SUPREME COURT OF YUKON

Citation: *J.P.R.A. v. L.M.A.*, 2017 YKSC 67

Date: 20171109
S.C. No. 12-B0088
Registry: Whitehorse

BETWEEN:

J.P.R.A.

APPLICANT

AND

L.M.A.

RESPONDENT

AND

THE DIRECTOR OF FAMILY AND CHILDREN'S SERVICES

RESPONDENT

Before Mr. Justice L.F. Gower

Appearances:

Kelly Labine	Counsel for the Applicant
Vida Nelson	Counsel for the Respondent
Karen Wenckebach	Counsel for the Respondent, The Director of Family and Children's Services
André Roothman	Children's Lawyer

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is essentially an application by the father for custody of two children, J., age 11, and L., age 10, ("the children"), and permission to relocate both of the children, or alternatively only J. to Nova Scotia, where the father resides. The mother resides in

Dawson City, Yukon. The children are from a common-law relationship between the father and the mother between 2004 and 2010.

[2] The mother also has 16-year-old twins from a different father, J.A.J. and L.C.R. J.A.J. lives in Dawson City with his maternal grandmother, who has custody of him. L.C.R. is presently residing with her paternal grandparents in Saskatchewan, pursuant to a temporary arrangement, but will be returning to the Yukon for the 2018-19 school year.

[3] The mother and the father resided in Nova Scotia with all four children from 2008 to 2011, when the mother moved back to Dawson City following the separation.

[4] J. has been in the care of the Director of Family and Children's Services from 2014 until July 25, 2017, when he was returned to the temporary care of the mother, under the supervision of the Director. J. has been diagnosed with attention deficit hyperactivity disorder ("ADHD"), oppositional defiant disorder ("ODD") and disinhibited social engagement disorder, as well as other mental health issues.

[5] The mother has full custody of L.

[6] I understand that the mother and the four children are all members of the Tr'ondëk Hwëch'in First Nation ("THFN"). The mother has had stable employment with THFN since 2011.

[7] There have been child protection concerns regarding the mother's care of the children since 2007. More specifically, since February 2012, the Director has been involved with the mother and her children on a number of occasions related to: the children's emotional and behavioural functioning; sexualized behaviour; physical and

emotional abuse; and physical and emotional neglect. Until now, the proceedings in the Yukon have all been in the Territorial Court.

[8] The global issue on this application is whether it is in the best interests of the children to reside with the father in Nova Scotia. The more specific issue is whether the mother has demonstrated that she has sufficiently improved her capacity to parent the children, in particular J., in order to allow the children to remain in her custody in the Yukon.

BACKGROUND

[9] On March 21, 2011, an order was made in Nova Scotia granting the mother "care and control" of all four children and permission to relocate to the Yukon. The father was granted six weeks of consecutive access each summer, with the cost of transportation to be shared equally by the parties. The mother moved to the Yukon shortly after this order.

[10] On September 15, 2014, the Director filed an application for orders which would place: J. in the temporary custody of the Director for a period of six months; J.A.J. in the care of D.S., under the supervision of the Director, for a period of six months; L. in the care of her paternal aunt, R.J., under the supervision of the Director, for a period of six months; and L.C.R. in the care of the mother, under the supervision of the Director, for a period of six months.

[11] In December 2014, J. began residing in a group home in Whitehorse.

[12] On May 8, 2015, Deputy Territorial Court Judge Luther ruled that the "care and control" order in favour of the mother from Nova Scotia, dated March 21, 2011, should be interpreted as giving the mother care and "custody" of the children. Accordingly, the

father was not considered a concerned "parent" under the definition provided in the *Child and Family Services Act*, S. Y. 2008, c. 1 ("*CFS Act*"). As a result, the children could not be placed in his care after they were apprehended from the mother. The father has since commenced this Supreme Court action seeking to obtain custody of the two youngest children and permission to relocate them to Nova Scotia. The Territorial Court proceedings have been effectively joined with this Supreme Court action, although for reasons set out below, I am not making any orders under the *CFS Act* in this decision.

[13] L. was returned to the mother's care in July 2015, under a six-month supervision order, which has since expired.

[14] The first protective intervention hearing for J. proceeded before the Territorial Court in July and August 2015. The Director filed nine affidavits and three psychological assessments in support of his application for an order for temporary custody of J. The Court ultimately heard from 31 witnesses over the course of 12 days. Both the mother and J. were represented by counsel.

[15] On October 1, 2015, Deputy Territorial Court Judge Luther issued his reasons for judgment, in which he found that J. was in need of protective intervention. He granted a Temporary Custody Order ("TCO") in favour of the Director until the end of the school year on June 20, 2016. In his reasons, the Deputy Judge included the following pertinent points:

- the mother was striving to set up a plan to transition J. from his school program in Whitehorse to the Robert Service School in Dawson City with

the assistance of the THFN, which the Deputy Judge implicitly approved of;[1]

- he was not ruling about whether the mother is "a bad mother" who does not love her children, but rather about what was in J.'s best interests;
- he described the mother as someone who is "intelligent and ambitious" and who has done well at school and college, including making the Dean's List;
- he concluded that addictions did not appear to be an issue for the mother, who has been a non-smoker since 2011 and does not use recreational drugs;
- he noted that J. had had 10-to-11 visits with his mother and other family members, and that the mother had phoned him almost daily, while J. was at the group home in Whitehorse;
- he noted that the mother has been a "persistent advocate" for J.'s proper treatment, while in the Director's care;
- many witnesses indicated that J. was either the most problematic or one of the most problematic children they had to deal with; and
- that he was "quite optimistic" about what the future held with J. going back to the mother in Dawson City.

[16] On April 29, 2016, a registered psychologist, Dr. Richard Lucardie, completed a lengthy psychological assessment report, in which he assessed the mother, J. and L.

[1] 2015 YKTC 36, at paras. 30 and 44.

The assessments were conducted between January 15 and 17, 2016. Dr. Lucardie determined that the mother's personality configuration was composed of the following:

- narcissistic personality disorder with obsessive-compulsive personality traits;
- paranoid personality features; and
- schizotypal personality features.

Overall, his assessment identified risk factors related to child abuse and neglect while the children are in the mother's care. He recommended continuing evaluation and monitoring as being in the children's best interests and, in particular, recommended that J. remain in the Director's care.

[17] On October 4, 2016, a child psychiatrist, Dr. Geoffrey Ainsworth, completed a psychiatric assessment of J. His interview of J. took place on September 17, 2016. He diagnosed J. with disinhibited social engagement disorder and recommended that J. remain in the group home, for the time being, principally because of the stability of that environment. Dr. Ainsworth commented:

> … When he is in a new situation or with a new adult supervisor his behaviour can quickly escalate and become out of control. Even if he is with a secure, wellknown caregiver, he can still over-react if the situation is different. This was evident two days ago when he refused to turn off the television.
>
> In my opinion, he needs to be in a place where he can get skilled care on a consistent basis for the long term, until he is able to show that his behaviour really has settled.
>
> I am concerned that it will be difficult for him to develop secure, trusting relationships with people, but with sufficient

> attention paid to his needs now it may be possible for him to develop a lifestyle where he has at least safe.[2]

[18] On November 14, 2016, this Court made an order granting custody of J.A.J. to his maternal grandmother.

[19] On January 19, 2017, Deputy Judge Luther of the Territorial Court granted the Director's application for a six-month TCO for J. On February 17, 2017, he issued his reasons for judgment, in which he included the following pertinent points:

- the Director was relying largely on the reports from Drs. Lucardie and Ainsworth;
- that "structure, routine and consistency were vital" for J., and that he has considerable difficulty adjusting to unanticipated changes;
- that the mother could benefit from the assistance of a capable therapist, counsellor or psychologist, to help her deal with her childhood family issues and her personality issues;
- J. had a "valid desire" for a relationship with his mother, but also expressed an interest in staying with his father Nova Scotia, which the Deputy Judge described as confirming J.'s "confused emotional state with attachment issues";
- the mother "can sometimes properly parent" J.;
- that as for J.'s supervised visits at his home in Dawson City, "most have gone well";
- that there was an incident during the Discovery Day weekend in Dawson City, in August 2016, when there was a physical altercation between J.,

[2] Affidavit #1 of Sarah Winton, Exhibit B, p. 5/6.

> L.C.R., and their mother which resulted in J. being physically and emotionally hurt;
>
> - that the Court had heard from K.J., who had been J.'s schoolteacher since January 2015 and who described him as "her most challenging and complex student"; and
> - that, on the mother's part, "clearly some progress has been made", but that the Deputy Judge preferred to err on the side of caution and continue the TCO because of the evidence of the two experts.

[20] The above TCO expired on July 19, 2017.

[21] On July 25, 2017, Deputy Justice Browne, of this Court, sat on this matter both as a judge of the Supreme Court of Yukon, and also as a Judge of the Territorial Court of Yukon, for the purposes of any orders to be made under the *CFS Act* in respect of J. Deputy Justice Browne heard an application by the Director for a further six-month supervision order, on terms, until the father's application for custody is ruled upon. She ordered that the Director's application be adjourned to September 19, 2017, and that in the meantime, J. be returned to the mother, subject to certain supervision conditions, which were set out in the affidavit of Regional Social Worker for the Director in Dawson City, Tyler Flaumitsch, at para. 33. The preamble to the conditions states as follows: [3]

> 33. Despite the progress [the mother] has made in addressing the child protection concerns, the Director is of the view that [J.] remains a child in need of protective intervention, as [the mother's] care combined with his complex behavioural issues presents a risk of emotional and/or physical harm. However, once the current TCO expires, and if [the father's] application for custody and relocation is not granted, the Director believes that this risk

[3] The order states that this was the affidavit filed July 11, 2017, but this is a typographical error. In fact, it was the affidavit filed July 7, 2017 in the Territorial Court proceedings.

> can be mitigated by way of a six-month Supervision Order with the following terms: … (my emphasis)

[22] In the immediately preceding paragraph, Mr. Flaumitsch deposed:

> … The Director supports [the father's] application for custody and relocation of [J.] given the absence of child protection concerns associated with [the father's] care. (my emphasis)

[23] The hearing of the father's application for custody and permission to relocate the children to Nova Scotia began before me on August 31, 2017, but had to be adjourned because we ran out of time. The hearing continued on September 18, 2017. At that time, I understood from counsel for the Director, who is now a party to the Supreme Court proceedings, as well as from the mother herself, who was present in court, that until I make my decision on the father's application, the Director would apply to further adjourn J.'s child protection hearing, with the supervision order in favour of the mother to continue. The mother indicated that she would consent to the continuation of supervision of her care of J., but only for a period of four months.

ANALYSIS

[24] The parties are agreed that the legal issue here is not particularly complicated - would it be in the children's best interests to grant the father custody of them and allow him to move them to Nova Scotia? The pertinent principles from the leading case on mobility, *Gordon v. Goertz*, [1996] 2 S.C.R 27, are as follows:

- Each case turns on its own unique circumstances. The only issue is the best interests of the children in the particular circumstances;
- The focus is on the best interests of the children, not the interests and rights of the parents;

- The court must consider all of the relevant circumstances, including:
    - the views and wishes of the children;
    - disruption to the children from the change in custody;
    - disruption to the children consequent on removal from family, schools and the community they have come to know;
    - the children's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
    - the children's physical, mental and emotional level of development;
    - the children's cultural background; and
    - the importance of continuity in the children's care and the possible effect on the children of disruption of the continuity.

[25] In my view, with these considerations in mind, it is not in the best interests of the children to grant the father custody and allow him to move the children to Nova Scotia. I come to that conclusion for the following reasons:

1) the mother has demonstrated, in the more recent past, that she is capable of providing a safe and secure home for the children;
2) moving the children to Nova Scotia would be significantly disruptive, especially for J.;
3) the children are not overly familiar with the father; and
4) it is important for the children to maintain the connection with their First Nation.

I will deal with each of these reasons in turn.

1. The mother has demonstrated, in the more recent past, that she is capable of providing a safe and secure home for the children.

[26] The mother has indicated in her first affidavit that she has made the following positive changes to support the return of J. to her care:

- she is exercising more supervision over the children;
- she has established set routines and schedules for the children;
- she has been actively involved as an advocate for J. regarding his education;
- she has changed the way she disciplines the children (e.g. she has not spanked them since 2013);
- she has hired a housekeeper to help her keep the home clean and safe for the children;
- she has been attending counselling, both with the children and on her own, to deal with their issues and her own issues;
- she has been working cooperatively with her First Nation representatives to improve her parenting and also to involve her children in cultural activities; and
- she has taken numerous courses since 2014 to improve her parenting skills.

[27] Jennifer Gibbs, the Family Services Worker for THFN, has been working with the mother since September 2015. She corroborates that the mother has participated in a variety of workshops and training sessions since then, including personal wellness training, professional training and parenting skills development initiatives. Ms. Gibbs has worked with the mother to develop parenting strategies to utilize when she feels

overwhelmed with challenges, particularly with J. She meets regularly with the mother, often one to two times per week, regarding parenting support. She also meets with the mother and the Regional Social Worker, Mr. Flaumitsch regarding parenting issues. She deposed that the mother has shown "good progress" and has "demonstrated insight" into how her parenting approach has changed and what strategies may be more effective to utilize. She corroborates that the mother has been actively involved in a collaborative planning process regarding J.'s educational and behavioural needs for over a year. Indeed, Ms. Gibbs has been present at all of the meetings to discuss the transition from J.'s Whitehorse school to the Robert Service School in Dawson City. She deposed that the mother has "been working tirelessly" to have J. back with his family. Ms. Gibbs reported no adverse incidents and expressed a willingness to continue working with the mother to support J.'s transition back to Dawson City.

[28] Mr. Flaumitsch, in his affidavit in the Territorial Court proceedings, filed July 7, 2017, has documented the extensive number of visits that the mother had with J. while he was in the Whitehorse group home, including a number of visits where J. was allowed to visit his family in Dawson City. While Mr. Flaumitsch recognized that the mother has raised child protection concerns by failing, in the past, to provide J. with the stability and consistency he requires, he also deposed that, since February 2017, he has observed that the mother has been providing J. with a level of structure and supervision that is adequate to meet his needs during home visits. Mr. Flaumitsch stated that he attended the mother's home during three of the four weekend visits to observe the family, as well as during J.'s most recent 10-day visit to Dawson City, and observed a routine being followed which was consistent with the mother's advance

planning, as well as an acceptable safety level. He did not have any concerns during the visits. Further, he states that he has a good working relationship with the mother and that she has made progress. Mr. Flaumitsch further deposed that the mother has begun to show insight into her son‘s needs, particularly when using redirecting skills with him to de-escalate stressful situations. He stated that as of the date of that affidavit he was not aware of any recent incidents where J. was at risk of physical or emotional harm while in the mother‘s care. Mr. Flaumitsch supports the transition to Robert Service School for the 2017-18 school year, and acknowledges that the mother has been active in that planning process and has worked hard to establish a network of support in Dawson City to maximize the success of the transition.

[29] Mr. Flaumitsch referred to an incident on or about June 30, 2017, when J. refused to turn off the television in the mother’s home. When the mother unplugged the television in an attempt to convince J. to go to bed, his behaviour escalated and he began to damage items in the living room. For example, he broke a floor lamp after trying to strike the mother with it and broke the television by throwing it on the floor. The mother withdrew to the dining area and began filming J. with her cell phone. She also attempted to prevent J. from leaving the home, but when he forced his way past her, she called the RCMP, who later located J. walking down the road with no shoes. Mr. Flaumitsch deposed that the mother tried to restrain and control J. during this meltdown, and followed the safety plan that had been discussed earlier, by reaching out to resources for assistance. He stated that he has not substantiated any physical abuse or the use of inappropriate discipline by the mother.

[30] The mother has also employed Devon Laing to assist her with childcare issues in the home. Ms. Laing swore an affidavit on August 16, 2017 in which she describes herself as a childcare worker with 34 years of experience. She has been providing care for J. since July 25, 2017. Ms. Laing deposed that J. has told her he is looking forward to starting at the Robert Service School. She says she does not have any concerns about the mother's ability to provide a loving, safe and secure home for her children and has witnessed no abuse or neglect.

[31] The Director's counsel confirmed at the hearing that there have been no adverse incidents between the mother and J. since his return to her care under the order of July 25, 2017. Further, the fact that the Director is prepared to continue the supervision order for a further period of four months, pending this decision on the father's application for custody and relocation, in my view corroborates the extent to which the mother has made positive and constructive changes to improve her parenting capacity for J.

2. Moving the children to Nova Scotia would be significantly disruptive, especially for J.

[32] It is uncontested that, given J.'s various psychological disorders, he has an unusually high need for consistency and stability in his home and community environment. In my view, granting the father custody of J. and allowing the move to Nova Scotia would be extremely disruptive to him at this critical time, counterproductive and not in his best interests.

[33] J.'s need for stability and consistency was noted several times in both of the reports of Drs. Ainsworth and Lucardie. Dr. Ainsworth noted in particular that when J. is in a new situation or with a new adult supervisor his behaviour can quickly escalate and become out of control. Even if he is with a secure, well-known caregiver, he can still

overreact if the situation changes. Dr. Lucardie recommended that the Director provide J. with a home and community environment that can consistently meet his basic needs.

[34] If J. remains in Dawson City, he will be in a familiar environment, with access to community supports and family members that he has known since he moved there when he was five years old. In particular, he will have the following advantages towards maximizing his stability and consistency:

- a reliable, consistent and very experienced childcare worker, Ms. Laing, to work with him during the day when he is attending school or at home;
- he will attend Robert Service School, where the mother has attempted to create a program which mimics as much as possible the specialized program J. was attending in Whitehorse to address his special needs;
- he will continue to have access to the same counsellors and social workers which he is familiar with in Dawson City, including counselling through the Child and Adolescent Therapeutic Services ("CATS") program;
- he will continue to have the support of the Robert Service School psychologist, Marjorie Logue;
- he will continue to have access to the Big Brothers and Sisters mentorship program and programs offered through Family Supports for Children with Disabilities;
- he will continue to benefit from his sibling relationships with L., J.A.J., and next year, with L.C.R.; and

- he will continue to be able to spend time with his extended family, which includes: his aunt, R.; his uncle, V.; his cousins/godparents, E., D. and M.; his cousins, A., R. and D.. The mother has also deposed that her father comes to visit the family in Dawson City once or twice a year for extended visits.

[35] It is important to note here that J. has already started at the Robert Service School, where the mother's counsel informs me he has a one-on-one teacher working with him.

[36] On the other hand, if J. is to move to Nova Scotia, he will be entering an entirely new school, Central Colchester Junior High. Although the father has deposed that J. will have access to a psychologist, a guidance counsellor, a resource teacher and a speech therapist, there is no evidence that J. is familiar with any of these professionals. Further, the letter dated June 9, 2017, which the father attached to his second affidavit, provided details about the program in the Chiganois Elementary School and not Central Colchester Junior High. Therefore, I have little or no evidence as to the father's education plan for J. in the Central Colchester school. Finally, if the move is permitted, J. will be starting school late, almost halfway through the fall term.

[37] Admittedly, there is evidence that J. has indicated to others fairly frequently that he wants to move to Nova Scotia to live with his father. This was particularly noted in the affidavit of Social Worker, Susan Graves. However, most of those utterances appear to have been made between the early fall of 2016 and late March 2017. More recently, it appears that J. has become increasingly ambivalent about the move. For

example, Ms. Graves deposed that on April 25, 2017, J. said:

> … that he would be okay if he moves to Dawson, but he would also be okay if he moves to Nova Scotia. He shared that it is hard for him to decide, but that if he moves to either Dawson or Nova Scotia, he wants to make sure that he can have visits and regular phone conversations with either his mother or father, depending on where he lives.

Then Ms. Graves deposed that, on May 17, 2017, J.:

> … continued to say that he would be okay with living with either his mother or father. When I asked him what had changed for him since the winter, when he was saying he wanted to move to Nova Scotia, he said he was not sure but that he did not want to hurt either of his parents' feelings.

According to Ms. Graves, J. repeated this message on May 30, 2017.

[38] In his report dated August 29, 2017, the children's lawyer also indicated that J. wanted to move to Nova Scotia to be with his father. However, notwithstanding that information, the children's lawyer did not support a move to Nova Scotia for J., mainly because of the following reasons:

- the progress made by the mother in addressing the historical child protection concerns and the insight she now shows into J.'s needs;
- the extent to which the mother has been engaged in planning for J.'s transition from Whitehorse to Dawson City;
- the extent to which J.'s life would be disrupted by such a move, especially given his particular needs; and
- J.'s Aboriginal roots in the community of Dawson City.

[39] Although the Director supports the father's application for custody and relocation of J., it is important to understand that this is simply because the Director has no child protection concerns regarding the father, whereas, the Director continues to have child

protection concerns regarding the mother. This is the reason why the mother is currently under a supervision order, and likely will continue to be so for some time to come. However, the Director is not submitting that she supports the father's application because she thinks it is clearly and affirmatively in J.'s best interests. Indeed, Mr. Flaumitsch, in his affidavit sworn in June 19, 2017, deposed that, if the father's application is not granted, the Director believes that her child protection concerns regarding J. in the care of his mother "can be mitigated" by way of the supervision order, which would allow J. to return to his mother in Dawson City.

[40] A move to Nova Scotia would also be disruptive for L., and the father has really made no case to justify changing the custody of L. from the mother to himself. Indeed, the Director has apparently had no child protection concerns regarding the mother and L. following the expiry of the last six-month supervision order made in 2015. Further, the Director takes no position on the father's application for custody and relocation of L. It is also important to remember that L. was not the subject of the two protective intervention hearings held in the Territorial Court, which I referred to above, and that those were exclusively relating to J. In addition, Dr. Lucardie's assessment included the following comment:

> Currently, no significant concerns are identified for [L.] with her self-perception, self-esteem, resiliency, perception of school and teachers, or with her socialization.

In general, the evidence is that the mother and L. have a positive relationship and that L. is doing well in school and in her community. She has also told the children's lawyer that she wants to remain in the Yukon. She is now 10 years old, and so her views and

preferences in that regard should be given due consideration. Finally on this point, the children's lawyer does not support L. moving to Nova Scotia.

[41] L. also told the children's lawyer that she missed J. when he was attending school and living in the group home in Whitehorse, which bodes well for the sibling bond between the two children. Conversely, it also works against the prospect of separating them.

3. The children are not overly familiar with the father.

[42] The father has only exercised his access to J. for a total of approximately eight and one-half weeks since the mother and the children moved to the Yukon in 2011. The dates of those visits were: March 18 - 25, 2017; October 29 - November 5, 2016; and six weeks in the summer of 2013. In the last two years, the father has only had access to J. for two and one-half weeks.

[43] The father has only exercised his access with L. for approximately seven weeks in total, since the 2011 move.

[44] Admittedly, there is conflicting evidence about why this has been the case. The Nova Scotia order of March 9, 2011, was to ensure that the father would have six consecutive weeks of access with the children each summer, with the cost of transportation to be shared equally by the parties. However, the father has explained that he was experiencing some financial difficulties at times since then, which made it impossible for him to finance one-half of the access costs. He has also complained that the mother has been uncooperative in scheduling access. From the mother's side, she has complained that the father has been inconsistent in arranging for the summer access, and often left the arrangements until the last minute, by which time the mother

had already made summer vacation plans for the children. This is a problem which needs to be resolved, for the sake of the children, and I will return to it later.

[45] The father's phone access with the children has also been somewhat limited and inconsistent.

[46] The father began having regular, but unscheduled, phone access with J. more often in the summer of 2015, approximately once every week. However, since April 2017, that phone access has declined to once every two-to-three weeks. The father's phone records indicate that from November 2016 to August 2017, the father called the group home 38 times. However many of the calls were only between one and three minutes in length. Here, I agree with the mother's counsel that such brief calls are not necessarily indicative of meaningful contact or conversation.

[47] As for L., the father's phone records indicate that he has only spoken with her, in conversations lasting more than five minutes, seven times between November 2016 and August 2017.

[48] I also acknowledge here that there are factual disputes about the father's attempts to make telephone contact. He claims that many times he phones the mother's home and no one answers. On the other hand, the mother claims that the father has failed to phone at times previously arranged, for example on Christmas Day 2016.

4. It is important for the children to maintain the connection with their First Nation.

[49] This is a point which was particularly stressed by the children's lawyer.

[50] Although the father has indicated that he would attempt to maintain the children's connection with THFN, his evidence in this regard was scanty. He deposed that he would contact someone in the Millbrook First Nations Community office to see what

could be done to nurture the cultural heritage of the children. However, I understand that to be a Mi'kmaq First Nation, which is no doubt a different culture from the THFN (Hän) tradition that the children are familiar with. Certainly, the language would be different. Indeed, the mother has obtained a letter from the Millbrook First Nation which confirms that they do not offer any funding, educational, cultural, language and program support to non-members of that First Nation.

[51] The father then attached an email from the THFN Director of Health and Social Services, in response to a query as to what services could be provided to THFN members living away from settlement land and THFN traditional territory. Frankly, the email does not say very much except that "being out of territory presents unique challenges to accessing culture, language and traditions".

[52] I accept the father's point that the children are also entitled to learn more about the father's Scottish heritage. However, the father has not provided any information as to the nature of the information or the types of activities which he would like the children to be involved in in order to acquire such knowledge.

[53] That is in significant contrast to the extent of the information provided by the mother as to the number and types of THFN cultural activities the children have been involved in, or are in the process of learning about:

- the gathering at Moosehide, a former traditional community of the Hän people;
- traditional harvesting (i.e. spruce sap, cutting and drying fish, moose, and caribou);
- beading earrings;

- sewing;
- basket weaving;
- attending Hän language sessions;
- participating with the Hän singing group, singing traditional songs;
- hunting and fishing;
- jigging classes;
- making salve; and
- participating in community potlatches.

[54] The mother has also provided rather extensive evidence about the Hän cultural program in the Robert Service School, which includes various cultural activities in each year, from kindergarten to grade 6.

CONCLUSION

[55] The father's application for custody of the children and for permission to relocate them to Nova Scotia is dismissed. Accordingly, it is unnecessary for me to rule on whether the current supervision order regarding J. should be terminated. I will leave that in the hands of the Territorial Court.

[56] In order to reduce conflict between the parties and to bring greater certainty to the issue of summer access, I feel it is appropriate to order that the father's six weeks of access take place during a specified period of time, rather than leaving it to the parties to have to negotiate the dates each summer. Of course, they can always agree to change the default dates which I am about to prescribe. I order that the father's six weeks of summer access will commence each year seven days after the last day of school for the children in June, unless otherwise agreed in writing. The parties shall

continue to share equally the cost of transporting the children (J. and L.) in order for this access to occur.

_____
GOWER J.