However, she never saw him do anything unsafe with them, or touch them inappropriately.

[242] W.A. heard the father tell D.H. that he would "wash her mouth out with soap", but he never did it and the children did not express fear of him because of this. This was something that W.A. herself used to threaten the father with when he was young. The father confirmed this in his testimony and that D.H. frequently swears and this is why he threatened to wash her mouth out with soap. However, it was never his intention to actually put soap in D.H.'s mouth.

[243] W.A. has never heard the father speak negatively about the mother in the children's presence. He does not ask the girls questions about what happens at the mother's home.

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*The father's alcohol consumption:*

[244] W.A. acknowledges that about 5 years ago the father's alcohol consumption was high. His alcohol consumption decreased 3 years ago and in the last 6 months the father does not drink alcohol as he has limited finances. Neither W.A. nor J. drink alcohol. W.A. testified that during the father's visits, she does not allow alcohol in her home. This was her rule and not the Society's expectation. She has never seen the father drink alcohol during a visit.

[245] However, at trial, a video was shown to W.A. of the father carrying a sandwich in her kitchen and then take a can of Bud Light out of her refrigerator. W.A. maintained that she was not aware that alcohol was in her home and did not see the father bring it into her home. This must have been a time when the children were sleeping over at her house. When the children go to bed in her room, the father is not permitted into the room. She believes that once the children are in bed they are in her care and not the father's care.

[246] She agreed that it was wrong that alcohol was in her home and will now search her home and refrigerator for alcohol.

[247] The father acknowledges that he had a beer after the children had gone to bed and that his mother may not have known that he had a beer. It is his position that once the children go to bed, W.A. is in the caregiving role and not him. Therefore, he does not believe having one or two beers after the children are in bed is a problem.

[248] The father testified that he has given up alcohol in or about early summer, 2023 due to his finances. He denies that his alcohol consumption has had a negative impact on his life, and he never would drink while in a caregiving role.

C.H.:

[249] C.H. ("C.H."), the maternal grandmother, testified. C.H. and the mother are close. They see each other almost daily and speak at least once daily. C.H. assists the mother when she has flare-ups from her Behcets, cares for the children overnight and takes the children to appointments. The mother states that she would be "lost without her mother".

[250] C.H. admitted that alcohol was a problem in the parents' relationship until H.H. was a baby. Both parents would drink alcohol, and both were aggressive. She would witness the parents fight at times, and the mother disclosed to her that the father was abusive. She is aware of the mother's conviction of assaulting the father when she was drunk. However, C.H. did not see the parents fight in front of the children. The mother does not drink alcohol now.

[251] In C.H.'s opinion, the mother is a very good mother. C.H. works during the week until 5 p.m. but picks up the children from school on her breaks. She can assist with exchanges if required.

[252] When D.H. initially made the disclosures of sexual harm in March, 2021, D.H. contacted C.H. and told her that her daddy touched her vagina and her bum. The day after D.H. made the disclosure, C.H. went to the mother's home. W.A. and the father also showed up. C.H. states that she was in the living room when W.A. was questioning D.H. W.A. asked D.H. "where would you hear this kind of stuff' and kept asking D.H. if she was "telling stories," or "are you telling the truth", and "are you lying". C.H. said she got mad

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and intervened, so W.A. stopped asking D.H. questions.

[253] C.H. confirmed that all of this has been stressful for the mother and the more stress she is under, the sicker she gets with her Behcet's disease. She does not believe that the mother is obsessed with the children's disclosures but is a concerned mother. The mother does not want what happened to her as a child to happen to her children. She knows that the mother finds it difficult to get the children to go on access visits when the mother herself does not want them to go.

[254] C.H. did not learn about the mother's own sexual abuse as a child until about 4 years ago. She believes the mother's disclosures of abuse and wishes that she had told her at the time.

*The children:*

[255] C.H. noted a change in the children's behaviours over the past few years since the disclosures happened. D.H. has become more aggressive towards her sister, including physical aggression. H.H. is now starting to hit back, but D.H is definitely the aggressor. D.H. is more violent, swears, and seems to take pleasure in hurting people.

[256] The children have slept over at her house overnight. D.H. wakes up at night with "phantom bum pain", similar to a night terror. When this happens, C.H. will give her Tylenol and rub her back.

[257] C.H. has been present on a few occasions when the children have had to go on access visits with the father. She has witnessed H.H. reluctant to go for access. C.H. says that the mother explains to the children that they have to go for access and do not have a choice.

[258] C.H. states that the children make disclosures to her directly on a regular basis. For example, D.H. called her on Father's Day in 2023 to tell her that "it happened again", and then in August, 2023, D.H. disclosed it happened again and that is when police got involved. C.H. did not provide any details of these disclosures, just that the children "make disclosures". C.H. did not report these disclosures to the police or to the Society, and she has never been questioned by the police or the Society about the disclosures.

[259] C.H. was firm that she believes her granddaughters and believes that the father should have been charged. She indicated that there is "so much anger and hurt in her". Since the children have reported it to her so many times, C.H. believes it to be true and that there were multiple incidents of abuse as it happened in different residences.

[260] D.H. has also told C.H. that "Gram" (W.A.) does not believe her and calls her a liar. C.H. said that the children have said this over and over again.

[261] It is clear that C.H. does not like the father. She did not want her daughter to marry him as she believed he talked down to her. She confirmed that no one in the mother's support system was neutral towards the father.

*K.H.2:*

[262] In addition to reporting D.H.'s disclosure to the police in July, 2021, the mother's sister K.H.2 testified about her other involvement with the children and family.

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[263] When K.H.2 is visiting her sister, she has been present for some exchanges for the father's access. She does not tell the girls that it is a Friday as that means that they have to go to their father's home on the weekend. On Saturday mornings, the girls are reluctant to get out of bed. The mother encourages the girls to go and tries to make the morning happy by giving them their favourite cereal and has called K.H.2 to assist her to get the children to go for their visits.

[264] K.H.2 has seen D.H. have pains at night. Baths assist D.H. to relax her and having her back rubbed. Since the disclosures, K.H.2 has seen sexualized behaviours in the children such as touching toys in a sexual way, but mostly with D.H.

[265] K.H.2 acknowledges that she and the mother would talk about the disclosures and concerns about the father, and she cannot be sure that the children did not overhear their conversations. Since the disclosures, the mother has been fearful of sending the children for access with their father. K.H.2 acknowledged that the children are smart and could have picked up on their mother's fears but did not believe this was why the children were resisting access with their father. She did not believe that they were disclosing abuse by their father to make their mother happy.

[266] K.H.2 acknowledges that she has never liked the father. In her opinion, he is arrogant and speaks to the mother and the children in a demeaning way. However, the father was polite to her.

[267] K.H.2 indicated that although she respected decisions made by the court, she would not like it if the court did not find that there has been sexual abuse by the father. She believes that the majority of the children's present behaviours are due to the situation and their sexual abuse.

K.B.

[268] K.B. ("K.B.") is a good friend of the mother's. She has known the mother for over 9 years, and they talk to each other daily. K.B. has a daughter who is 8 years old, in the same class as H.H. and they are best friends.

[269] K.B. now assists in driving the children to school when the mother cannot walk them to school due to a Behcet's flare up and as the mother does not drive. She estimates that she brings the girls to school approximately 50% of the time. She acknowledged that she frequently drops off the children late at school. K.B. used to drop the children off at the front of the school, but if the bell rings as they enter the school they are marked late. So, she now drops them off at the back of the school. The mother has spoken with K.B. about bringing the children to school late and she is now picking them up earlier.

[270] K.B. has noticed a change in both children over the past few years. The children seem "off' emotionally. H.H. used to be outgoing and now there are times when she does not want to play. H.H. will have meltdowns out of nowhere, where she screams and cries. The mother is effective to calm H.H. D.H. also has meltdowns or will just not want to talk. The children resist going to school and just want to stay home with their mother and relax.

[271] K.B. sees that the children are very connected to their mother and that their mother is a safe place for them.

[272] The mother told K.B. about D.H.'s initial disclosure in March, 2021. The mother

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was frantic as a result of this disclosure. H.H. has told her that she did not like going to her father's house as he hurt her. D.H. has told K.B. numerous times that her father put his finger in her butt and hurt her. K.B. could not recall when these disclosures were made to her, but she believes that this was a repetition of the disclosures that had already made and not new disclosures. This is why she did not report the disclosures to the police or the Society. K.B. believes what the children were saying was true.

[273] The children have also made statements to K.B. that they "don't like daddy"; "daddy is mean to us"; "I don't like to see daddy"; and "daddy hurt me", but no context was given regarding when and why these statements were made.

[274] As a result of the children's disclosures, K.B. acknowledges that the mother tried to restrict the father's access to the children "as any parent would".

The father's access:

[275] After the parties initially separated, the father had substantial access to the children. When the father began to reside with W.A., H.H. would sleep with W.A. and D.H. would sleep with him. He explains that the mother would let the children sleep in her bed, and he tried to discourage this. However, D.H. would often wake up and cry until the father came and got her, so he just started letting D.H. sleep with him.

[276] After D.H.'s initial disclosure in March, 2021, the father's parenting time restricted for a period of time and then was on Sundays from 10 a.m. to 6 p.m. supervised by W.A.. This agreement was negotiated between the parties with the assistance of counsel.

[277] Since the Society commenced a Protection Application, and after the father was charged with sexual assault, the father's court-ordered access has been at the discretion of the Society and his access moved to the Society offices until the charges were dropped. The father's access has always been supervised either by the Society or by family members and at the discretion of the Society, with minimum times and terms for access set by the court. The Society always considered both parents wishes when taking a position on the father's access.

[278] During the police investigations, the Society had to either suspend the father's access, move it back to the Society officers, or not increase it as scheduled.

[279] The mother has cancelled numerous visits with the father. From August 26, 2021 to January 9, 2022, out of 46 visits, 17 visits were cancelled due to reasons other than the father having to cancel or weather conditions. Most often visits were cancelled due to the children being sick. However, this was during COVID, and the children were frequently sick, particularly due to their Behcet's disease. Some visits were cancelled as the mother lacked transportation.

[280] The visits on December 25 and 26, 2021 for Christmas were cancelled by the mother as she indicated that the children were sick. The father questioned this at trial, filing pictures posted by the mother on TikTok on those dates wherein the children appeared healthy. I note that there is a doctor's note from December 17, 2021 indicating that the mother brought the children to see Dr. Thimm due to having respiratory problems, a fever, and vomiting. In a counselling note from December 20, 2021, the mother reported to Ms. Kelp that the children were sick with a persistent cough. The mother's friend K.B. testified that at Christmas, 2021, the children were sick with fevers and had the sniffles.

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Therefore, I am satisfied that the children were actually sick over Christmas in 2021.

[281] The father's access has both progressed and regressed due to orders of the court and investigations of sexual abuse. The Society was in the process of moving the father's access back into the home when another police investigation was commenced in December, 2021 following a disclosure of abuse made by H.H. so this expansion was put on hold.

[282] On December 2, 2021, the paternal grandparents signed an Agreement of Access Expectations with the Society to ensure that the father's access with the children was directly supervised at all times. Thereafter, in or about the end of January, 2022, the father's access moved to the home of the paternal grandfather, R.A. and his partner, D.O. on Saturday and Sunday from 10 a.m. to 2 p.m. The Society did not want access to be in W.A.'s home as D.H. had made a disclosure of abuse in that home. Although the father was critical of the Society's position on where access could take place, access did occur regardless of which home it occurred in.

[283] In April, 2022 there was a further disclosure of sexual harm during the father's access supervised by R.A. and D.O., and police became involved and charges were laid. Thereafter, access moved back to the Society offices on Saturdays for just over 1 hour. In or about June, 2022, the charges of sexual offences against the father were withdrawn.

[284] Access started back at W.A.'s home in or about July, 2022 and has remained there ever since. When access resumed at W.A.'s, the father suggested that he wear a body camera during visits to protect himself against allegations of sexual abuse. The Society did not require this as a condition for access. However, it is hot to wear the body camera, so after a few times wearing the camera the father now just keeps it close to him during visits. The father acknowledges that there have been some glitches in that the audio was missing one weekend as he pressed the mute button by accident. Another time part of the video was missing. Since the father started to wear the body camera there have been no allegations of sexual abuse until August, 2023, which disclosure was deemed by police to be historical.

[285] As access was going well, as of August 13, 2022, the Society expanded the father's access to be twice weekly for 3 hours. By September 3, 2022, this access increased to twice weekly for 6 hours each visit, with approved supervisors.

[286] By October, 2022, the Society increased the father's access to twice weekly for 10 hours. At Christmas 2022, the Society approved an overnight visit with the father, which was cancelled due to the weather. The father had a few overnight visits in February and March, 2023, and the children slept in the W.A.'s room on mattresses. According to the father and W.A., the girls were excited about having overnight visits and both children advised the OCL, Ms. Dyszuk, that they wanted to have an overnight visit, although H.H.'s views changed at the beginning of 2023. According to the mother, H.H. told her that during the overnight visit in March, 2023, the father randomly made statements throughout the day that "I never hurt you, you know that"; "you are lying, and your mother is making you say that". The mother sent an email to the Society and Ms. Samii regarding H.H.'s disclosures and expressed that the children were not safe during visits.

[287] The Society proposed once-monthly overnight visits for the father. As the father was having every weekend with the children, the court suggested that the mother be able to have some weekend parenting time.

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[288] In her report dated April 10, 2023, Dr. Sas only recommended overnight visits with the father if the children wanted them. As the Society was proposing another expansion of the father's access, which the mother and the OCL opposed, following an argument of a motion, on May 11, 2023, the Court made the following temporary without prejudice order for the father's access, which is the present order for access:

- For Week 1, 2 and 3, the father shall have access with the children on Saturday and Sunday at times as directed by the Society but not overnight.
- The mother will have the children in her care for the entire weekend on Week 4.
- The mother shall have the children in her care for the entire day on May 14, 2023, being Mother's Day.
- Access shall continue to be subject to paragraphs 2 and 3 of the order of September 1, 2022.

[289] The father states that in general, his access visits are positive, as confirmed by W.A..

Access Supervisors:

[290] Two society workers who supervised the father's access visits that occurred at the Society offices testified: Sara Brown and Roxanne Murray.

Sara Brown:

[291] Sara Brown supervised 5 of the father's visits from October 3 to December 12, 2021. The visits were scheduled for Sundays from 9 a.m. to noon at the Society offices.

[292] The children were always excited to see their father at the beginning of the visit. During visits, the father engaged in games with the children, read to them, and talked to the children about school and what they did during the week. The children were affectionate with their father by hugging and cuddling with him. The father always came to visits with snacks and a bag of activities.

[293] The father appropriately intervened when the children argued. During one visit,

D.H. poked her finger around H.H.'s bum area and the father immediately intervened. Ms. Brown never had to redirect the father or intervene in the visits. She never saw the children to be reluctant to be around the father or reluctant to get out of the car to come to the visits.

Roxanne Murray:

[294] Roxanne Murray supervised the father's visits from May 28 to August 6, 2022. She supervised 6 visits that occurred on Saturdays from 11:15 am to 12:30 p.m.

[295] The father usually arrived early for visits. The children were always excited to see their father and the father greeted them with hugs. He engaged in appropriate conversation with the children and would follow the children's lead in play. The father

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responded appropriately when the children argued. Ms. Murray viewed the interactions between the children and their father to be positive. At the end of the visits the children would hug and kiss their father goodbye. At the end of one visit, D.H. hid in the playground outside as she did not want to leave the visit.

[296] During one visit, when discussing D.H.'s birthday party, D.H. told her father that according to her mother, the father is not allowed in their home. The father responded appropriately but did not engage further with the children on this subject.

[297] Ms. Murray never had to intervene during these visits. She never saw any hesitation of the children to engage with their father.

The children's views on access and resisting visits:

[298] When Ms. Spriggs was involved from 2021 to early 2022, the children were consistent that they wanted to see their father but were inconsistent with their views on who they wanted to be present for access and the access location. At times, they wanted visits at the paternal grandfather's home. At times, they wanted visits at the Society. The children never told Ms. Spriggs that they did not want to attend for visits at all. Ms. Spriggs believed that the children love their father, want to see him, and their interactions were positive. However, they did not want to see their father alone. On November 29, 2021, when having a private interview with D.H. and when asked if she had any worries about visits with her father, D.H. disclosed to Ms. Spriggs that her worry was that "daddy would put his finger in my bum again".

[299] The mother would report to Ms. Spriggs that at times the children did not want to attend for visits with their father. The mother states that H.H. is more resistant of the two to go on access visits with the father. Before visits with the father, at times she will lock herself in her bedroom, hide under the bed, hit the mother and scream. The mother attempted to enter into evidence several audio tapes of what she stated was the children resisting access, but they were not clear enough. She did enter into evidence one audio of H.H. whining, saying that she "did not want to go" for access and "please don't send me" and the mother reinforcing that H. H. had to go.

[300] When visits were supervised by Society staff, staff observed that the visits were positive, and staff rarely had to intervene or redirect the father. H.H. would be disappointed when visits were over. At the end of one visit supervised by the Society in September, 2021, H.H. was crying uncontrollably as she did not want her father to leave.

[301] The children were not consistent with Ms. Kling about their views regarding access with their father. Their reasons for not wanting to go on visits were also inconsistent, such as not getting along with their grandfather or dad or referencing previous investigations that "daddy hurt me". When Ms. Kling would ask D.H. about her visits with her father, at times D.H. would shut down and just do something else.

[302] The children also disclosed to Ms. Kling that their father did fun activities with them such as playing video games, making crafts, eating meals together, and going to the park and for ice cream. The children told Ms. Kling that they were comfortable having visits at either the home of the paternal grandfather or grandmother.

[303] At one point, the children told Ms. Kling that they were not opposed to overnight visits with their father but just wanted their grandparents there. Just before trial in June,

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2023, D.H. reported to Ms. Kling that at times she did not want to go on visits with her father as he had hurt her. H.H. also reported she did not want to go on visits but would not provide details to Ms. Kling about why she did not want to attend for visits or why she wanted to wear baggy clothes around him.

[304] R.A. has seen H.H. resistant to attend visits and crying on 2 to 3 occasions when he has picked them up. However, H.H. is fine after about 5 minutes and is fine during the actual visit. He does not recall D.H. ever not wanting to go on visits. W.A. indicates that only rarely do the children resist attending for access. The father has not observed H.H. resisting to attend for visits. He states that the children often do not want to leave visits and ask when overnight visits will start again.

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The mother's opinion regarding access with the father:

[305] Since the disclosures by D.H. in March, 2021, the mother has been adamant that she did not want the children to attend for access visits.

[306] Before the Society commenced the Protection Application, the mother continuously asked the Society about restricting the father's access and she was adamant that she would not be successful in court if the Society did not take a position on the father's access. However, until the Protection Application was commenced, the Society continued not to take a position on the father's access.

[307] The mother did not send the children for access visits with their father from March to May, 2021 and acknowledged that she did not consider even supervised visits during this time. At least since the beginning of June, 2021, the mother has consistently advised the Society that the children should not have to attend for access with their father as he is their "abuser".

[308] The mother advised Ms. Kling that she cries every time the children attend for access. The mother reported that the children expressed anxiety even when the father would attend their soccer games. Ms. Kling did not find concerns with the father attending soccer games as they were in the public and the children would not be alone with the father.

[309] At trial, the mother acknowledged that:

- She questioned why the father had any access visits at all and asked s. Kling if there was a way to stop his access.
- The mother states that the children are happier when they get to stay home with her, and they don't have access.
- She agreed that she was fixated on restricting the father's access to the children even with a court order for access as no child should have to see their "abuser" as it is not safe and not good for their mental health.
- She thought it was "disgusting" that the Society suggested an overnight visit between the girls and the father over Christmas in 2023 and were ignoring the fact that he is a pedophile and an abuser.

- The mother testified that she did not want the father to have any access with the children until he received counselling, or until the children were older, perhaps teenagers.

[310] Although the mother resisted access, in general, the children attended for visits and the mother was cooperative to arrange for make-up visits when visits had to be cancelled.

**The parents' counselling:**

[311] This family was referred to the Huron Perth Centre ("HPC") in Stratford following disclosures by D.H. of sexual abuse. The entire family were provided with counselling services through HPC.

The father's counselling with Darlene Pullen:

[312] Darlene Pullen testified. She is a mental health counsellor with the HPC.

[313] The Treatment Service Agreement between Ms. Pullen and the father dated January 7, 2022, indicated that:

> Needs: The father is seeking parenting support in navigating a difficult time with his family. He sees his children supervised and he is wanting help to make these opportunities positive. He is concerned about how to answer his children's questions now and in the future.
>
> His goals included:
>
> - Be the best dad under limited contact arrangements.
> - Reflect on experiences in family of origin and how this impacts my parenting.

[314] She did 8 sessions of counselling with the father from October, 2021 to June, 2022. She used the Circle of Security parenting model. They discussed information about the stages of the children's development, and how the father could best respond to the children, be regulated and present during his access visits, as he was not seeing the children often at that time and worried about that. Ms. Pullen was aware that D.H. had made a disclosure of sexual abuse.

[315] Ms. Pullen found the father to be very engaged in counselling. He came to sessions with relevant questions. He was able to reflect on his own upbringing and his experiences with his children. He believed that his parents were more lenient, and wondered if a stricter parenting approach was better. It was difficult for Ms. Pullen to get a sense of what type of parent the father is when she did not see him with the children.

[316] The father did not talk about D.H.'s disclosure as it was still under investigation. Ms. Pullen did not see any "red flags" that he shared in their sessions about his parenting practices. They discussed whether he should let his daughters sleep with him.

[317] Ms. Pullen's notes indicate that during a session on June 17, 2022, there was a discussion about how best to make use of the limited time that the father had with the children. Ms. Pullen suggested that the visits should be fun and suggested relaxing

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activities. The father questioned if bringing the children their favourite snacks and toys would be "like rewarding them for lying". Ms. Pullen just encouraged the father to consider approaches that allow the visits to be pleasant for the girls.

[318] The HPC made a decision to discontinue counselling with the father at the end of June, 2022 as there was a second disclosure by D.H. and it was determined that the criminal matters should be resolved before counselling moved forward. Ms. Pullen believes that the father did meet his counselling goals. The father was able to use a strategy they discussed to explain to his daughter why he could not attend her birthday party.

[319] The father was not fixated on the mother during his sessions. If the father were to reach out again, she would continue to work with him but could not provide specific counselling for sexual offenders.

[320] The father would not participate in counselling specific to sexual offending as he denied any abuse of his children. He indicated that due to his work in counselling, he has reassessed his parenting techniques and is no longer as strict as he was previously. He agrees that his tone may come across as aggressive and he tries not to use such a stern tone.

The mother's counselling with Jenny Kelp:

[321] Jenny Kelp testified. She is also a counsellor with the HPC and is trained as a play therapist. Her records were filed in evidence.

[322] Ms. Kelp has worked with the mother since March, 2021, and continues to provide ongoing support to her. She meets with the mother approximately twice per month and her sessions are approximately one hour long. Her treatment goals with the mother are to provide therapeutic support for the children so they have a safe place to unload their "big" feelings. This includes dealing with the children's stress behaviours such as defiance, aggression, anxiety and emotional dysregulation in general. The mother is experiencing stress due to the situation, and Ms. Kelp provides support to mitigate her stress so that the mother can be emotionally available for the children. Ms. Kelp explained that the mother has a high level of anxiety regarding her children and Ms. Kelp will reinforce the mother's strengths and what she is doing well for the child to give her validation. The mother was consistent in her attendance at counselling and follows Ms. Kelp's advice.

[323] In counselling, the mother discussed D.H.'s many angry outbursts, including throwing things, biting, and slapping her sister. Ms. Kelp explored concepts with the mother of what is helpful to calm and understand D.H.'s feelings. The mother will often hold D.H. until she calms down. Ms. Kelp believes that the mother uses creative strategies to assist D.H. with her anger such as toys, redirection, and offering her comfort. During the counselling session on April 28, 2021, the mother advised that after the children's second visit with the father after D.H.'s disclosure, D.H. said that daddy did not do it, but the mother overheard H.H. tell D.H. to say this so that they could have a sleepover at their grandmother's home.

[324] In October, 2022, the mother reported to Ms. Kelp that D.H. recently disclosed that dad has hurt her privates while in a bathroom at a toy store, but the mother did not know when this occurred. D.H. continued to talk about the pain in her bum from the time when

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the father hurt her. In 2023, H.H. continued to express to her mother that she no longer wanted to see her father. H.H. has also expressed to her mother that she is upset that her grandmother (W.A.) does not believe her about the father's abuse towards H.H. and D.H. The issue of both children resisting contact with the father had been discussed in counselling. However, the mother discussed her strategies to encourage the children to attend access visits with the father. The mother explained one situation in September 2022 when D.H. did not want to go to the access visit with the father. The mother carried D.H. to the car and pointed at the father and said, "Daddy looks excited to see you". D.H. went on the access visit but was quiet. Ms. Kelp agreed that the mother used an effective strategy on this occasion to get D.H. to go to the visit and that the mother used appropriate language that they had discussed in therapy.

[325] In counselling, the mother would discuss the children's disclosures. In Ms. Kelp's opinion, the mother was very worried and concerned about her children. The mother was receptive to Ms. Kelp's parenting suggestions. Ms. Kelp was satisfied with the mother's progress in counselling thus far, but there was some further work to be done to meet their goals.

**The children's needs:**

Dr. Andrias Thimm:

[326] Dr. Thimm has been the family physician for the mother and both of the children since in or about August, 2018.

*The Mother:*

[327] When he first met the mother in September, 2018, he was treating her for anxiety, depression, panic attacks and weight loss issues. He states that the mother has a lot of anxiety. She worries about her children's health, D.H.'s disclosures, and difficulties getting the children to attend access. The mother manages her anxiety with medication, and this seems to work well.

[328] He has treated her for other conditions including Behcets disease. Dr. Thimm explained that this is a clinical diagnosis based on a constellation of symptoms. There is no test to prove someone has Behcets disease. It is a "working diagnosis" based on presenting symptoms and to the best of their knowledge. Sometimes there can be genetic components to Behcets. He referred the mother to a specialist to treat her Behcet's.

*D.H.:*

[329] He started to see D.H. as a patient in August, 2018. He has seen her for routine check-ups for immunizations and sicknesses. The possibility of D.H. having Behcets came up as she was having oral ulcers, rashes and joint pains. She was referred to a pediatrician with an expertise in Behcets, who confirmed a working diagnosis for Behcets for D.H. D.H. is on medication for this. The specialist suggested that the children be taken *off* the medication for 3 months to see if they still had symptoms. During the time that D.H. was *off* medication, her symptoms of lesions and ulcers worsened so the specialist restarted D.H.'s medications.

[330] D.H. did have a speech delay, but this has improved.

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[331] On March 8, 2021, the mother contacted Dr. Thimm to advise that D.H. had disclosed that her father put his finger in her bum, and she may need an exam. Dr. Thimm booked an exam for D.H. for March 9, 2021. Dr. Thimm noted bruises just above D.H.'s buttocks but no other major trauma was visible.

[332] Dr. Thimm's records note that he referred D.H to a female pediatrician due to intermittent rectal pain and the report of abuse by the father. D.H. was seen by Dr. Kirsten Blaine on November 15, 2021. Dr. Blaine believed that D.H.'s rectal pain could be related to Behcet's disease or another organic etiology. D.H. was also seen by the Pediatric Outpatient Gastroenterology Clinic on January 13, 2022 due to her rectal pain. At that point, D.H. had not had rectal pain for about 1 ½ months. Dr. Crowley at this clinic indicated that hard stools could leave to anal fissures or mild injury to the rectum causing pain. Behcet's disease could have gastrointestinal involvement. A non-organic cause such as a trauma response is also on the differential given her recent history of sexual abuse.

[333] In October, 2022, D.H.'s teacher noted behavioural issues with D.H. so Dr. Thimm saw D.H. to query ADD or ADHD. Dr. Thimm referred D.H. to a child psychiatrist, Dr. Tefleman, who determined that D.H. does not meet the criteria for ADHD nor is she on the autism spectrum.

[334] On June 20th, 2023, Dr. Thimm saw D.H. for a possible bladder infection as she was frequently urinating in her pants. The mother mentioned that her father put his finger in her bum, and then D.H. on her own said yes, her father put his finger in her private parts but then did not want to talk to Dr. Thimm further about it. Dr. Thimm asked D.H. if she wanted to be examined and D.H. said no, so Dr. Thimm did not press the issue. Dr. Thimm took some urine samples, which came back negative for an infection. He knew that the Society was involved, so he did not think to make a further report to the Society.

*H.H.:*

[335] Dr. Thimm started seeing H.H. in September, 2018, and saw her for things such as colds, coughs and fevers. There was also a concern that H.H. had Behcets due to an ulcer. H.H. was also referred to a pediatrician with an expertise in this area and there is a working diagnosis that H.H. has Behcets and she is on medication.

[336] Dr. Thimm has seen the children's oral ulcers and skin lesions, but not the vaginal ulcers. He explained that various things can cause Behcet flare-ups, including colds, bacterial infections, stress and certain foods may be triggers. The stress to cause a flare-up can be physical (like getting sick) or mental. He did not believe that the children were ill more often than average children.

[337] Notes from pediatrician Dr. Demirkaya from London Health Sciences Centre confirmed the diagnosis of Behcet's disease for both children, which is managed by colchicine. However, at trial, Dr. Sas indicated that she had spoken with Dr. Demirkaya who confirmed that this diagnosis is difficult to make in children and it could take years, so a definitive diagnosis has not yet been made. However, Dr. Sas indicated that the children definitely presented with this symptomatology of Behcet's.

*Father's view of Behcet's disease:*

[338] The father has spoken with Dr. Thimm several times and was present with the

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mother when Dr. Thimm spoke with them about Behcet's disease. The father states that he left several messages with Dr. Thimm to further discuss this but did not receive a phone call back.

[339] The father has seen the children's cankers, red dots on their skin and bruises. However, he questioned the children's diagnosis of Behcet's disease as there is no test for it. The reports regarding the children's symptoms were made by the mother to the doctors and the father believes the symptoms could be attributed to other things such as being tired, running into things, etc. The father queries whether it is the mother wanting the children to be sick.

[340] The father told Dr. Sas that he did not support the children being on medication for their Behcets disease. If anything, he believed that they had a mild version of Behcets as they did not exhibit symptoms on access visits.

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The children's counselling:

[341] In 2021, the father expressed his support of the children attending counselling to Ms. Spriggs. The children were initially referred to the Huron Perth Centre.

[342] However, counselling was difficult to arrange due in part to challenges in obtaining the father's consent. He did not want the mother remaining in the room for the children's counselling sessions or for Jenny Kelp to be the children's counsellor as she was also the mother's counsellor. Ms. Kling believed that this was a reasonable concern articulated by the father, and the Society also did not support the mother being present for D.H.'s counselling sessions, other than the first few sessions to ensure that D.H. was comfortable. The father signed the consent for counselling in May, 2021 but still expressed concerns as the mother continued to be involved in the children's counselling, so the HPC was concerned that they did not have the father's full consent.

[343] Ms. Kelp explained that as the children were so young, they needed a parent to be in the room during counselling for them to feel safe. The philosophy of the HPC was for counselling to be done as a family unit and to have the primary caregiver involved in the counselling with the children, which was the mother in this case. Although Ms. Kelp testified that D.H. did not feel safe with the father so he was not included in the sessions, she clarified that D.H. did not articulate this, but she insinuated it from her disclosure of sexual abuse.

[344] At trial, the mother also confirmed that she did not want to be in the same room as the children for their counselling sessions but was asked by the counsellor to stay, particularly as it was difficult to understand D.H. due to her speech delays and the mother could interpret what she was saying.

[345] In a meeting with the HPC, Ms. Samii, the OCL, suggested that another family member could be the attachment support for the children during counselling. However, this was not the policy of the HPC as they work with the caregiver and the children.

[346] The father continued to advocate for another therapist to work with the children. Ms. Kelp explained that they did explore having a play therapist involved with the children who specialized when there have been disclosures of sexual abuse, but this was an expensive service that the parents could not afford.

Counselling with D.H.:

[347] Ms. Kelp from the HPC commenced working with D.H. on June 16, 2021. D.H. was excited when she came to therapy to explore the toys. Ms. Kelp explained to D.H. that she was there to help families and children talk about their feelings and worries. D.H. then told Ms. Kelp that her "dad put his finger in her bum, and this made her sad". The mother was also in the room at the time. Ms. Kelp contacted the Society worker, Ms. Spriggs to report D.H.'s disclosure.

[348] Ms. Kelp had 2 more sessions with D.H. on June 23 and July 7, 2021. Ms. Kelp utilized a non-directive play therapy approach, and allowed D.H. to play, following her lead. Nothing stood out for Ms. Kelp arising from these sessions. The mother was involved in these sessions as the primary caregiver. Ms. Kelp was aware of the concern that the mother may have coached D.H., but the mother did not interfere with her work with D.H.

[349] After D.H.'s second disclosure in July, 2021, her counselling with Ms. Kelp was put on hold. Generally, she would require a number of sessions with a child to establish a therapy plan. However, therapy was put on hold for D.H. after 3 sessions.

[350] Ms. Kelp advised that play therapy for the children could start with the HPC once the father signed a consent. In Ms. Kelp's opinion, the children could have been in a better position if play therapy had started a few years ago.

Counselling with the Sexual Abuse Treatment Program:

[351] In January, 2022, the Society referred both children to the Sexual Abuse Treatment Program at the Family & Children's Services of the Waterloo Region. ("SATP") This team provides assessment and counselling for children who have been sexually abused. There must be a verification of sexual abuse before their team will become involved, which had occurred for both children in this case. SATP was asked to assess the impact of sexual abuse on both children by their father and recommend the next steps. SATP does not investigate whether the sexual abuse occurred as this had been verified.

[352] Both parents cooperated to sign the consent forms for the children to be involved with SATP. The mother was initially involved in the assessment process. The father was not involved in this process, but the SATP program was aware that he denied the allegations.

[353] The notes from SATP were filed, as well as the assessments and intake summaries of both assigned workers.

Amanda Hailer's work with D.H.:

[354] Ms. Holler testified. She is a social worker on the SATP team and has specific training in trauma treatment and assessment and questioning children. She was assigned to work with D.H. She was provided with background information from both the Huron-Perth CAS and the mother.

[355] Ms. Holler met with D.H. for 5 one-hour sessions for her assessment. For the first two appointments, both the mother and H.H. were in the room with D.H. to assist Ms.

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Holler in establishing a rapport with D.H.

[356] Ms. Holler was assessing the impact for D.H. on the sexual abuse. She found D.H. to have high energy. She noted that when D.H. spoke about her father her demeanour changed resulting in her hiding under the furniture in the counselling room or stating that she did not want to talk about him anymore.

[357] On March 22, 2022, when engaging in an activity without the mother in the room and without prompting, D.H. advised that her father had touched her private parts, including her "vagina" and "butt cheek"; that she did not like playing with her daddy "because he hurt my private parts", and that his touching made her feel angry, sad and scared. She described him as "mean" for doing it.

[358] D.H. advised Ms. Holler that she and her mother were hurt by the private parts touching, and her dad was not. D.H. understood that it was her father's fault for the touching. D.H. loved her father and wanted to continue to see her father but wanted him to stop touching her and for "Gram" to be there when she was with her dad. To feel safe, she did not want to be alone with her father.

[359] At times, D.H. would get frustrated and did not want to talk about her father.

[360] In the 3 sessions involving the mother, Ms. Holler noted that the mother appeared to be doing her best to protect D.H. from harm, stress and additional trauma. The mother appeared open, warm and caring in her interactions with her daughters and modelled and supported healthy boundaries.

[361] Ms. Holler made the following recommendations for D.H.:

- A therapeutic modality, such as play therapy to allow D.H. to express her thoughts and feelings in a play-based environment with appropriate tools. This service cannot be offered through SATP. Ms. Holler believed that D.H. had been impacted by being interviewed multiple times by the Society and the police and play therapy could offer an open-ended opportunity to discuss her feelings. She understands that there is a cost for play therapy.

- D.H. would benefit from some basic safety teaching boundaries and developing her coping strategies. This service could be offered through SATP.

- Given D.H.'s views that she does not want to be left alone with her father, his visits should continue to be supervised. However, the need for supervision of her contact needs to be reassessed on a regular basis for any possible changes.

- D.H. may experience additional stress from the impact of sexual abuse later in her development and may need additional counselling.

<u>Lena Wodnicki's work with H.H.:</u>

[362] Lena Wodnicki is also a worker with the SATP and was assigned to work with H.H. She met with H.H. for 5 one-hour sessions in March and April, 2022. She also met with

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H.H. twice after her assessment was completed in December, 2022 and March, 2023.

[363] The first two sessions were with the mother and D.H. In her third session, the mother only joined them briefly. In the remaining 2 sessions she met with H.H. individually.

[364] Ms. Wodnicki indicated that H.H. engaged quite well in the assessment: she was talkative and active in the activities. However, when talking about her parents' separation, the sexual abuse, and her emotional well-being, she was shy and did not make eye contact. However, she would perk up when they moved to another activity.

[365] Her first activity with H.H. was on March 3, 2022, Ms. Wodnicki called "People in my World" where H.H. would label people who are important to her. H.H. included her mother and sister first, and then others including her paternal grandmother. Ms. Wodnicki asked about her father, and H.H. chose not to put her father on the first page but put him on the other side of the page. She advised Ms. Wodnicki that she loves and felt loved by all of the people in her world but did not put love beside her father. H.H. also felt cared for everyone in her world, but only a little bit by Gram and her dad. Her father was the only one who hurt her, and that hurt her feelings.

[366] On March 11, 2022, Ms. Wodnicki did a "Worry Survey" with H.H. H.H. confirmed that most of her problems are about her father, and she worries a bit about her father because of what happened and worries a lot that her father might do something to her sister. When asked about a worry that someone was touching her in a way that she does not like, H.H. indicated that her dad touched her.

[367] On March 22, 2022, Ms. Wodnicki did an activity with H.H. about the "good and not so good" things that happen in both her mom and dad's homes. H.H. shared that she did not like being left alone with her father as he had touched her vagina over her clothing on one occasion. H.H. was worried that rules were broken by her father, and that she could possibly be hurt again by her dad.

[368] H.H. still wants to go see her dad as she has fun there and her father is being nice to her now but wants her Nanna or Poppa there at all times. Her biggest hope is for her father not to hurt her again.

[369] H.H. made the same disclosure 3 to 4 times about her father touching her vagina. All of the disclosures were not prompted and were in the context of activities. H. H. was quieter when she made these disclosures, and it was clear to Ms. Wodnicki that H.H. did not want her to ask her more questions about the incident. H.H. shared this information both when her mother was present and individually to Ms. Wodnicki.

[370] H.H. disclosed feeling scared, sad and hurt when her father touched her, but feeling brave to be able to tell her mother about the "not OK touch".

[371] Ms. Wodnicki made the following recommendations for H.H.:

- That H.H. attend individual counselling through SATP or another program for education on age-appropriate healthy sexuality, boundaries and safety teaching.

- That H.H. engage in play therapy to address her emotional needs related to her parents' separation, her relationship with her father and

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possibly parental loyalty conflicts. SATP does not provide this type of therapy.

- That H.H. continue to visit with her father and that these visits be supervised by a supervisor who is supportive and validates H.H.'s experiences. The need for supervision of her contact with her father needs to be reassessed on a regular basis for any possible changes.

- H.H. may demonstrate additional stress from the impact of the sexual abuse later in her development. Therefore, it is important to monitor any changes in H.H.'s presentation and demeanour for possible impacts of her experience and in that case further counselling should be explored.

[372] Ms. Wodnicki was willing to do some follow up sessions with H.H. regarding education on healthy sexuality, but this was put on hold due to Dr. Sas' assessment.

[373] The mother contacted Ms. Wodnicki in December, 2022 and March, 2023 due to something happening in visits with the father and H.H. wanting to speak with Ms. Wodnicki. She wanted to continue to visit her father but with someone else always there as she did not feel safe.

[374] On December 16, 2022, Ms. Wodnicki met with H.H. individually. At that time, H.H. was having visits with her dad from 7:30 a.m. to 7 p.m. on Saturdays and Sundays. H.H. said that the visits were long, and she wanted them shortened so that she could hang out with her mom and hang out with friends. She liked the fact that her grandparents were there during visits. Ms. Wodnicki followed up with the Society regarding H.H.'s views on visits. Ms. Wodnicki also met with H.H. in March, 2023.

[375] Ms. Wodnicki would not recommend a reassessment of H.H. as she has been interviewed many times about her disclosures. She is aware of play therapists who could assist in this case but understands that there is a cost for this service.

<u>Recommended Play Therapy:</u>

[376] After counselling with the Sexual Assault Centre was completed, play therapy was recommended.

[377] The Society wants to ensure that any play therapist is qualified to do the type of therapy required in this case. Although services through the HPC are free, they do not do this type of therapy. Private play therapy is expensive.

[378] HPC wanted to meet with the father during the trial to obtain his consent for ongoing counselling for the children. At trial, the father reaffirmed his support for counselling for the children, but he is worried about the type of counselling they will be receiving. He was worried that Ms. Kelp wanted to meet with the father personally to obtain his consent, which is difficult for him to do to take time off work. He was also concerned about meeting with her while he was in the middle of cross-examination at trial. He would be willing to meet virtually to obtain his consent.

[379] Play therapy is costly. The mother acknowledges that the father asked to put the

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children on his benefits through his new employment for funding for counselling. The mother declined this offer as the father often changed his employment so she would have to also potentially change health care coverage. The mother indicated that if the father maintained the same employment for a long period of time, the children could go on his benefits. She also stated that she had coverage for the children through her ODSP.

[380] The mother agreed to have another therapist other than Ms. Kelp meet with the children. In October, 2023, the mother met with Shirley Brooker of the HPC to start therapy for the girls, and the last evidence at trial was that Ms. Brooker was going to meet with the father to obtain his consent to commence this therapy.

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The Children's school attendance and behaviours at school:

[381] The children's report cards dated June 27, 2023 were filed. It was noted that for the 2022/2023 school year, D.H. had 59 absences and 26 lates, and H.H. had 52 absences and 27 lates. Ms. Kling indicated that neither parent reported to her that school absences was a concern. However, the children were absent approximately ¼ of the school year.

[382] Ms. Kling was aware that the children were sick a lot and had flare-ups due to Behcets. Ms. Kling acknowledged that the children's absences were more than the average student but not a significant concern for the Society. Although D.H.'s grades were low, it is acknowledged that D.H. has difficulties focusing and through her family physician she was referred to a child psychiatrist to query ADHD.

[383] A teacher from the school contacted Ms. Kling about H.H.'s dysregulation at school, which Ms. Kling addressed with the mother. The mother believed that the only explanation for H.H.'s dysregulation was her access with her father. However, Ms. Kling could not definitely say that there was a correlation between the children's visits and their lack of attendance at school as the children themselves were inconsistent regarding their views on visits with their father. H.H.'s dysregulation could also be because of separation anxiety and being away from her mother. H.H. was in fact doing fairly well academically.

[384] The mother indicates that she had to pick up H.H. from school on several occasions due to her dysregulation. In the first month of the 2023 school year, the mother has had to pick up H.H. early from school 4 times. The school has also reported some incidents this year with D.H.

Adrienne Jacgues

[385] Adrienne Jacques, a principal at A[...] School where both children attend, testified.

[386] Counsel for the mother, Mr. Winninger, attempted to introduce through Ms. Jacques a letter she had written dated March 23, 2023. In this letter, Ms. Jacques outlines behaviours of the child H.H. over the past 3 months and statements made by H.H. on March 21, 2023. Ms. Jacques indicated that some of H.H.'s behaviours and the statements made by H.H. on March 21, 2023 she did not actually witness but were brought to her attention by H.H.'s teacher.

[387] Mr. Winninger sought to introduce this letter for the truth of its contents regarding

H.H.'s behaviours and statements made by H.H. The introduction of this letter as an exhibit was objected to by all other counsel as it was inadmissible hearsay or even double hearsay.

[388] For the reasons outlined in my decision dated November 8, 2023, I found that the letter dated March 23, 2023 was not admissible in evidence. However, Ms. Jacques could testify regarding her own personal experiences with the children.

[389] Ms. Jacques testified that H.H. is in grade 3 and D.H. is in grade 2. In her role, teachers will bring to Ms. Jacques' attention issues with students, and she frequently does check-ins in the classrooms to observe what is occurring. Ms. Jacques will assist when a child's behaviour is outside of normal functioning so that the classroom can function. Neither H.H. nor D.H. fit the profile to require an Educational Assistant.

[390] Ms. Jacques indicated that in the first 3 weeks of this school year in 2023, she has had no requests for assistance from teachers in the children's classrooms and both H.H. and D.H. appear to be adjusting well.

*H.H.:*

[391] She noted the number of !ates and absences on H.H.'s June, 2023 report card, which she signs off on. It was noted on H.H.'s report card under the heading "Next Steps for Improvement" that:

> H.H. has begun to struggle with self-regulation and following the expectations in the class this term. She is more often off task and requires redirection and frequent reminders to be where she should be and stay on task. At times, H.H. will respond to adult redirection in a disrespectful and negative tone. When frustrated or upset she sometimes will growl, shove furniture, throw items and stomp her feet. She is reminded to maintain a respectful tone when interacting with adults and peers. H.H. will continue to be provided extra support and visuals including timers and extra prompting to help assist her in terms of transition and when she is dysregulated.

[392] On D.H.'s June, 2023 report card, it was noted under the heading "Next Steps for Improvement" that:

> D.H. needs reminders throughout the day to follow the group plan. She has difficulty using her attentive listening skills during lessons. She requires 1-1 support and modifications for most classroom work. D.H. has difficulty keeping her focus even when receiving 1-1 help. She needs encouragement and assistance to work on the Lexia Cores Reading program. She needs reminders to be safe by not staying in the hall during lessons or work time to play with her toys when she asked to get her sweater or water bottle. It would be helpful if she didn't bring toys to school. D.H. is reminded to stop and think to help her make a good choice. D.H. needs to work on keeping track of her things. She often loses necessary materials and needs assistance to be prepared for activities. D.H. has some difficulties working in small groups. She has some conflict with her peers that requires adult assistance to help solve it. She is learning to stop and think to help her make a good choice.

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[393] If a student is having difficulties with self-regulation, there are strategies that the classroom teacher can use. If those are not working, then the school has a team meeting process where the student could be referred to their school Child & Youth worker.

[394] Ms. Jacques noted that last year she was called to both D.H. and H.H.'s classes on 6 occasions to assist the teacher with their behaviours, which is not normal. Although she cannot completely confirm, she believes that they had team meetings within the school last year for both girls. Ms. Jacques observed that H.H. was having difficulties sitting still. She would spin around and hide under desks.

[395] Regarding the numbers of absences and lates for both children, Ms. Jacques agreed this was a significant amount. Ms. Jacques said that she would "red flag" them, monitor the situation and have conversations with the mother about it. A "late" could mean a few minutes late or a few hours. There were no reasons given for the lates. The mother was aware of the school's concerns regarding the children's lack of attendance. The children are on her "radar", but she is sensitive about what is going on with the family. She has not done a referral to an attendance counsellor as she knows the background, the nature of what is impacting this family and the mother communicates with her regularly. Most of her information about the family comes from the mother. She is aware that the children have Behcet's disease, and this affects their attendance when they have flare-ups. She is aware of the sexual abuse allegations that occurred on a weekend when they were visiting the father, and H.H.'s resistance to attend for access visits with her father.

[396] Ms. Jacques also had contact with the father through email. With separated parents they are able to send the report cards to each parent but at times need reminders to do so, such as in this case. The mother explained that she did not put the father on the emergency contact list at school as he cannot pick them up from school due to the current access order. However, the mother clarified that the father is on the general contact list.

[397] Ms. Jacques explained that repeated absences and lates can have a detrimental affect on a child's behaviour. Consistently arriving late and having to integrate into the classroom is a disruption that is challenging. When this happens long-term, it will impact the child's social functions, rhythm and routine. For behavioural difficulties, this is she would suggest a referral to a pediatrician to discuss testing for things such as ADHD.

[398] In her 30 years of experience in education, Ms. Jacques indicated that the girls were showing typical age-appropriate defiant behaviour given their family circumstances.

[399] After hearing the testimony of Ms. Jacques and K.B., the mother agreed that lateness could be an issue contributing to the children's behaviours. She advised that if K.B. continues to make the children late for school, she will be asking someone else to assist to get the children to school if she cannot. She advocated with the school to provide bus transportation for the children, but the children did not qualify due to the close distance they live to the school, or due to their medical issues.

Dr. Sas' Assessment:

[400] Following the father's motion for an assessment pursuant to s. 98 of the CYFSA, on July 19, 2022, I made an order that the children and the parents participate in an assessment with respect to the children's allegations of sexual abuse and as to whether those allegations have been coached or influenced by a third party.

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[401] This is not the usual type of "parenting capacity" assessment ordered pursuant to s. 98, but requested for a very specific purpose, and at the request of a parent and not the Society. Although it would not fall under the 2019 Ministry Policy Directive for Societies to verify the credentials of individuals conducting parenting capacity assessments, the Society confirmed that Dr. Sas was a Registered Psychologist and in good standing with her professional association.[1]

[402] In his motion, the father proposed that Dr. Lousie Sas complete the assessment. At the time the assessment was ordered, in accordance with s. 98(4), all parties and the court agreed that Dr. Sas was qualified to perform the assessment.

[403] A Section 98 Endorsement was signed on August 9, 2022, indicating that Dr. Louise Sas was to perform the assessment, identifying the reasons for the assessment, the specific questions asked of Dr. Sas, and seeking recommendations from Dr. Sas regarding how the parents can support the children following their disclosures of sexual harm. The parties agreed to the documents to be provided to Dr. Sas.

[404] After some delay, Dr. Sas' report dated April 10, 2023 was released and filed at trial.

[405] Dr. Sas testified at trial. Although her expertise was not opposed by any party, a *voir dire* on her qualifications to give opinion evidence on hers. 98 assessment was held at trial, as required pursuant to the trial judge's gatekeeping role.[2]

[406] Her 28-page curriculum vitae was filed as an exhibit. She has her Ph. D in Clinical Psychology. Since 1981, she has been a clinical psychologist specializing in children and families. Since 1999 has had her own private clinical practice. Prior to that, for over 25 years, she worked at the London Family Court Clinic in various roles including as a clinical psychologist, co-ordinator of the Child Welfare Assessment Project and Assistant Director of the Clinic. She has over 27 publications and studies in the areas in her field and has been involved in over 125 presentations on a wide range of topics in her area of expertise, focusing on children's testimony in child protection and sexual assault cases. She has conducted approximately 330 assessments pursuant to s. 98 of the CYFSA and s. 30 of the *Children's Law Reform Act*

[407] What is important to highlight about Dr. Sas' expertise in the context of this matter is her work with child witnesses and developing the Child Witness Project through the London Family Court Clinic, providing clinical services to child witnesses and expert testimony and clinical assessments in cases of child sexual abuse. Dr. Sas indicated that to gain expertise in this area, she attended many conferences, training and read research in this area. She has continued to conduct assessments for Khan applications and testifies regularly in criminal matters. She also has testified in child protection and family matters and estimates that she has been qualified as an expert approximately 100 times. She has been qualified in many areas including parenting capacity; child sexual abuse; child witness issues; sexual assault disclosure patterns in child victims; and credibility and reliability of disclosure of abuse.

[408] Although she has not been deemed an expert in "coaching" issues previously, she agreed that assessing reliability always includes an element of being cognizant of coaching issues, particularly in interfamilial abuse.

[409] In this case, there were no objections to Dr. Sas being qualified in the areas of

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parenting capacity assessments and credibility and reliability of disclosures of abuse, with reliability including an element of assessing coaching by a third party. On the basis of the evidence on the *voir dire,* and as Dr. Sas confirmed her duty to the court to be impartial, independent and unbiased, I found that Dr. Sas' report and her opinion evidence met the test for admissibility of expert evidence and deemed her to be qualified as an expert in the areas as agreed upon by the parties.

[410] Dr. Sas succinctly articulated her mandate for her assessment arising from the questions raised in the s. 98 endorsement as:

- To offer an opinion on whether the children were coached or influenced with respect to their disclosures of sexual harm. More specifically, whether either parent, or anyone else, influenced or coached their disclosures.

- To examine the reliability and credibility of the children's disclosures of sexual harm.

- To examine the reliability of H.H.'s disclosure that she witnessed D.H. being sexually harmed.

[411] During the course of her assessment, Dr. Sas assessed both parents; interviewed the children and observed their interactions with their parents; reviewed documents and videotapes of the disclosures by the children to their mother, the Society, various therapists, family members and the police. She interviewed the Society workers, the children's doctors, the counsellors for the children and the parents and the paternal grandmother; and the father's probation officer. Testing and questionnaires were administered to both parents. In conducting this assessment, Dr. Sas also researched symptom presentation in children and adults diagnosed with Behcet's disease.

*The children:*

[412] Dr. Sas observed that the children have high needs and compete for parental attention. D.H. in particular was very hyperactive and non-compliant at times.

[413] The mother reported that it was difficult to get H.H. to go to school in the mornings, especially Mondays and Fridays. H.H would cry hysterically not to go, and just wanted to stay home with her mother. When H.H. was in school, she loved it and did well academically.

*Relationship between the children and the mother:*

[414] She observed the children with the mother in their home on one occasion and once at the Society offices. Dr. Sas observed a strong attachment and very close relationship between the children and the mother, and that the children felt supported by her. The mother had some difficulty controlling the children's behaviours and she observed that the children would minimally listen to their mother.

[415] Dr. Sas believed that both children miss their mother when they have to go on visits every weekend with their father. They have no "down time" with their mother and are very attached to her.

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*Relationship between the children and the father:*

[416] When Dr. Sas initially suggested to D.H. that she would meet with her and daddy in her office, D.H.'s immediate reaction was "no", saying that she did not want to be alone with daddy as he had hurt her. Dr. Sas suggested the same thing to H.H., and H.H.'s reaction was the same: that she did not want to be alone with daddy and that he had hurt her and D.H. before.

[417] Dr. Sas observed the father in his home with the children on one occasion and once in her office. The children did not appear to be fearful of their father and Dr. Sas observed some very good interaction between them. Dr. Sas observed that the father can be quite stern and "pR.A.ly" in his approach, raising his voice and telling the girls to look at him when he was talking. This approached was not well-received especially by

H.H. During an observation visit at Dr. Sas' office, D.H. was playing with a toy owl and announced that she was putting her finger in the owl's bum. The toy could also be a finger puppet, but what Dr. Sas noticed was that D.H. announced what she was doing and looked directly at her father and the father appeared uncomfortable. Dr. Sas believed this was intentional on D.H.'s part.

[418] The father indicated that the children are very much aware that there needs to be supervision with his access and were vigilant. He did not think it was healthy for them to believe he was not safe.

*Disclosures by the children:*

[419] Dr. Sas was clear that it was not her role to reinvestigate the children's disclosures and she was mindful that the children had been repeatedly questioned about the disclosures and were "fatigued with this" as it is stressful for them.

[420] During an individual visit with H.H., when asked how things were going, she reported that did not want to have visits at Papa R.A.'s because something happened there, but she did not give details. She also shared that her father had hurt her before and D.H., and that her father was "fake" pretending to be nice during visits. H.H. added that nothing had happened to her in a long time, and she probably would be fine.

[421] In January, 2023, D.H. told Dr. Sas that she was happy to be going on a sleepover at Gram's. During that visit, both girls were wearing glasses and the mother explained that they were disappointed at a recent optometrist appointment that they did not need prescription glasses, so she gave them pretend glasses. During the visit, D.H. was punching herself in the eyes and said that "Daddy punched me in the eyes" and "that's why I need protection, that's why I wear glasses". D.H. spoke of her father hurting her when she was 5, in her privates in the front and back and it hurt. She thought it was a long time ago when it happened. Dr. Sas asked if D.H. was pretending, like she did about the glasses, and she said no and was angry.

[422] On an individual interview with H.H. in February, 2023, H.H. told Dr. Sas that she was upset and just did not want to see her father on weekends anymore. She said visits were not fun and she got in trouble for things that D.H. did. She said her father was mean in his words to her and it hurt her feelings. She said she did not want Papa R.A. to supervise as he did not follow the rules. She wanted her mother to have a boyfriend so she could get a nicer daddy.

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[423] Dr. Sas had to take a toy away from H.H. as she was putting it in her mouth, and it was a choking hazard. H.H. then had an extreme meltdown, but Dr. Sas was firm that

H.H. would not get it back and had to coach the mother on how to say "no". Dr. Sas opined that this over-the-top display of emotion, which did not match being unable to have a tiny rubber pink toy, was indicative of how overwhelmed H.H. was about everything going on in her life. However, when H.H. walked out of the meeting, she hugged Dr. Sas. Dr. Sas testified that "that's what H.H. needs: she needs someone to help and support her".

[424] Dr. Sas was very worried about H.H. as she has "anticipatory anxiety" about visits. She loves both of her parents but cannot reconcile what has happened to her.

*The mother:*

[425] Dr. Sas indicated that the mother showed deep empathy and concern for her children. She was strongly attached and committed to her children.

[426] The mother told Dr. Sas that she believed that the father was a good father to the girls before the disclosures and she understood that the girls loved their father. She wanted the girls to have a relationship with their father and to have access with him but not be sexually abused by him again. She did not want the children to be taken away from their father but struggled with access as she wanted them to be safe. She worried each time the children were with their father. The mother acknowledged that a part of the girls not wanting to go on Saturday and Sunday mornings was that they just wanted to relax at home and be with her.

[427] The mother admitted to Dr. Sas that the children's disclosures triggered her. When D.H. disclosed abuse to her, she was determined not to be like her mother when she had disclosed her abuse. She wanted to validate D.H. and protect her. Dr. Sas did not see the mother's childhood sexual victimization as causing her to coach her daughters to make false allegations, but that the mother may have overreacted to different information she received. However, Dr. Sas found that the mother's reaction to D.H.'s disclosure was not unreasonable.

[428] Dr. Sas felt that the mother's preoccupation with D.H. being sexually abused influenced her to consider D.H.'s pain as a "trauma memory". The mother describes D.H.'s disclosures as one of the most traumatic experiences that she has ever had and worries about it all of the time. The concern was whether there was a pattern of attributing all physical symptoms after the disclosure to access stress and past sexual abuse. Dr. Sas believed that the mother attributed most of the children's difficulties to the stress of their relationship with their father.

[429] Dr. Sas did not believe that the mother being upset by discovering daddy-daughter searches on the father's phone was an overreaction. Dr. Sas found that the mother's personal experience of child sexual abuse motivated her to act proactively, and she presented as acutely sensitized.

[430] Given the facts of this case, Dr. Sas had to consider what was reasonable hypervigilance. Dr. Sas indicated that if you have a partner who is accessing potential child pornography, and a child making disclosures of sexual harm, you have a right to be worried. However, Dr. Sas believed that the mother may be overreacting when she

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interpreted all of the children's physical symptoms and Behcet's flares to be a result of visits with the father. They could be due to other things as well, like normal fatigue, a different diet, and regular cold/flu season.

[431] The results of the psychological testing on the mother did not reveal serious psychopathology. Dr. Sas did not find the mother to be "mentally unstable". She was feeling depressed, displayed general anxiety and was reporting symptoms of traumatic stress. She suffered from no disorders that would cause her to wrongly believe her daughters were being abused. She was mildly hypervigilant, but she was grounded.

[432] Dr. Sas concluded that:

> In assessment of the mother, I found her to be genuinely worried about her daughters and desperate to find a solution that ensures they were safe and still had a relationship with their father. I did not see her as malicious. I did see her as vulnerable to believing everything the girls told her about their father. She did respond to advice from me about the possibility that some of the time they did not want to go on access because they missed her and not because they were afraid.

*The father:*

[433] The father acknowledged to Dr. Sas he was a functioning alcoholic. During his marriage, he had 3 to 4 beers every day and sometimes 8 each night on a weekend. However, he has significantly reduced his alcohol consumption and never drank when he had the children the next day. He also acknowledged watching porn excessively but denied being interested in child porn.

[434] The father told Dr. Sas that it should have been obvious to everyone right from the beginning that the mother was engaging in parental alienation, and she was the parent that was abusing the children. He wanted her to have consequences and believed she should lose custody for her actions. The father was highly critical of the mother in the areas of parenting, the children's physical health and their educational needs. Dr. Sas found that the mother was kind about the father in every aspect except related to the allegations of abuse. The father was not kind about his comments about the mother. Dr. Sas found that the father's "criticisms of every aspect of the mother's parenting were quite striking".

[435] Other than the two areas of alcohol and pornography, the father blamed many others for what was happening in his life: the Society, the therapists, his parents for being too lenient on him, and the mother.

[436] Regarding the results of the psychological testing, Dr. Sas noted that the father had the lowest score possible on the Aggression Scale, which Dr. Sas rarely sees. Given the father's past assault against the mother, he did not identify any anger issues. Overall, the father did not present with any major psychiatric/psychological disorders. However, Dr. Sas noted that there were definitely personality factors at play, dependency, intransigence, persecutory ideation and poor introspection.

[437] Regarding the allegations of abuse, the father was clear he had done nothing wrong, and indicated that D.H. had lied. He believed that the mother was "sick" and has purposely created evidence by sharing coached audio tapes of her conversations with

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the children. He believes he is in an impossible situation caused by the mother coaching the children or her mental illness, and the children believe they were abused when they were not. He wanted the mother sanctioned for all of this.

*The children's disclosures to others:*

[438] What Dr. Sas found regarding the children's disclosures:

- Research indicates that it is not unusual that children will make disclosures of abuse first to their mother.

- In only a small portion of cases is it proven that allegations of sexual abuse by one parent is made as a tactical advantage in a custody situation. Most cases are not found to be deliberate coaching but due to other reasons.

- The mother's decision to first call her ex-mother-in-law, W.A., after D.H.'s disclosure was not consistent with a malicious ex-spouse trying to get an advantage in a family court proceeding. Her actions were more consistent with a parent reaching out for help and trying to be protective. The mother had reached out to W.A. previously when she was concerned with the father's pornography use.

- Dr. Sas listened to the audiotape from March, 2021 of D.H. disclosing that her father put his finger in her bum, and it hurt. D.H. is sobbing. Dr. Sas did not believe that D.H. had been coached to say this. Although the father told Dr. Sas that he had a longer version of this audio tape, he did not provide it to her. However, with any of the video or audios that were reviewed, it is uncertain what happened before or after the video/audio was taken. Due to D.H.'s age and speech problems, there is no way to know if D.H. accurately described what happened to her to her mother.

- It was the mother's therapist and not the mother who reported D.H.'s initial disclosure to the Society.

- With respect to D.H.'s disclosure to Ms. Spriggs in May, 2021 and her aunt on Facetime in July, 2021, this information was consistent with her first disclosure: specifically, that her father put his finger in her bum.

- Regarding H.H., she first made a disclosure to her mother in December, 2021 that she had a nightmare of her father rubbing her vagina over her clothing and it made her feel uncomfortable. H.H. disclosed that they were at Gram's in the basement and playing with dolls. H.H. was not clear on the exact timing of this incident.

- Regarding the incident at the end of April, 2022, D.H. told her mother that during a visit on the weekend her father took her pants down and was trying to grab at her vagina. She was pushing her father away and telling him to stop, and that H.H. witnessed this. When H.H. was confronted by her mother about what happened the past weekend, H.H. advised that she heard D.H. yelling and went upstairs and saw D.H. with

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her pants down and what her father was doing. Both girls disclosed that Papa R.A. and D.O. had left the home and they were alone with their father.

- Dr. Sas reviewed the police videotaped interviews with the children. Dr. Sas could not review Detective Soontiens' interview with the children, however reviewed a description of the interview from the Society's notes. She noted that D.H. offered an unusual disclosure that "someone" wiped her bum without toilet paper, and that he put something in her bum. H.H. did not report any concerns about her father.

- Dr. Sas was not provided with the interview of H.H. with Detective McCallum on December 16, 2021. Dr. Sas did review the Society notes that H.H. disclosed that her father rubbed his hand on her vagina when she was playing with him in the basement at Gram's.

- With respect to the children's interview with Detective MacRae on May 5, 2022, Dr. Sas found that the difficulty was that D.H. was unable to provide a timeline for when these events occurred. Dr. Sas found that H.H. was credible about what she saw happened to D.H. Dr. Sas also noted that both children independently provided almost identical accounts of what transpired in 2022, and she did not see the girls conspiring to make this false allegation, or the mother being able to coach them on all of those details such that they could go into a police interview the next day and offer the details that they did.

[439] Dr. Sas indicated that although you should not over-interview a child about an incident, the number of interviews depends on the case and the age of the children. A second interview may be helpful. However, the most reliable evidence you can get is closer in time to the event.

[440] The girls' disclosures were consistent with what they reported to their mother and others and were reliable, keeping in mind that they are children.

[441] Dr. Sas agreed that this is a very difficult matter. She concluded that:

- She did not find evidence of a motivation to lie on the part of the girls for example to make malicious false disclosures.

- With H.H., it is possible that when the father touched H.H., it was poor boundaries, and he was not abusing her. It is possible that H.H. misinterpreted the father's actions as sexual abuse.

- Overall, Dr. Sas is of the firm belief that something happened.

- In terms of informal disclosures to the mother and others, Dr. Sas found that the children were consistent and reliable. Neither child recanted. Although D.H. indicated that she was told to tell bad stories by her mother, she only reported this to the father and W.A..

- In police interviews, the girls provide disclosures, made spontaneous

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remarks about being touched inappropriately that were not led by suggestive questioning. The interviews were generally well-conducted. Dr. Sas found the information provided by the girls to be reliable and credible in the police interviews.

- Dr. Sas did not see this as a situation where the children have been made to believe that they were sexually abused by their father when it is certain that it did not happen, such as in a malicious parental alienation case.

- Dr. Sas agreed that in some of the audiotapes provided by the mother she engaged in suggestive and leading questions with D.H. Dr. Sas indicated that "it is hard to know the impact of this on D.H.'s subsequent disclosure pattern". Dr. Sas explained that parents are not trained to ask non-leading questions, and there is no evidence of what was said to D.H. before or after, so the court must be mindful of that.

- Dr. Sas indicated that the decision of the Crown to withdraw the charges made sense, particularly given the difficulties D.H. would have had testifying. Dr. Sas wanted to emphasize that D.H. did make a false allegation against her father to her regarding the reason why she was wearing glasses. This behaviour showed that D.H. is not always truthful and may be making up things about her father now even if she was truthful about other disclosures. Of the 2 children, D.H. is more likely to lie about something than H.H. Further, D.H. may feel an expectation she should be telling on her father, and she needs to be warned that this is serious. Dr. Sas used the example by the father that when D.H. was playing with the father and H.H. in the basement, was touching H.H.'s bum and the father told her to stop because it was inappropriate; then D.H. went upstairs and told her grandmother that her father touched her in the bum. However, Dr. Sas was clear this does not mean that D.H. was lying about her initial disclosure.

- Dr. Sas did not know what to make of the children seeing child pornography on the father's phone but did not find the father's explanation of the children seeing a picture of his girlfriend on his phone to be adequate.

- Dr. Sas concluded that the mother did not intentionally coach the children to make false allegations of sexual abuse against their father. She indicated that in interviews, the mother did not present as a vindictive person but devastated that her daughters disclosed sexual abuse. Dr. Sas found it significant that after the first disclosure, she reached out to W.A. seeking advice, not revenge. "This is not the behaviour of a parent who is mounting a case to support alienating children from their father... she felt that the father was a good father beforehand and her concern for the children's safety came on suddenly".

- The mother's past experience of being sexually abused explained her hypervigilance in relation to child sexual abuse and her level of protectiveness of her children. It did not signify malicious coaching and

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malintent. However, the mother was interpreting many symptoms in the children in the past year as being in relation to their sexual abuse and worries about their father, some of which may not have been related.

- Given the disclosures of the children, Dr. Sas was leaning in the direction that there was abuse that occurred. But at the very least, the father has boundary issues that she is worried about. Both children allege inappropriateness in their private areas by their father, yet they adore him, they love him, they want to see him, and they are not vindictive of him with respect to the sexual abuse.

- Dr. Sas felt that the Society's actions were appropriate, measured and protective.

[442] Dr. Sas recommended the following:

- Dr. Sas recognized that the children are hypervigilant. The mother must look worried when the children attend for access, and this must influence the girls. She used the example of her telling the girls that they could come to meet her with their father too, and they both immediately said "no, we don't want to be alone with him". Dr. Sas was surprised that both children said that separately.

- Both girls reported to Dr. Sas that they want supervision to continue which suggests that they do not feel secure that something won't happen again. Dr. Sas would support continued supervision until the father has done some therapy work.

- Dr. Sas found that should the children not want to sleep over at any time they should be allowed to voice their opinions and go back to their mother. This is particularly important for H.H. who was demonstrating anxiety over sleepovers. Dr. Sas also suggested individual time with each parent as the children are highly needy and compete for their parents' attention. She suggests that one weekend a month, parents should alternate having H.H. and D.H. each for a day.

- Dr. Sas agreed that supervision is not sustainable forever. However, she was concerned that the father has likely engaged in inappropriate boundaries with the girls and has not acknowledged it.

- In terms of clinical intervention:

    - Both children should be engaged in play therapy.

    - There should be family therapy sessions with the father and the children in the future so that they can express their worries directly to him and be supported by him.

    - The father should engage in therapy and didactic sessions on the maintenance of healthy boundaries in his interactions with the children. The father should also have parenting education as

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he is too stern.

- The mother should continue to be involved in therapy with Ms. Kelp to continue to manage the children and not overreact to their behaviours, and parenting support on child management strategies.

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Issues regarding Dr. Sas' assessment:

[443] Father's counsel pointed out some issues with Dr. Sas' report that affect the weight to be given to her conclusions:

- In her report, Dr. Sas indicated that the father was charged with assaulting the mother in 2014, which was inaccurate. It was the mother who was charged with assaulting the father. The fact is that the father did assault the mother.

- Dr. Sas was not able to review the video of Det. Soontiens' interview with the children. However, she reviewed the Society's information about that interview but did not know that Det. Soontiens was concerned about the mother coaching the children. Dr. Sas also did not review the video of the interview with Detective McCallum. Therefore, Dr. Sas only saw 4 out of the 6 police interviews with the children and did not review the complete information.

- The father questioned Dr. Sas' conclusion that he had inappropriate boundaries. However, he appreciated Dr. Sas' concerns about his stern parenting approach and is less strict now.

[444] I do not find that the father's concerns regarding Dr. Sas' assessment are significant enough to question her conclusions. Dr. Sas' assessment was very thorough and detailed and supported by the evidence at trial. Her insight was extremely helpful to the court.

[445] However, during the assessment, Dr. Sas found that the mother believed that the father was a good father and wanted the children to have a relationship with him. Dr. Sas found that the mother was kind about the father in every way except related to the allegations of abuse. This was not the mother's presentation at trial. At trial she consistently referred to the father as the "abuser", and a "monster" and her position clearly was that he should have no access with the children until he received counselling or until the children were older, perhaps teenagers. Similarly, Dr. Sas found that the father was not kind in his comments about the mother and that his criticisms about every aspect of the mother's parenting were quite striking. Again, this is not entirely how the father presented at trial. At trial, he acknowledged that the mother's home was a loving one for the children and that the mother cares deeply for them. This reinforces the finding of the unintentional influence that the mother has had on the children.

The Children's Views: Interviews with Barbara Dyszuk:

[446] Ms. Dyszuk is a clinician with the OCL and was assigned to assist Ms. Samii as legal counsel for the children for the purpose of putting their views and wishes before the court. Ms. Dyszuk clarified that her role was not to make recommendations.

[447] Ms. Dyszuk is a very experienced panel member of the OCL working with the OCL since 2009. She has a Bachelor of Applied Science, Bachelor of Education and Master of Science degree, a Certificate in Conflict Management and Mediation and a Certificate in Solution Focused Counselling. She is also an accredited family mediator and a certified specialist in mediation with the Family Dispute Resolution Institute of Ontario. She has prepared between 300 to 400 s. 112 OCL reports.

[448] Ms. Dyszuk swore three affidavits outlining her meetings with the children, sworn August 5, 2022, June 19, 2023 and October 27, 2023, which were filed at trial.

[449] Ms. Dyszuk testified that the children were delightful, adorable, friendly and engaging.

[450] Ms. Dyszuk interviewed the children 7 times from June 28, 2022 to October 17, 2023. These meetings occurred either at a park, at the children's school, at a public library and once at Happy Hills Resort where they were vacationing with their mother. The children were interviewed together for the first two interviews and separately for the remaining 5 interviews.

[451] The mother brought the children to 6 interviews and the father brought the children to one interview. Ms. Dyszuk noted that when the children were brought to the interview with their father in June, 2023, H.H. had baggy clothes explaining that she wanted to cover her private parts from her father. However, in her opinion, the girls did not generally present differently when being dropped off by their mother or their father. Ms. Dyszuk viewed positive interactions between the girls and both parents. The girls expressed no fear of being with their father. D.H. actually wanted to play with her father rather than meet with Ms. Dyszuk.

[452] In preparing for her interviews, Ms. Dyszuk reviewed the court pleadings, Dr. Sas' report, the records of the Society and the police, and the children's OSRs and report cards. She also spoke with the principal, Ms. Jacques.

[453] Ms. Dyszuk confirmed she had no problem understanding D.H. despite her speech delays.

*Regarding the children's disclosures:*

- During her first meeting with the together children on June 28, 2022, when Ms. Dyszuk asked the children why they have a lawyer, H.H. responded "My dad hurt us", and D.H. put her head down and did not respond verbally.

- In June, 2023, H.H. told Ms. Dyszuk that "I don't like talking about this all the time, it reminds me of all the bad stuff, he hurt me a long time ago. I'm not getting over it any time soon. Mom is there for me, she calms me down, she rubs my back and says, 'He's not here, he can't hurt you'".

*H.H.'s views:*

- Initially, in June, 2022, H.H. reported liking visits with her father. Her favourite thing to do with her father was to "play with him" and she did not like missing visits. She really liked it at daddy's house; she felt safe,

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and daddy takes good care of her. She wanted to have sleepovers at her father's home as she missed them. She felt she spent the right amount of time with both her mother and father.

- In November, 2022, when asked if she wanted to spend more time at dad's house, H.H. indicated "I don't know". She rated the present schedule of spending the daytime on Saturday and Sunday with dad and the rest of the time with mom as a "5 out of 10". To make it better, she said she wanted to sleepover at dad's house. If she slept over on Saturday, then she would rate it "9 out of 10". She wanted to try to sleep over at dad's house as she hadn't done that in a long time.

- In January, 2023, H.H. spontaneously said "I don't want to go to Dad's". When asked what happened, she indicated "he hurt us in the past". But H.H. explained that she felt scared around dad a long time ago when she was four. H.H. indicated that she wanted to call her dad "A.A.". When asked if she loved her dad, H.H. indicated "I'm not sure".vWhen asked if she thought her daddy loved her, she indicated "Dad says he loves me. I'm not sure, he hurt us in the past... I'm confused about loving dad". H.H. wanted some weekend time with her mom. She wanted to stay home every day with her mother. H.H. said that D.H. likes to go to her father's but she does not want to. She was fine if D.H. went to dad's and she did not go.

- In June, 2023, H.H. indicated that her mother gets angry with D.H. and yells at her as D.H. misbehaves. H.H. stated that, "I don't like going to Dad's, I don't like him, he hurt us. No sleepovers at Dad's". "I wear baggy clothes now. I don't want Dad to see me. I have to cover my private parts".

- When asked if she wanted the court stuff to stop, H.H. said "yes". When asked if she felt confused and caught in the middle, H.H. said "yes". When asked if she wanted the judge to make the decisions for her and D.H., H.H. said "yes". She would be O.K. if the judge said that she should spent one week with mom and one week with dad.

- In October, 2023, H.H. spontaneously said "I don't want to have sleepovers. D.H. wants to, if D.H. goes, I will most likely go". When asked why she did not want sleepovers, H.H. responded "I don't really like Dad. I don't like talking about it. It makes me "samd", meaning "sad" and "mad". H.H. did say that sometimes she is excited to go spend time with her dad and that she "loves her Gram and Grandpa".

- H.H. said that her mother is "always happy and has a smile on her face. I never see her worried. I see her sick a lot. I worry about her. I don't want her to be sick. She cries a lot". When her mom is sick, H.H. "gives her snuggles. I take care of her. I give her coffee. I bring her food when she's hungry". H.H. articulated that both of her parents love her.

- In October, 2023, when asked about what she would like Ms. Dyzsuk to tell the judge about her spending time with mom and dad, H.H. said "I'm happy living with Mommy. I want Gram to pick us up one hour after

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it gets light out, then do stuff we like to do, then have a sleepover with daddy on Sunday and he drops us off at school". H.H. would be fine with dad picking her up at her mom's as she is "used to them not talking to each other". She knows that her dad would be excited if she spent more time at his house. She thinks her mom would be "fine, if it's what I like".

*D.H.'s views:*

- In July, 2022, D.H. expressed that she spent "too much" time with her mother and the right amount of time with her father. She was happy to live with both her mother and father and it is "good" to spend time at daddy's house. She said she felt safe at daddy's house and would like "Gram" to also be there. She wanted a sleepover at daddy's house.

- In November, 2022, when it was presented to D.H. that she spend every Saturday and Sunday during the day with her father, she said "I want to see Daddy every day". She wanted to sleep over at her dad's house on Saturdays and Sundays, and Grams would take her to school on Mondays. This schedule would be a "10 out of 10" for D.H.

- In January, 2023, D.H. confirmed that she wanted to sleep over at her dad's house even without H.H. She knew that H.H. did not want to see her father, but H.H. didn't give her a reason. When asked what makes her feel happy, D.H. said "to go see Dada". When a sleepover was cancelled with her father recently D.H. felt sad as she "wanted to see him so bad".

- D.H. advised that out of everyone in her family her mother gets mad the most. She said that "Mama gets mad, Mama's hand spanks my butt", and that makes her feel sad. D.H. says that she "cries at Mama's, I want Dada, when I cry, Mama cries".

- In June, 2023, when asked how she would feel if the judge said that she could sleep over at her dad's house, she said "good".

- In October, 2023, when asked if it was okay to sleep over with dad and Gram, D.H. responded "I hate my dad", and then said, "can we play a game instead"? So they played a "yes/no/slow down" game as answers to questions and D.H. answers to these questions are as follows:

    - Does mommy love you? "Yes"
    - Does daddy love you? "Yes, no, slow down"
    - Do you have fun at mommy's house? "Yes"
    - Do you have fun at daddy's house? "Yes, No"
    - Do you go to daddy's on weekends? "Yes"
    - Do you like going to daddy's on weekends? "No"

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- Are you angry with daddy? "Yes"
- Are you angry with mommy? "No"
- Did daddy do something to make you angry? "No"
- Does daddy play MineCraft with you? "Yes"
- Does daddy take you to the park? "Yes, No"
- Are other people angry with daddy? "Yes"
- Is mommy angry with daddy? "Yes"
- Is H.H. angry with daddy? "Yes"
- Is the maternal grandmother angry with daddy? "Yes"
- Is Gram W.A. angry with daddy? "No"
- Is Grandpa angry with daddy? "No"
- Does mommy want you to go to daddy's house? "No"
- Does daddy want you to come to his house? "Yes"
- Is mommy happy? "Slow Down" (mommy is always sick)
- Is daddy happy? "Yes"
- Is D.H. happy? "No"
- Is Mommy sad? "Yes"
- Is daddy sad? "Yes" (when his best friend died)
- Is D.H. sad? "Slow down"
- Does D.H. want to spend time with daddy and sleep over at Christmas? "Yes"

[454] In her experience, the girls are young and do not have a level of maturity. They do not have a good sense of time, either past or the future. Age and maturity is important when you are trying to establish independence of views. These children have had adverse childhood experiences and are susceptible to suggestion, whether intentional or unintentional. In Ms. Dyszuk's opinion, it is impossible that the emotions of their family will not influence the children. These children's memories could be influenced by the things that they are told. Ms. Dyszuk concluded that it was difficult to say that these children's views were independent.

[455] Ms. Dyszuk felt that D.H. was fairly consistent that she wanted to spend time more time with her father. D.H. had no worries about her father. H.H. was not as consistent. However, both children were confused. H.H. actually articulated that she was confused and felt caught in the middle. D.H. was clear that important people in her life, like her

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mother, sister, and grandmother did not want her to spend time with her father and clear about who did not like her father.

[456] Neither child made specific disclosures to Ms. Dyszuk or details of what their father had done except to play with him and have fun.

[457] Ms. Dyszuk did not find it surprising that the children would tell their mother something different than they told her and Ms. Samii. If a child has a significant connection with someone, they will tell that person what they think that person wants to hear. Ms. Dyszuk was not asking forensic questions, for a child to pick a parent or about specific events. Her role was more open-ended: to get a sense of the children's relationship with each parent and who they want to be in their lives. Both children want to please their parents.

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**Issues to be decided by the court:**

[458] There are several issues before the court that need determination including:

1. Is the mother in contempt of the orders for access and failing to cooperative with the Society?

2. Are the children in need of protection due to actual and risk of physical and sexual harm?

3. How to deal with the children's statements, their ultimate reliability and weight to be given to them.

4. Has the mother intentionally or unintentionally coached the children to make disclosures of sexual harm?

5. Although it is agreed that the children are in need of protection due to actual and risk of emotional harm, what is the basis for these findings?

6. What disposition is in the children's best interests?

Contempt Motion:

[459] Mid-trial the father served a contempt motion on the mother dated October 18, 2023 indicating that without reasonable excuse the mother:

- Failed to produce the children for access on July 9, 2022.

- Failed to produce the children for access on May 27 and 28, 2023.

- Failed to comply with the order of August 9, 2021 that the mother shall cooperate with the Huron Perth Children's Aid Society.

[460] This motion was addressed through the oral evidence of the witnesses at trial and in particular the parents and the society worker, Ms. Kling.

[461] As affirmed by the Ontario Court of Appeal in *Moncur v. Plante*[3] the following general principles govern the use of the court's power to find a party in contempt of court

for breaching a court order:

1. For a person to be found in contempt of court for breaching a court order, three elements must be proved beyond a reasonable doubt:

   (i) The order must state clearly and unequivocally what should and should not be done;

   (ii) The party alleged to have breached the order must have had actual knowledge of it;

   (iii) The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

2. Exercising the contempt power is discretionary. Courts discourage the routine use of this power to obtain compliance with court orders. The power should be exercised cautiously and with great restraint as an enforcement tool of last rather than first resort. A judge may exercise discretion to decline to impose a contempt finding where it would work an injustice.

3. When the issue raised on the contempt motion concerns access to children, the paramount consideration is the best interests of the children.

[462] There are situations where the reasons for the breaches provide a legitimate excuse. In order to make out a defence, however, the party asserting it needs to have a reasonably held belief that there was a good reason to disobey the order.[4]

*Saturday July* 9, *2022 access visit:*

[463] At this time, the operative order in place was the order of May 16, 2022, being a temporary without prejudice order that the father's access to the children shall be at the discretion of the Society as to supervision, duration, location, including supervisors for access. The father had just been charged with sexual offences against D.H. and he was subject to criminal release conditions.

[464] Saturday July 9, 2022 was the father's scheduled supervised access at the Society offices. The mother testified that she was unable to get the children to the access visit as she was in a flare-up for her Behcets and could not get a ride to the Society offices. The mother testified that this was the weekend of the power outage from Rogers. She could not use her phone until the afternoon of July 9, 2022 to advise anyone of her circumstances. It is not disputed that the Rogers power outage affected many people's ability to communicate that weekend.

[465] In this situation, I do not find that it is an appropriate case for contempt. The order did not specifically state when access was to occur, and although the order stated that she must cooperate with the Society, who had scheduled this visit, the mother did not intentionally breach the court order.

*Access on the weekend of May 27 and 28, 2023:*

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[466] At this time, the operative order in place for the father's access was the temporary without prejudice order of May 11, 2023 that the father's access shall be:

- For week 1, 2 and 3, the father shall have access with the children on Saturday and Sunday at times as directed by the Society but not overnight.
- The mother shall have the children in her care for the entire weekend on week 4.
- Access shall continue to be subject to terms in paragraphs 2 and 3 of the September 1, 2022 order.

[467] As this order was made on the second week of the month, it was unclear exactly what weekend the mother's access would occur. During the week before the May 27/28 weekend, the mother confirmed with Ms. Kling that the weekend of May 27/28 was actually her weekend with the children as she had not had a weekend with them in a while. Ms. Kling sent her a calendar to confirm that her weekend was May 27/28, 2023.

[468] On Friday, May 26, 2023, Ms. Kling emailed the mother in the morning to advise the mother that there was going to be some changes to the schedule. Although that weekend was originally supposed to be the mother's weekend, the father was having difficulties arranging a supervisor for one of his weekends, so the Society had to change the schedule. Ms. Kling generally communicated with the mother by email, and she would generally respond within an hour. Ms. Kling sent the mother a schedule on the afternoon on Friday May 26, 2023 to advise that May 27 and 28 would now be the father's weekend.

[469] The mother indicates that her phone was not working on May 25, and she got a new phone on May 26, which was not working until later that night. As it was the first weekend the mother had with the children in a while, she had made plans for the children to have a lemonade stand and a pool party with friends. The mother did not see Ms. Kling's email until the night of May 26. At 10:10 p.m. that night, the mother emailed Ms. Kling to advise that she had plans that weekend that she could not change last minute. The mother no longer had W.A.'s contact information in her phone so could not contact W.A. to advise her that she could not change the weekend access.

[470] The father's counsel sent a letter to the Society on Saturday May 27, 2023 regarding the father's access that weekend including a text message from the mother that she would not be sending the children for the father's access as the children had a lemonade stand that weekend. There was also a request that the children be sent for access on Sunday May 28, 2023. The children did not attend at all for access with the father on that weekend.

[471] Ms. Kling testified that she most likely did not get Mr. Hodder's letter until Monday May 29, when she returned to work. Ms. Kling was not aware of any plans that the mother had with the children for that weekend and would have expected that the mother would send the children for access that weekend. All of the emails between Ms. Kling and the mother between May 25 and 26, 2023 were entered as exhibits.

[472] Much of the father's access was at the discretion of the Society and arranged through the Society. At times, the mother requested modifications to the schedule set by

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the Society for the father's access and would request that the children return from access early or cancelling access altogether so that the children could attend events such as a friend's birthday party or a family event, and Ms. Kling would reach out to the father to facilitate this change. Usually when the mother requested these changes there was some notice of a few days before the change. During Ms. Kling's involvement, these requests from the mother to change access came once per month or once every other month.

[473] Due to the number of changes in the access schedule, at one point, the father told Ms. Kling that he would not be consenting to any further modifications to access.

[474] At trial, the mother confirmed that she probably would not have sent the children for access with the father for the weekend of May 27/28 anyway as it was her first weekend that they had together in a long time, and she had plans with the children for both days.

[475] I also cannot find that this is an appropriate case for contempt. It was actually the mother's scheduled access weekend, as court ordered, which the father requested that she change to accommodate him. The mother was not in breach of any order.

The Children's Statements:

[476] One of the central issues in this case are the statements made by the children of sexual harm by the father.

[477] In this case, there are two general types of categories of the children's out-of-court statements that the parties want to admit into evidence: the children's statements of sexual harm by their father, and their views on access with their father. These two categories of statements are arguably linked to each other.

[478] Hearsay is the out-of-court utterance of a person, tendered by a party to prove the truth of the assertions made in the utterance. An out-of-court statement does not constitute hearsay if it is not tendered for the purpose of proving the truth of the contents of the statement. Sometimes the probative value of the statement comes solely from the fact that it was made, not from its truth.[5]

[479] The children's statements through hearsay evidence, which if tendered to prove the truth of the statements are presumptively inadmissible. The statements are only admissible if they fall within a categorical exception to the hearsay rule such as: admissions by a party, business records, spontaneous statements (excited utterances or res gestae) and statements about physical, mental or emotional state (state of mind exceptions).[6]

[480] If the hearsay statement does not fall within a categorical exception, then it may be admitted if it satisfies the twin criteria of necessity and threshold reliability under the principled approach.

[481] After considering all of the evidence at trial, the parties agreed to an order made on December 19, 2023 that:

> Statements made by the children to third parties may be admitted into evidence satisfying the criteria of necessity and threshold reliability with the issue of ultimate reliability to be determined on the basis of the totality of the

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evidence heard at the trial.

[482] The state of mind hearsay exception includes a child's wishes and preferences and statements made by the child about his or her physical, mental and emotional state. The statements must assert a contemporaneous physical, mental or emotional state. They cannot include the reason for the child's statement and should not be made under circumstances of suspicion.[7]

[483] Therefore, the views of the children regarding access with their father could be admitted under the state of mind exception. However, I am cognizant that they are linked to the disclosures of sexual abuse by the father and could be subject to influence, so their ultimate reliability and the weight to be given to them is in issue.

[484] At the time of trial, the children were 6 and 8 years of age and had been interviewed numerous times by numerous professionals regarding their statements of harm by their father. Ms. Dyszuk indicated that due to being interviewed multiple times they had "emotional fatigue". Dr. Sas agreed that the children were "fatigued" by being repeatedly questioned about the disclosures as it was stressful for them. All parties agree that the children have been emotionally harmed by the conflict between the parties, much of which is due to the children's disclosures. Therefore, it is clear that it would be emotionally harmful for the children to testify, and it would be inappropriate to call these children as witnesses. The necessity element of the principled hearsay exception was met.

[485] In terms of threshold reliability, most of the children's statements were made to professionals such as society workers, counsellors, police officers and a psychologist. All of these professionals testified and were subject to cross-examination. Many of these witnesses were specifically trained in interviewing children. Their notes, reports or videos of the interviews were disclosed. The statements by the children to all professionals were similar and the children never recanted. Dr. Sas indicated that in the police interviews, the children provided disclosures, made spontaneous remarks about being inappropriately touched that were not led by suggestive questioning and, in her opinion, the interviews were well-conducted. Dr. Sas found the information provided by the children in the police interviews to be credible and reliable.

[486] The issue of how to deal with the children's statements of sexual harm by their father is also inextricably linked to what protection findings the court will make. The mother's position is that the children's disclosures should be accepted by the court for the truth of their contents, proving actual sexual harm to the children. The father's position is that the mother has influenced the children either intentionally or unintentionally to make these statements, which has caused emotional harm to the children, and would like the statements admitted to prove his theory of the case. The Society's position is that the children are being negatively influenced by their mother and maternal relatives against the father, which has influenced their disclosures of harm.

[487] Children's statements can be admitted for purposes other than the truth of their contents, and the parties should be able to have them admitted to advocate their positions.[8] The order of December 19, 2023 did not indicate for what purpose they were being admitted.

[488] Ultimately, it is in the Court's discretion on the basis of all of the trial evidence how these statements will be used, their ultimate reliability, and the weight to be given to them.

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Protection Findings:

[489] As indicated, when the Society commenced this Protection Application, they were seeking findings of actual and risk of physical and sexual harm. However, their position changed to seeking findings of actual harm and risk emotional harm pursuant to s.74(2)(f) and (h) of the CYFSA as the children are suffering emotional harm due to serious anxiety, withdrawal and self-destructive or aggressive behaviours as a result of the post-separation conflict, exacerbated by the disclosures of sexual harm.

Finding of Physical Harm:

[490] Only the mother is advocating for a finding of physical harm.

[491] There is little evidence of physical harm to D.H, being the following:

- D.H. told her mother on several occasions that her father hit her back. An audio recording was entered as evidence of D.H. saying that "daddy hit my back". However, there is no context to this disclosure.

- In Det. Soonteins interview in March, 2021, D.H. said that her dad "smacked her bum" and in Det. MacGregor's interview in July, 2021, D.H. said that her daddy had hit her back.

- In an examination by Dr. Thimm in March, 2021 he noted bruises just above D.H.'s buttocks but no other major trauma was visible.

[492] Although in submissions, the mother's counsel indicated that the Society verified physical abuse by the father, the Society worker, Ms. Spriggs agreed at trial that the evidence of physical harm was inconclusive. I cannot find on a balance of probabilities that there is evidence to make a finding of actual or risk of physical harm to D.H.

Finding of Sexual Harm:

[493] The findings of sexual harm and risk of sexual harm are based on the disclosures of the children, and the ultimate reliability of these disclosures and the weight to be attributed to them considering all of the trial evidence.

[494] These children have been the subject of several Society and police investigations of allegations of sexual abuse by the father, in which the disclosures of the children were made to society workers and the police as detailed above. The results of these investigations are summarized as follows:

1. *Investigation from March, 2021 of O.H.'s disclosure that "daddy put his finger in my bum":*

    - The Society found that the investigation regarding D.H.'s disclosure was inconclusive; there was no medical evidence of the harm; the recordings submitted by the mother of D.H.'s disclosures were not clear and there was no context to D.H.'s disclosures. Therefore, the Society was uncertain exactly what had occurred.

    - Det. Soontiens confirmed that on the clear answers D.H. provided, and given no disclosure by H.H., there were no

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reasonable and probable grounds to lay charges.

2. *Investigation from May, 2021 of D.H.'s disclosure of "daddy put his fingers in my bum this weekend":*

- Det. Federman determined there was no disclosure by D.H. which would lead to reasonable and probable grounds to proceed with charges.

3. *Investigation from July, 2021 of O.H.'s disclosure to Aunt K.H.2 that "daddy put his fingers in my bum":*

    - D.H. disclosed to Sgt. McGregor that her daddy put his finger in her bum and vagina, and showed him by touching her bum and vagina. Sgt. McGregor indicated that it was D.H.'s actions and giving him a "look" and the fact that she locked eyes with him when she did the actions that had "the ring of truth" for him. As a result of this investigation, the police laid charges against the father of sexual assault and sexual interference of D.H., although it was unclear if this was the same disclosure that D.H. had previously made. These charges were withdrawn.

    - On August 26, 2021, Ms. Spriggs and her manager verified that it was more likely than not that D.H. was sexually abuse by the father. Even though Ms. Spriggs acknowledged that D.H. was more difficult to interview due to her speech impediment, Ms. Spriggs found D.H.'s disclosures were credible. This was the first time that D.H. disclosed that her father also put his finger in her vagina. This was also the only time that the police laid charges and the Society verified the abuse.

4. *Investigation from December, 2021 of H.H.'s disclosure that daddy touched her vagina:*

    - During the police interviews, H.H. disclosed to Det. McCallum that while in the basement at her grandmother's house, her father brushed his hand over her private area and that made her feel uncomfortable. H.H. said this happened when she was 4 years old. As H.H. did not expand on her disclosure, Det. McCallum did not find that he had reasonable and probable grounds to lay charges.

    - During private interviews with H.H. on January 28 and February 18, 2022, H.H. disclosed to Ms. Spriggs that her father touched her vagina when she was in her father's basement and it made her uncomfortable. She said this occurred a year ago when she was 4 or 5 years old. Although the police did not lay charges, Ms. Spriggs and her manager verified that it was more likely than not that H.H. was sexually abused by her father based on H.H.'s clear disclosure and the context that H.H. provided when the abuse occurred.

    - H.H. has always been consistent that her father touched her on her vagina over her clothing on only one occasion. Although H.H. told

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the police and Ms. Spriggs that her father's actions made her feel "uncomfortable", she acknowledged not knowing what this meant.

5. *Investigation from May, 2022 of H.H. and O.H. disclosures during* a *supervised access visit, and H.H.'s previous disclosure:*

- Det. MacRae determined that she had reasonable and probable grounds to lay charges of sexual assault against to the father for the new incident involving D.H. Both D.H. and H.H. made similar disclosures of what happened. The police also laid charges for the previous incident involving H.H. where the father touched her vagina over her clothes. These charges were again withdrawn.

- The Society did not verify the concerns of sexual assault of D.H. on this occasion and determined the investigation was inconclusive. The Society believed that the statements by the children contradicted each other in the police interviews and the paternal grandparents presented evidence that they did not leave the home.

- With respect to this incident, H.H. made drawings of what occurred, but it was unclear when these drawings were made or if someone helped her make these drawings. However, the drawings confirm H.H.'s disclosures. Although both children were clear that their grandparents left the home and left them alone with their father that day for a period of time, at trial both grandparents denied this, and provided some proof that this did not occur through submitting bank and credit card records from that day.

- In March, 2022, just before the incident from April 30, 2022, H.H. disclosed to her counsellor, Ms. Wodnicki that recently she and her sister were upstairs during a visit with the father getting dressed and her sister could not find her pants. Her father did not follow the rules and came up to check on them. H.H. hid under the covers as she did not have her pants on. In Ms. Wodnicki's opinion, there was a good chance that someone had told H.H. that her father was not to be alone with her as she believed that this was a "rule". This incident described by H.H. to Ms. Wodnicki is very similar to the incident from April, 2022. Further, no timeline what provided by the girls as to actually when the incident alleged to have occurred in April actually happened.

- Dr. Sas noted that the children independently provided almost identical accounts of what happened in 2022, and she did not see the girls as conspiring to make this false allegation, or the mother being able to coach them on all of the details such that they could go to the police interview the next day and offer the details that they did. However, Dr. Sas found that there was no evidence that the father actually touched D.H.

6. *Investigation from August, 2023 and D.H. disclosure that "daddy put his finger in her bum and vagina"*

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- Det. Jardine concluded that D.H. was disclosing the same incident again as she did in the 2021 investigation, so did not pursue the investigation further.

*The father's explanations for the disclosures:*

[495] The father cannot explain D.H.'s consistent disclosure that "daddy put his finger in my bum". He speculates that someone, perhaps the mother, put this into her head, but all he knows is that it did not happen. D.H. does exaggerate stories, and lies about little things, but the father does not believe that she could come up with this lie on her own.

[496] Regarding H.H.'s disclosure that her father brushed his hand over her vagina over her clothes, the father explained that there were many times when he would have to wipe something off H.H.'s lap with her clothes on, such as crumbs, dirt or hair.

[497] The father denies that he was ever alone with the children during the incident in April, 2022, which evidence is supported by his father and step-mother.

*O.H.'s repeated disclosures of her father putting his finger in her bum:*

[498] D.H. has made repeated disclosures to her mother, family members and professionals about "daddy putting his fingers in my bum". It is not clear if she is repeating the same incident or if this has happened more than once.

[499] D.H.'s initial disclosure in March, 2021 was that her father put his finger in her bum while she was sleeping. Presumably that was when she was having overnight parenting time after the parents' separation. After this time, the father's parenting time has always been supervised. However, D.H. made disclosures that her father continued to do this in May, June and July, 2021 and in August, 2023. When Sgt. McGregor asked D.H. in July, 2021 when this had occurred, she said "my birthday" (which was in November), and that it happened at her "mom's house" and then at her "Gram's house in the bedroom". Sgt. McGregor was unclear if this was the same or a different event from her original disclosure.

[500] Both Ms. Spriggs and Ms. Kling were uncertain if D.H. continued to repeat her original disclosure or was making any new disclosures. Aunt K.H.2 indicated that she did not know if D.H.'s disclosure in July, 2021 was a new event. When D.H. was interviewed by Det. Jardine in August 2023, she gave two different time frames for when this abuse occurred: once in her old house when she was very young and then when she was in Gram's house. Det. Jardine concluded that D.H. was disclosing the same incident that she disclosed in the 2021 investigation.

[501] D.H. has made similar disclosures about her father putting his finger in her bum on numerous occasions to family members and professionals. However, rarely was there a context to this touching or exact time frame was provided by D.H. during these disclosures. D.H. could have just been repeating the same incident to all of these persons. K.B. acknowledged that she believed that D.H. was repeating to her disclosures she had already made.

[502] The mother agrees that at times, D.H. was disclosing the same incident. However, she believes this occurred "a few" times, due to the context of the disclosures of when it happened or where it happened.

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[503] In March, 2023, just before the trial commenced, D.H. confirmed with Ms. Van Den Berge that her father only touched her on one occasion.

[504] The only clear evidence is that the incident that D.H. discloses about her father putting his "finger in her bum" occurred once prior to March, 2021. The father's access with D.H. has been supervised since March, 2021 and except for the incident in April, 2022, there is no clear evidence that the father has been left unsupervised with D.H. for a subsequent incident to occur.

[505] *Dr. Sas' opinion on the children's disclosures:*

- Dr. Sas found that the police forensic interviews generally followed the guidelines required when interviewing children in sexual abuse situations: to build a rapport with the child; to ensure that the child understands to tell the truth; to ascertain if they know why they are meeting with a police officer and the role of the police officer; to begin with open-ended questions; with more direct questions being asked if nothing is being produced by the free narrative.

- Dr. Sas believed that the interviews that she did observe with Det. MacGregor and Det. MacRae were very well conducted. Although D.H. was difficult to understand, her speech improved from May, 2021 to May, 2022. The children made spontaneous remarks about being touched inappropriately and were not led by suggestive questioning. The children were reliable and credible in police interviews.

- She did not find evidence of a motivation to lie on the part of the children, for example, to make malicious false disclosures.

- Dr. Sas concluded that the children were consistent and reliable in their disclosures to their mother and all professionals involved. Neither child recanted.

*Intentional or Unintentional Influence by the mother regarding the disclosures:*

[506] Dr. Sas concluded that the mother did not intentionally coach the children to make false allegations against their father. Dr. Sas found that the mother was genuinely worried about her daughters. In her assessment Dr. Sas indicated that:

- She reviewed the audio tapes of the children's disclosures. Although the mother asked leading questions, there was spontaneous information provided by the children and genuine emotion. Dr. Sas did not believe that the children had been coached. Coaching involves more than a leading question. Coaching is repeatedly suggesting to a child that something happened that didn't happen.

- Although Dr. Sas did not see the mother's childhood sexual victimization as causing her to coach the children to make false allegations, the mother may have overreacted to the information she received.

- Dr. Sas felt that the mother's preoccupation with D.H. being sexually

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abused influenced her to consider D.H.'s pain as "trauma memory". The concern is whether there was a pattern of attributing all physical symptoms after the disclosure.

[507] I agree with Dr. Sas' assessment about the mother not intentionally coaching the children. However, I find that the mother and the maternal family have unintentionally influenced the children regarding the disclosures of sexual abuse, due to the following:

- It is clear that the mother and her family have very negative views of the father as the "abuser" and want him to be criminally charged. They have conversations about the disclosures and their views about the father that they acknowledge the children may have heard. In such cases, children may not be coached directly but indirectly influenced.[9] This may have influenced the children after D.H.'s initial disclosure to misinterpret the father's subsequent actions as sexual abuse.Just as the mother may have overreacted to the information she received from the children, as Dr. Sas indicated, it was possible that H.H. misinterpreted her father's actions of brushing his hand over her vagina as sexual abuse.

- Once D.H. made her disclosure that her father touched her inappropriately, as discussed in therapy with Ms. Blowes, the mother became focused on protecting the children from their father and heightened anxiety about sending the children for access.

- The children are very bonded with their mother and aware of her anxiety around access visits with their father. D.H. disclosed to her counsellor, Ms. Hollar that **"she and her mother** were hurt by the private parts touching" by her father. H.H. disclosed to her counsellor, Ms. Wodnicki, that her mother was angry at her father for touching her. Aunt K.H.2 agreed that the children are smart and could have picked up on their mother's fears. Dr. Sas found that the children may have picked up on the mother's anxiety about the situation, for example in her body language.

- When Ms. Van Den Berg questioned H.H. about her statement that she had anxiety about going on visits with her father, she explained that her tummy hurt, so her mother told her it was probably anxiety about having to see her father, reinforcing that her physical symptoms were due to her father's abuse.

- The mother advised Ms. Kling that she cries every time the children have to attend for access with their father as they should not have to see their "abuser".

- The mother agrees that the children are closely bonded to her and like to please her. However, she does not believe that the children are telling her what she wants to hear.

- Both children's disclosures evolved over time. D.H. initially indicated that her father put his finger in her bum, but then disclosed it was in her bum and vagina. It is not clear if there were ever two incidents of touching. Further it is clear that D.H. is not always truthful, as acknowledged by

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the mother, Aunt K.H.2 and confirmed by Dr. Sas. H.H. only initially disclosed that her father brushed his hand over her vagina over her clothing. Later, H.H. disclosed that her father put his finger in her vagina. However, she was also clear that this touching only happened on one occasion.

- The children have become hypervigilant about the risk that their father may touch them inappropriately or hurt them and concerns about being alone with him. It has been ingrained in the children's minds that their father has hurt them. Dr. Sas recognized that the children are hypervigilant, the mother is worried every time the children attend for access and this feeds into their fear. Dr. Sas indicated that H.H. in particular had "anticipatory anxiety" about visits with her father. During Dr. Sas' assessment, D.H. made up a story about her father punching her in the eyes and that is why she was wearing glasses to protect her against him.

- In Ms. Dyszuk's opinion, the children are susceptible to suggestion, whether intentional or unintentional. Ms. Dyszuk opined that it is impossible that the emotions of their family will not influence the children.

*What is the ultimate reliability and weight to be given to the children's disclosures?*

[508] The weight to be given to the children's statements will include factors such as the circumstances surrounding the taking of the statement, the risk either child was influenced or manipulated when giving the statement or that the statement itself was edited or manipulated, and the desire of the children to please or appease a parent.[10]

[509] The children have been consistent with their disclosures and have not recanted. agree with Dr. Sas that the children were describing a personal experience and something that happened to them. They had no motive to lie and were not intentionally influenced or coached by their mother to make these disclosures.

[510] With respect to D.H.'s initial disclosure of her father putting his finger in her bum, it is clear that something happened with her father that upset her, and the father demonstrated poor boundaries. Around this initial disclosure, the father was sleeping with D.H. at night and his mother, W.A., agreed there was the opportunity for something to occur.

[511] Regarding H.H.'s disclosure that her father brushed his hands over her vagina over her clothes, again the father may have demonstrated poor boundaries. I agree with Dr. Sas that it was possible that H.H. misinterpreted her father's actions as sexual abuse.

[512] Regarding the incident in April, 2022, H.H. had disclosed an incident right before this where her father saw the children trying to get dressed but they did not have their pants on, which upset her and she hid under the blankets so her father would not see her. During the incident in April, 2022, D.H. disclosed that her father pulled down her pants but H.H. only saw D.H. in the room with her pants down and that she saw her father grabbing at D.H.'s vagina. There is no evidence that the father touched D.H.'s vagina. H.H. was clear that she knew the "rule" was that her father was not to be alone with them, and this was very upsetting for her. Something did happen during a supervised access

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visit. I accept that the grandparents did not leave the home during the visit, but do not accept that they may have left the father alone with the children. As both children made similar disclosures independently, I find that the father was left alone with the children for a period of time during this access visit, perhaps while the children were changing, and this upset them as they know the rule is that the father should not be alone with them. H.H. told Dr. Sas that she did not want to have visits with her father at Papa R.A.'s as something happened there.

[513] I find that due to the unintentional influence on the children that they have interpreted their experiences to be that their father has sexually abused them.

*Should there be a finding of actual or risk of sexual harm?*

[514] In her report, Dr. Sas indicated that:

> "Cases involving sexual abuse disclosures by young children are difficult for child protection agencies and the police, because physical evidence is almost always absent, and the incidents reported are clandestine in nature, given by children who may present with developmental constraints and unconvincing disclosures. As well, corroboration by another child does not have the same probative weight as that of an adult witness".

[515] In the present case, there was no physical evidence of sexual abuse, and the only witness to the alleged the sexual touching on one occasion was H.H.

[516] The test of actual or risk of sexual harm is if it has been proven on a balance of probabilities. Evidence must always be sufficient clear, convincing and cogent to satisfy the balance of probabilities test.[11] Further, the evidence must not be considered in isolation, but must be based upon its totality.[12]

[517] On a balance of probabilities, I find the evidence does not support that the children have been actually sexually harmed, or that there is a risk of sexual harm from their father based on the following:

- Although the Society verified sexual harm regarding D.H. in August, 2021 and regarding H.H. in January, 2022, the test for verification is low: being is it more probable than not that the incident harm occurred based on the evidence that the Society has at that time. There have been no verified incidents of sexual harm since January, 2022 being 2 years when this trial was completed. It is the Society's position that these 2 verifications are not enough for a finding of actual or risk of sexual harm, particularly as there have been safety plans in place for the father's access to the children to mitigate any risk. A verification of sexual harm does not necessarily mean that the court will make a finding of sexual harm on a Protection Application on a balance of probabilities after considering all of the evidence at trial.[13]

- Although the police laid charges twice against the father, they withdrew the charges on both occasions.

- Although not consistent in their views, the children have reported very

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positive experiences with their father and want to have contact with him. D.H. wants to have sleepovers at her father's house. The father's access supervised by Society staff has always been positive. The access supervisors, Dr. Sas and Ms. Dyszuk all noted that the children were not fearful of their father.

- The proof of sexual harm is based on the children's disclosures. Although I find that the children were relating personal experiences that they had, I find that these experiences were subject to unintentional influence. D.H.'s initial disclosure is concerning, but this incident occurred over 3 years ago, and her contact with her father has been supervised since that time with safety plans in place.

[518] The father's obsession with pornography is a concern for the court. Watching 13 hours of pornography a week is excessive. Although the father denies that D.H. saw pornography on his phone, D.H. disclosed to Dr. Sas very specific images of adults touching children, which would be difficult for D.H. to fabricate. This incident supports concerns that the father could have inappropriate boundaries with the children but not actual sexual harm.

[519] I am not satisfied that the evidence is sufficiently clear, convincing and cogent to satisfy the balance of probabilities test to find actual or risk of sexual harm.

Findings of Emotional Harm:

[520] All parties agree that the children have suffered actual and are at risk of emotional harm as defined under s. 74(2)(f).

[521] I agree that the trial evidence supports this conclusion.

[522] Ms. Kling explained the Society's shift from a finding of sexual harm to emotional harm due to the following:

- The Society is worried about the emotional harm being caused to the children either by one or both parents and the conflict post-separation.

- Although the Society is not able to confirm the source of the conflict, Ms. Kling admits that the mother communicates her concerns regarding the father more than the father communicates his concerns about the mother.

- The mother fixates on past events and is upset about the outcome of some of the police and Society investigations.

- In his involvement with the Society, Ms. Kling believes that the father is trying to better himself and move forward and is focused on his children.

- Sexual harm has not been verified by the Society since January, 2022 and the more pressing and current protection concern is the emotional harm to the children.

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[523] Ms. Kling's supervisor, Ms. Van Den Berg further explained the shift from a finding of sexual harm to emotional harm as there was no new information about sexual harm, there was a safety plan in place for the father's access, and the children need to have a relationship with their father.

[524] The children have been exposed to significant post-separation conflict between the parents, which included numerous investigations of sexual abuse, a high level of reports to the Society by the parents, and conflict that involved the extended family. For numerous reasons, the children also have had poor attendance at school.

[525] Ms. Dyszuk indicated that when children experience adverse childhood experiences, often they exhibit behavioural problems. H.H.'s adverse experiences to be:

- being interviewed multiple times;
- their attendance at school as when children are not at school, it can make it difficult in terms of social interactions and relationships with peers;
- the pandemic was not healthy for any child;
- being separated from their father when they did not have access;
- the conflict in the family

*Numerous interviews due to sexual assault allegations:*

[526] The children have been subjected to numerous police and society investigations regarding their disclosures of sexual abuse by their father. D.H. has been interviewed by 5 police officers and H.H. has been interviewed by 3 officers. Both children have been interviewed by 3 child protection workers, one child protection manager; several counsellors, Dr. Sas and Ms. Dyszuk. Almost all of these professionals have asked them repeatedly about their disclosures of sexual harm and many of them interviewed the children several times.

[527] *Effects of the investigations on the children:*

- Ms. Spriggs indicated that the children were difficult to interview and became confused and overwhelmed as many professionals were asking them questions.
- Ms. Kling indicated that most children have not been interviewed as much as D.H. and H.H., and there was a concern of the long-term trauma on the children from being interviewed so many times.
- Ms. Van Den Berge testified that the mother video taping the children and having the children interviewed multiple times has had a negative impact on the children. When Ms. Van Den Berge interviewed the children, she believed that due to their multiple interviews their responses were automatic.
- Most of the police officers involved expressed concerns about multiple interviews with a child, particularly about the same incident.

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- D.H.'s counsellor Ms. Holler, indicated that at times D.H. would get frustrated and did not want to talk about her father. Ms. Holler believed that D.H. had been impacted by being interviewed multiple times by the Society and the police.

- When H.H. disclosed that her father had touched her to her counsellor, Ms. Wodnicki, she became quiet, and it was clear that did not want Ms. Wodnicki to ask her more questions about her disclosures.

- Both Ms. Dyszuk and Dr. Sas indicated that the children are fatigued by being repeatedly questioned.

[528] It is clear that the numerous interviews have contributed to the emotional harm that these children are experiencing.

[529] *High Volume of Reports:*

- Ms. Spriggs testified to the high number of reports received by the parents, mostly by the mother. The reports of the mother included the children's negative reactions after visits with the father; photographs of the children's symptoms of Behcet flare-ups, recordings of the children not wanting to attend for access visits; disclosures of sexual harm and exhibiting sexual behaviours.

- Ms. Kling also testified about the continuing unusually high number of reports received by parents, mostly the mother. Reports from the mother continued to include what she had provided to Ms. Spriggs, and in particular pictures and recordings of the children expressing fear of their father. Ms. Kling indicated that although the Society expects a parent to report concerns, the number of reports in this case was problematic.

- The manager, Ms. Vandenberg understood that the mother should report concerns to the Society, but it was the volume of her reports, about the same incident reported multiple times, and at times about minimal issues such as her worry that the father would show up at the children's soccer games, that heightened the anxiety in the home and created the risk of emotional harm to the children. The Society worries about the questions the mother may be asking the children about their access with the father.

- It is noted that the mother made multiple audio and video recordings of the children either making disclosures or not wanting to attend for access visits. Ms. Kling was concerned about the number of emails and recordings of the children making disclosures or not wanting to attend for visits that the mother sent her, which was a weekly occurrence. From February, 2022 to the present, Ms. Kling estimates that she received between 50 to 100 emails from the mother, about half of which were concerns related to the father and his family. Ms. Vandenberg indicated that this was not a typical response from a parent to record a child in these situations.

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- The mother no longer sends many videos or photographs to the Society of the children. The mother agrees that the Society may have cautioned her about recording the children, but she was clear that she will continue to do so, as "the Society does not seem to listen". If the mother records the children, she believes that the Society will "start to make good decisions and protect these children". The mother agreed that if there was a court order that she not to record her children, she will have to abide by that order.

- I note that the father has never videotaped the children other than when he was wearing the camera during his supervised access visits.

*Conflict between the parents and their support systems:*

[530] It is clear that the children are fully aware of the conflict between their parents and of the polarized positions taken both of the maternal and paternal sides of the family. It is reasonable to believe that they have overheard many conversations in both homes. The children have internalized this conflict as demonstrated by their behaviours at home, at school and in the community.

[531] At trial, the father agreed that the strained relationship between the parents had impacted the children. When asked at trial if she believed that there was conflict between the parents post-separation, the mother stated perhaps there was conflict when the parties first separated, but now it is just "her protecting and standing up for her daughters who have been abused".

*The positions of both sides of the family:*

[532] *The maternal relatives:*

- The mother consistently calls the father "the abuser", and a "pedophile". She is clear that nothing will change her mind that the father did not abuse the children, and that the father is a narcissist.

- In or about September, 2022, as the children were driving in the car with the father, D.H. spontaneously said "mommy never talks to you". When the father asked her how she knows this, D.H. told him that the mother told her.

- Aunt K.H.2 also refers to the father as the "abuser", and a "monster", and she believes the children should not have access with their father. The maternal grandmother believes that the father should have been charged with sexual assault and she has "so much anger and hurt in her". She is unwilling to accept any other explanation for the children's disclosures and firmly believes that the children's behavioural problems are due to the sexual abuse by their father.

- Both Aunt K.H.2 and maternal grandmother are very involved in the children's lives, so there is opportunity for the children to be influenced by their views of the father.

[533] *The paternal relatives:*

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- The father advised Dr. Sas that he believes that the mother is "sick", has mental health issues, and has purposely created evidence by making coached audio tapes of the children.

- The paternal grandmother, W.A., clearly does not believe that the father abused the children. The children are also aware that their paternal grandmother, W.A. does not believe their disclosures. Although it is unclear exactly what was said when W.A. came to the mother's home immediately after D.H.'s initial disclosure, W.A. has acknowledged asking D.H. if her disclosure was "the truth or a bad story?" H.H. has also expressed to many that Grams does not believe her that this makes her sad.

- Neither the paternal grandmother, R.A., or step-grandmother, D.O., believe that the children's disclosures were true. The children are fearful that Papa R.A. does not follow the rules.

*The Children's Attendance at School:*

[534] During the past school year, the children have been late a significant amount of time and absent for ¼ of the year. Many of their absences have been due to sickness and Behcet's flare-ups. It became apparent during the trial that a significant reason for their lateness is due to the mother's friend K.B. not getting the children to school on time. The school principal, Ms. Jacques testified that repeated absences and lates can have a detrimental affect on a child's behaviour. Consistently being late and having to integrate into the classroom is a disruption and challenging for a child and will impact a child's social functions, rhythm and routine.

[535] While the mother believes that all of the children's behaviours are as a result of access with their father, there is evidence to support that their poor attendance at school has also contributed to their negative behaviours.

*The children's behaviours:*

[536] The children are demonstrating behaviours indicative of emotional harm as defined in the CYFSA.

- Both parents acknowledge that there has been a negative changes in the girls' behaviours since March, 2021 in that:

    - H.H. is acting out more and has trouble controlling her emotions.

    - D.H. is angry, very aggressive towards her sister, has become distant and guarded.

- The mother adds that D.H. at times lashes out, but at times is also closed off and quiet. She is very polarized regarding her father: one minute she loves him and the next minute she hates him. D.H. has regressed in toileting issues since she made the disclosure. H.H. explodes emotionally. Both girls are arguing far more, and both girls are experiencing nightmares.

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- The maternal grandmother noted a change in the girls' behaviour since the disclosures. D.H. has become more aggressive towards her sister and H.H is hitting her back. D.H is more violent and swears.

- Ms. K.B. testified that in the past few years, she noted that H.H. is no longer outgoing but at times does not want to play. She will have meltdowns out of no where, screams and cries.

- When D.H. was drawing a picture for Dr. Sas, she drew a line down the centre of the page. On one side was a happy sun with rays coming down. On the other side was a little girl sitting under a rain cloud. On the back, D.H. wrote "mom" and her name. Dr. Sas interpreted this as D.H. being very troubled by what was going on. Half of the picture was of a sun and hope and D.H. was saying she wants to feel lighter and to be happy.

- Dr. Sas witnessed H.H. have a complete meltdown when she took away a small toy from her, describing it "as though H.H. was being murdered", she was crying and screaming so much. Dr. Sas indicated that this extreme reaction was indicative of how overwhelmed H.H. was about everything that is going on in her life.

- At school, the children exhibited the following behaviours:

    - When H.H. is frustrated or upset, she becomes dysregulated and will growl, shove furniture, throw items and stomp her feet. Ms. Jacques has witnessed H.H. having difficulties sitting still, spinning around and hiding under desks. The mother has had to pick up H.H. early on several occasions due to her behaviours.

    - During this past school year, the principal, Ms. Jacques was called to assist with both D.H. and H.H.'s dysregulated behaviours in the classroom on 6 occasions.

- Ms. Dyszuk indicated that the children presented as being very much caught in the middle of their parents' conflict. D.H. told Ms. Dyszuk that she just wished there was a secret tunnel to go back and forth between mommy and daddy's houses. H.H. advised Ms. Dyszuk that she wanted the court stuff to stop, and that she felt confused and caught in the middle. In June, 2023, H.H. told Ms. Dyszuk that "I don't like talking about this all of the time, it reminds me of all the bad stuff, he hurt me a long time ago." H.H. told Ms. Dyszuk that she is "confused about loving dad".

- As outlined above, during Ms. Dyszuk's interview with D.H. in October, 2023 it was clear that D.H. understood that her mother's family does not like her father, and that she was not happy.

[537] The Society filed the case of *The Children's Aid Society of Inverness-Richmond v. S.S.*[14] to support their position regarding a finding of emotional harm arguing that it was a similar situation. In that case, the mother and her family made allegations over several years that the father had physically and sexually abused their 7 and 9-year-old children.

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Neither the police nor the Society substantiated the allegations. Experts determined that the child's disclosures were not reliable or disclosed sexual abuse. The court found that through their actions, the mother and grandparents created and exacerbated fear in the children of their father as a sexual predator, without reason, so that the children were afraid of him and reluctant to visit him. What Justice Legere Sers found in that case was:

- The mother insists that the evidence supports her conclusion that the father is an abuser. It allows for no other possibilities or interpretations or insight.

- The father is not a risk to the children and the evidence did not support that he physically or sexually abused the children.

- However, on a balance of probabilities, the children were at continuing risk of emotional harm due to the unresolved conflict between the parents. This harm arises out of the now entrenched belief, held by the mother and her family, that the father sexually abused the children.

- The children have been involved in parental conflict to such as extent that they are exposed to repeated questioning to the point that they believe they are a victim of abuse.

[538] I agree that this is a similar situation, although in the present case the children's disclosures were credible and reliable in the sense that they were explaining real events that they experienced.

[539] I find that there are reasonable grounds to believe that the behaviours of the children are indicative of emotional harm are as a result of the post-separation conflict between the parties, exacerbated by the disclosures of sexual harm.

Disposition:

[540] Section 101(1) of the CYFA indicates that:

> "Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the orders outlined ins. 101(1) or section 102, in the child's best interests".

[541] All parties agree that the children are in need of protection and a court order is required to protect them. All parties agree that the children need to be placed with a parent subject to Society supervision. The question is should this placement be with the mother or the father, and what order should be made in favour of the access parent?

[542] In coming to this determination, the court must consider what order is in the children's best interests, considering the factors in s. 74(3) of the CYFSA, the least disruptive alternative for the children, and the appropriate terms of supervision.[15]

*Views and Wishes:*

[543] As the children are not indigenous, the mandatory factor for the court to consider in the best interest test are the views and wishes of the children pursuant to s. 74(3)(a) of the CYFSA.

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[544] All professionals involved with the children attest to the close bond that the children have with their mother. This was observed by both Ms. Spriggs and Ms. Kling. Dr. Sas observed a strong attachment and very close relationship between the children and the mother and the children felt supported by her. The children miss their mother when they attend access visits with the father.

[545] As indicated above, the children's views regarding the father were inconsistent with both Ms. Spriggs and Ms. Kling. However, the children never told Ms. Spriggs that they did not want to see their father but were inconsistent about who should be present for visits. Ms. Spriggs believed that the children loved their father and wanted to see him.

[546] In general, D.H. has been positive about her father to Ms. Kling. She expressed excitement about, and wanting to see her father and that she missed him. She spoke positively about access visits with her father. However, one occasion in March, 2023, while in her mother's presence and clinging to her mother, D.H. expressed that her father hurt her and she wanted visits at the Society.

[547] H.H. has spoken positively about visits with her father to Ms. Kling but also that she did not want to see him or be hurt by him again. During a home visit shortly before the trial commenced in June, 2023, H.H. told Ms. Kling that she never wants to see her father again, and that she wanted to wear baggy clothes so that her father does not see her body parts. In Ms. Kling's opinion, the children expressed wanting to attend visits with their father more than not wanting to attend.

[548] D.H. disclosed to her counsellor, Ms. Holler that she loved her father and wanted to see him but wanted him to stop touching her and she did not want to be alone with him. In counselling sessions with Ms. Wodnicki, H.H. was clear that her mother and sister were important people to her, and she felt loved by them, but only felt cared for a little by her father as her father was the only one who hurt her. H.H. still wanted to see her father but wanted her grandparents there at all times.

[549] Despite their disclosures, both children expressed to Ms. Dyszuk that they feel safe in both homes.

[550] H.H. was consistent with Ms. Dyszuk that she felt safe and comforted by her mother. H.H. was very connected to her mother and her biggest worry was if something happened to her. H.H. advised Ms. Dyszuk that she was happy living with her mother. H.H. was initially positive about her visits with her father and missed him. However, her views changed, and she fluctuated from being excited to see her father to not wanting to go on visits at all. However, during the trial she articulated to Ms. Dyszuk that she was fine having visits with her father on weekends and even sleeping over.

[551] D.H. has been fairly consistent with Ms. Dyszuk that she was happy living with both of her parents, wanted to spend more time with her father including overnights. D.H. articulated that she thought she spent "too much time" with her mother and it was her mother who gets mad the most. However, during the trial it was clear by her answers to Ms. Dyszuk's questions that she as confused about her feelings regarding her father. It is interesting that D.H.'s views regarding her father are more positive than her sister's. However, it was D.H. who had made more disclosures of sexual harm by her father than H.H.

[552] The children articulate to their maternal family that they do not want to go on visits

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with their father, but articulate to their paternal family that they are excited to see their father. Ms. Dyszuk did not find this surprising as both children want to please their parents and tell them what they want to hear. This is why it is so important for children's views to be presented by someone independent through the Office of the Children's Lawyer.

[553] What is clear is that the children's views and wishes have been influenced by the strong emotions that both sides of the family have about the other parent, more so by the maternal family against the father. Ms. Dyszuk indicated it is difficult to determine if the children's views are independent.

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*The additional relevant factors in s. 74(3)(c) of the best interest test*

*The children's needs and level of development and the care required to meet those needs:*

[554] The father describes D.H. as "rambunctious, energetic, mischievous, kind, creative and smart". The father describes H.H. as "kind, thoughtful, very emotional, smart, creative, and a 'creature of habit'". The mother describes D.H. as "very stubborn, active, sweet and snuggly and very smart". She describes H.H. as "rambunctious, chatty, loves to be the centre of attention, very sweet and caring, funny, emotional and very smart".

[555] Both children have a working diagnosis of Behcet's disease, which requires medication. They have symptoms of ulcers including genital ulcers. Although a definitive diagnosis has not been made, they definitely present with symptomatology of Behcet's. Any caregiver must be sensitive to their symptoms. The mother has Behcet's and is supportive of the children's needs regarding their symptoms and medication. The father questions this working diagnosis and does not support the children being on medication for Behcet's. It is the father's position that the mother victimizes the children due to their alleged Bechet's disease.

[556] The children have high needs and at times demonstrate emotional dysregulation. They have been emotionally impacted by the conflict between their parents. They require a caregiver who will support them with their big emotions. As Dr. Sas indicated after H.H.'s extreme meltdown with her, she recognized that H.H. needs someone to help and support her with everything that is going on in her life.

[557] Both parents have different parenting styles.

[558] The mother admits that she is not good with discipline as she does not want to be too hard on the children. When the girls have temper tantrums, she holds them to comfort them. Both Ms. Kling and Dr. Sas observed that the mother had difficulty controlling the children. However, professionals also observed that the mother was warm and caring towards the children.

[559] Many observed the father to have a stern parenting approach, including his parents. Even in her limited interaction with the father and the children, Dr. Sas found the father to have a "pR.A.y" approach to the children. The father has acknowledged that he has a strict approach and through counselling reassessed his parenting techniques and is now more lenient. The father clearly needs further counselling to be able to support the children given their disclosures.

[560] Out of the two parents, I find that the mother is the best person to be able to provide the emotional support and caring approach that these children require at this time.

[561] It is clear that the children require counselling. Although the father's concerns regarding consenting to the children's counselling due to the complex circumstances are understandable, there have been significant delays to get counselling for the children due to his lack of consent. This could be a concern moving forward as the children most likely will require intensive services.

*The children's relationship and emotional ties to* a *parent, sibling and family*

[562] It is clear that the children are closed bonded with their mother, particularly H.H. Despite their inconsistent views on access with their father, which I have found to be negatively influenced by the maternal family, during the trial both children expressed to Ms. Dyszuk that they wanted to have contact with their father, including overnights.

[563] Although the girls fight and compete for their parents' attention, they are close and should maintain the same parenting time schedule

*The importance of continuity of care and effect on the child of disruption of that continuity*

[564] The children have been in the primary care of their mother since the parties separated. They have suffered emotional harm, which would be exacerbated by removing them from their mother's care. The society workers and Dr. Sas did not support a removal of the children from the mother.

[565] I understand that the father's position is that the children have been so emotionally harmed by their mother's negative influence against him that they should be placed in his care. However, at trial he acknowledged that the mother has good intentions, cares deeply about the children, and that the children are her "entire world". He acknowledged to Dr. Sas that in general the mother has been responsible before and after separation to take the children to their appointments, and that he rarely reached out to Dr. Thimm or Dr. Demirkaya about the girls' health even though he had concerns. Still, the father did not believe it would be detrimental to the children to be removed from their mother's care. I disagree.

[566] In cross-examination, the father acknowledged that it would be challenging to prove that the mother intentionally put the ideas of sexual abuse into the children's heads, and he just wanted to rebuild his relationship with the children perhaps with a shared parenting schedule. I find that the children can continue to have a positive relationship with their father while still being in their mother's care, provided that the Society monitors and facilitates the father's access and the children and both parents engage in counselling.

*The importance of developing a positive relationship with the parents*

[567] As Ms. Van Den Berg testified, the primary purpose of the CYFSA is the protection and well-being of children, and this includes having a relationship with both parents if that can be done safety. She believes that the children are not at risk in the father's care with a safety plan in place. It is the Society's position that the safety plan in place has worked, and that the father's access should move forward.

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[568] The father is clearly negative about the mother, and to Dr. Sas, was highly critical of the mother in all areas of parenting and believes that she is emotionally abusing the children. However, he admitted at trial that the mother cares deeply for the children, and there is little evidence that he speaks about the mother in the children's presence.

[569] What is concerning is the mother's ability to assist the children to have any relationship with their father.

[570] At trial, the mother acknowledged that she and everyone in her support network have negative feelings towards the father. She knows that the children sense her negative feelings about the father.

[571] In cross-examination, the mother was asked if the court did not find that the children were sexually harmed by the father and the court found that they were emotionally harmed due to the conflict between the parents, what would she do to protect the children in the future and what responsibility would she assume? The mother answered:

> "I honestly don't know what I would do. I try not to think about that and hope that it works out, but I honestly don't know what I am going to do".

[572] When asked "what can you and the father do to move forward?" The mother answered:

> "Nothing, until he admits to what he has done, and he gets therapy ... but he won't ever do that".

[573] When asked what would help the girls move forward, the mother answered:

> "Him not being around, so they can heal and being away from their abuser".

[574] The mother did agree that counselling with her, the children and maybe the father could be an option.

*The merits of the plans put forward for the care of the children:*

[575] The plans put forward by all parties include the children being with a parent. All parties, except for the father, agree to have the children remain in the mother's care, which is the least disruptive alternative.

*The effects of delay of disposition on the children:*

[576] These court proceedings have weighed heavily on the children. H.H. articulated to Ms. Dyszuk that she wanted the court stuff to stop, that she feels caught in the middle and wanted the judge to make decisions for her and D.H.

*The risk the children in the present circumstances:*

[577] The risk of harm emotional harm to the children continues whether they are in the father or the mother's care. However, terms of supervision and safety plans can mitigate this risk.

<u>Conclusion on Placement of the children:</u>

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[578] Considering all of the evidence, the best interest factors in s. 74(3) and s.101 of the CYFSA, I find that the children should remain in the care of their mother. The court must consider this first as the least disruptive alternative, if that is a safe placement.[16]

[579] The children have always been in the primary care of their mother and are very attached to her. As the mother's counsellor, Ms. Blowes testified, the children are the centre of the mother's life. Although there are concerns with the mother and her extreme negative views about the father which have been projected onto the children, this does not warrant removing the children from their primary caregiver. The mother's reports to the Society have decreased and there is no recent evidence that she is videotaping the children.

[580] Ms. Samii argued that these children need to heal and that can only happen if they are provided with an environment that is normalized for them: which is the stability of remaining in their mother's primary care, with regular and generous access with their father.

[581] The Society seeks a placement of 6 months, and the mother seeks a placement of 12 months under society supervision. Counselling has just started for the children and as indicated below, the father requires some intensive counselling that will take some time. I believe that a 9-month order is required for any progress to be made with this family.

[582] The children clearly need a relationship with both parents, so the question is what access to the father is in the children's best interest.

The Father's access:

[583] It is the Society's position that the children should maintain healthy relationships with both parents, which includes regular access with the father. Dr. Sas understood the Society's position on a gradual move towards normalizing access. Even though the children have disclosed sexual abuse, they clearly love their father and want to see him. Dr. Sas indicated that "the Society has tried to balance all of this".

[584] The children are inconsistent with their views on access visits, particularly H.H. However, I have found that they have been influenced by their maternal relatives regarding their views.

[585] In circumstances where disclosures of the children of abuse have generally been not verified and they have been inconsistent on their views on access, the court should place significant weight on the children's positive experiences during access with a parent. [17]

[586] All of the society workers who supervised the father's visits indicated that the visits were positive. The children engaged well with the father and showed no fear of him. When visits were at the Society offices, the children were sad at the end of visits and wanted longer visits. Both Dr. Sas and Ms. Dyszuk observed good interactions between the children and the father and that the children were not fearful of him. Ms. Dyszuk noted that both children spoke of positive experiences of their access with the father. Ms. Dyszuk's last instructions from H.H. was that she wanted to have weekend sleepovers at her father's house. Although D.H. appeared conflicted in her last instructions to Ms. Dyszuk, she has generally been consistent that she wants more access and sleepovers

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at her father's house.

[587] In general, the father has abided by directions given to him regarding access. The father suggested wearing a body camera during visits although this was not a requirement of the Society or the court. Although the father indicated that he would like to spend the extra 30 minutes in the car with the girls to attend for exchanges, he respected Dr. Sas' suggestion not to attend for exchanges to avoid conflict with the mother.

[588] Although the Society is not concerned with the father having short periods of unsupervised access at this point, I find that his access should continue to be supervised at least for an additional period of time. This is similar to the case of *Hastings Children's Aid Society v J.L.*[18] where Justice Deluzio found that supervised access may be required where a child believed that her father was sexually inappropriate with her even though the court found that this did not occur. The child was experiencing anxiety over contact with her father. Justice Deluzio was concerned as the child was very aware that her mother and maternal grandmother believed that the father posed a risk to the child, their negatively entrenched beliefs about the father, and inability to support the child before and after access visits.

[589] In cross-examination, the father was not entirely opposed to having his access supervised, if only to make the mother feel better as he knows that he has to work with the mother. He did not see himself moving out of his mother's home in the foreseeable future, but even if he did, he could go to W.A.'s home for his access, or to his father's house.

[590] The mother's position is that the father should have no access until he receives treatment. Thereafter, his access should continue to be supervised but could be on alternate weekends.

[591] There is a concern that the paternal relatives clearly do not believe that the father is any risk to the children and I have found that there has been at least one short period when the father's access has not be totally supervised. W.A. acknowledged that she was not aware of everything that was happening in her home, such as the father bringing alcohol into her home without her knowledge. The children are fearful of having even short periods of unsupervised contact with their father and should engage in counselling to assist them with this process.

*Overnight Access:*

[592] Although Dr. Sas recommended that overnight visits only occur with the consent of the children, given the children's young ages, the Society would generally not permit the child to make that decision. The worry would be that the children never request it, and have been influenced by both sides of the family. Both parents were not supportive of leaving overnight access to the discretion of the children. The mother did not support access visits with the girls separately as having H.H. in visits with D.H. is a protective factor.

[593] Ms. Kling agreed that deferring overnight visits at this point was in the best interests of the children. She knows that H.H. is resisting access with her father at this time. Ms. Kling also acknowledges that it is stressful on the mother to get the children to attend for access visits and to deal with their complaints after access.

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*Counselling for the Father:*

[594] It is clear that the father requires counselling. He is agreeable to attend parenting or co-parenting courses. At trial, initially he did not believe he required sexual-offending counselling as he did nothing wrong. However, he did agree to attend non-offending sexual therapy to assist him deal with the children's disclosures. The Society, however, has never requested this of him. He agrees that his communication with the mother can "come across as aggressive" and the tone in his texts is problematic. He agrees that therapy with the children will improve his relationship with them.

[595] I have found that the father has demonstrated inappropriate boundaries with the children which they have interpreted to be sexual abuse. It is also concerning that the father believes that the children have lied and made a comment to his counsellor that they should not be "rewarded for lying". The father should engage in counselling regarding how to appropriately deal with the children's disclosures. This counselling should be engaged before his access moves to being completely unsupervised. As Dr. Sas indicated, the father's limited therapy thus far with Ms. Pullen has not been "insight-oriented" therapy. Dr. Sas supported therapy for the father before a level of supervision was relaxed.

*Counselling for the children:*

[596] It appears as though play therapy has started for the children. It is important for this to continue to enable the father's access to move forward.

**FINAL ORDER:**

[597] On the basis of all of the above, the following final order shall be made:

1. There shall be the following statutory findings:

    i. The child's name is: H.H.

    ii. H.H.'s date of birth is: [...], 2015

    iii. H.H. is not a First Nations, Inuk or Metis Person

    iv. H.H. was not brought to a place of safety

    v. H.H.'s mother's full name is: K.H.1

    vi. H.H.'s father's full name is: A.A.

    i. The child's name is: D.H.

    ii. D.H.'s date of birth is: [...], 2016

    iii. D.H. is not a First Nations, Inuk or Metis Person

    iv. D.H. was not brought to a place of safety

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v. D.H.'s mother's full name is: K.H.1

vi. D.H.'s father's full name is: A.A.

2. The children H.H. born [...], 2015 and D.H. born [...], 2016 shall be found in need of protection pursuant to s. 74(2)(f) and (h) of the CYFSA.

3. The children H.H. born [...], 2015 and D.H. born [...], 2016 shall be placed in the care of their mother for a period of 9 months, subject to society supervision on terms as outlined in the Society's Plan of Care dated June 16, 2023, para. 3(1)(a) to (f) and the additional term that:

   (i) The mother shall continue to engage in counselling to manage the children and not overreact to their behaviours and parenting support on child management strategies.

4. Both parents shall be subject to the terms in the Society's Plan of Care dated June 16, 2023, paragraphs 5, 6, 7, 8 and 9.

5. Neither parent shall expose the children to conflict in the presence of the children.

6. The father shall engage in therapy including the maintenance of healthy boundaries with the children, parenting education to effectively deal with the children's behaviours and how to deal with their disclosures.

7. The father shall participate in counselling with the children to rebuild his relationship with them, and the mother will ensure that the children attend this counselling.

8. Both parents shall attend co-parenting education to assist with their post- separation conflict.

9. The Society should provide background information to the counsellors involved with both parents to enable the counsellor to fully appreciate the concerns related to both parents.

10. The father shall have access with the children:

   (a) In accordance with the order of May 11, 2023, until such time as the children have engaged in counselling, and at the discretion of the Society access can progress forward including overnight access, which may include having the father also commencing counselling in accordance with this order.

   (b) At the discretion of the Society, after considering the progress made by the children and the father in counselling, the father's access may progress to alternate weekends and other access in accordance with paragraph 3(2), (3) and (4) of the Plan of Care dated June 16, 2023

   (c) During his access, the father shall be subject to the following conditions:

      (i) The father shall not use physical discipline on the children.

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(ii) The father shall not consume alcohol 12 hours prior to or during his access with the children.

(iii) Any overnight access with the children shall occur at the home of the paternal grandmother or grandfather, and during any overnight access with the father, the children shall sleep in a room separate from the father.

(iv) The father shall not be involved in any bathing, showering or toileting of the children.

[597] I wish to thank all counsel for their professional approach to this very difficult case.

**Released: August 12, 2024**

**Signed: Justice K.S. Neill**

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[1] See Ministry Policy Directive: CW 001-19- Verifying the credentials of individuals conducting parenting capacity assessments.
[2] *Children's Aid Society, Region of Halton v. J.B.* [2018] O.J. No. 6760 (Ont. C.J.)
[3] 2021 ONCA 462
[4] *Szyngiel v. Rintoul*, 2014 ONSC 3298 (SCJ)
[5] *Children's Aid Society of St. Thomas and Elgin v. A.H.* 2017 ONCJ 852
[6] *Catholic Children's Aid Society of Toronto v. N.N.* (2019] O.J. No. 116 (Ont. C.J.)
[7] *Children's Aid Society of Toronto v.* G.S. [2018] O.J. No. 1022 (Ont. C.J.)
[8] *Children's Aid Society of Toronto v. G.S., supra*
[9] *Mi'kmaw Family and Children's Services v. D.P.* [2020] N.S.H. No. 99
[10] *A.M. v. O.M.* 2023 ONSC 2113
[11] C. *(R.) v. McDougall,* 2008 SCC 53
[12] *Mi'kmaw Family and Children's Services v. D.P.* [2020] N.S.J. 99
[13] See *Hastings Children's Aid Society v. J.L.* 2011 ONCJ 872
[14] 2009 NSSC 155
[15] Section 101(1), (3), (7), CYFSA
[16] S. 101 (3) of the CYFSA
[17] See *Sears v Coristine,* 2020 ONSC 7968
[18] 2011 ONCJ 872

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