

**SUPREME COURT OF NOVA SCOTIA**  
**(Family Division)**

Citation: J.S.V. v. B.A.J., 2017 NSSC 222

**Date:** 20170817  
**Docket:** SFHMCA 094682  
**Registry:** Halifax

**Between:**

J.S.V.

Applicant

and

B.A.J.

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Associate Chief Justice Lawrence I. O'Neil

**Heard:** April 19, 2016; June 2, 2016; July 27, 2016; September 28, 2016; October 21, 2016; November 17, 2016; December 13, 2016; February 21, 2017; April 7, 2017 and April 11, 2017, in Halifax, Nova Scotia

**Issues:**

1. Should custody of the parties' child be transferred to J.S.V.?
2. What remedy does the Court have, in this case, which involves a parent who has left the Province and is 'hiding' the child from his father?

**Summary:** J.S.V. has applied for custody of his son.

J.S.V. returned home and his partner had left and took their young son with her. She has, with the assistance of 'police' hidden her location and that of the child from him. She has not responded to the pleadings in this matter. Police witnesses confirm they have helped her leave the Province. Their involvement was initially explained on the basis of her needing the protection of the Witness Protection Plan. That explanation was later abandoned. The Court was not told the authority to which the police were acting.

The Court issued a Warrant for the arrest of B.A.J. and transferred custody of the child to J.S.V.

**Keywords:** Arrest; custody; witness protection

**Legislation:** *Maintenance and Custody Act*, R.S.N.S. 1989, c.160  
*Domestic Violence Intervention Act*, S.N.S. 2001, c.29  
*Parenting and Support Act*, S.N.S. 2015, c.44, s.2

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*Publication restriction: this decision contains information extracted from a file for which there is a restriction on publication as provided by s. 94(1) of The Children and Family Services Act, S.N.S. 1990, c. 5 .*

*“94(1) 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 pursuant to this act, or a parent or guardian, a foster parent or a relative of the child.”*

*The Court also relies on its common law power to prohibit the publication of information that has the effect of identifying the subject child.*

**Written Decision: August 17, 2017**

**Counsel:** J.S.V., Self-Represented  
B.A.J., Self-Represented (ABSENT)

**By the Court:**

**Introduction**

[1] J.S.V. wants to locate his young child. He wants to know he is safe. He wants to know he is well. He wants to see him. He has not seen his infant son in over eighteen (18) months. The child's mother, who is also J.S.V.'s former partner, has been hiding since December 2015. She has his son with her. Their whereabouts are or have been known by one or more police forces. It also appears police forces have aided B.A.J. in her efforts to not be found and to conceal the location of the subject child born in October 2012. I am satisfied on a balance of probabilities that this has been and continues to be the case. No satisfactory legal authority or explanation to support the decision making of these police forces or their continuing role in preventing J.S.V. from knowing where his son is located has been offered to this Court. The representation of Lieutenant Vigneault, offered on April 7, 2017 and again on April 11, 2017 (with the assistance of counsel on April 11, 2017) shed some light on the role of Lieutenant Vigneault and the Quebec Provincial Police. The overall impression the Court is left with after hearing Lieutenant Vigneault and his counsel is that as far as Lieutenant Vigneault knows, when assisting B.A.J., his force was acting in good faith at the request of the Halifax Regional Police.

[2] Over the past year, J.S.V. has appeared before me on eight (8) separate occasions seeking an access order so he could see his child, D.O.B. October 2012. In the absence of service of the process on B.A.J., a consideration of the merits of J.S.V.'s application has been delayed.

[3] Early in this proceeding J.S.V. told the Court he was informed 'by the police' that the Respondent and therefore his child were in the witness protection program and he says he was told further that his efforts to locate his child could result in his being charged. Presumably the charge would be for trying to locate someone in the Witness Protection Program, if such a charge exists.

[4] In addition to evidence being offered, which confirms the involvement of the Halifax Regional Police; the RCMP and the Surete de Quebec in abetting B.A.J. in hiding the subject child from her father, Nova Scotia Legal Aid has been represented at some of the proceedings, explaining its presence as that of an ‘observer’.

[5] Nova Scotia Legal Aid represented B.A.J. in an earlier proceeding involving J.S.V. and concerning the subject child. J.S.V. also told the Court a representative of the Halifax Regional Police told him to speak to the Nova Scotia Legal Aid lawyer who attended Court to get his answers. I am satisfied on a balance of probability the police and Nova Scotia Legal Aid knew of each other’s role and were communicating as J.S.V. pursued this application.

[6] Over the past year, the Court has been subjected to tactics, that delay or frustrate J.S.V.’s efforts; and involving three police forces, the Respondent and possibly Nova Scotia Legal Aid. As troubling as that is for the Court in terms of the attitude it displays about the Court system and as troubling as it is for J.S.V., the true victim of the tactics has been a child, deprived of an opportunity to see his father for eighteen months, a significant part of his young child’s life.

[7] To describe these series of events as troubling is, by any standard, a significant understatement.

## **Background**

[8] The parties were living together at the time of their child’s birth on October 2012. Early in the relationship, the Department of Community Services became involved in their lives and a protection application was filed by the Minister on February 27, 2014. The application was terminated April 7, 2015 on condition that an order issue under the *Maintenance and Custody Act*, RSNS 1989, c 160 [as amended and renamed the *Parenting and Support Act*, which took effect May 26, 2017.] That order gave ‘care and custody’ of the subject child to the Respondent. It was silent as to J.S.V.’s role. The parties continued to cohabit and the Respondent was a daily caregiver of the child for almost six months thereafter. J.S.V. had been a daily caregiver for the child since the child’s birth in October 2012 until December 2015.

[9] The Court running file (MCA 094682) which is the private litigation between the parents contains the following entries beginning January 29, 2015 and ending April 7, 2015:

January 29, 2015

Received application from B.A.J. via lawyer seeking relief pursuant to s 18 and 11 of the MCA (parenting and child support). Child subject of application is also subject of protection application (SFHCFSA 90098) Duty conciliator associated the two files which are to travel together until the Minister's protection application is resolved including to the above previously scheduled 15 min review hearing. File transferred to assistant to issue notices and documents to applicant's lawyer for distribution.

Direction to Disclose issued to J.S.V. for his Parenting Statement and Statement of Income with disclosure due date to be within 15 clear business days from receipt; forwarded to Lola Gilmer (via interdepartmental mail) on today's date for delivery upon Cathy Logan. Duplicate documents returned.

Notice of Application filed by Lola Gilmer, counsel for B.A.J., pursuant to the MCA ss. 18 and 11, seeking an order for custody and child maintenance.

April 7, 2015

Agreement to terminate CFSA proceedings on the condition of MCA Order going forward. Ms. Gilmer will prepare MCA Order: child in primary care and custody of the mother and silent on access. Ms. Webb shall prepare Termination Order on CFSA matter and give it to Ms. Gilmer who is to submit both Orders together to the Court for issuing.

. . . . .

[10] The child protection file contains the following entries beginning on March 4, 2014 and ending April 7, 2015:

March 4, 2014

Matter scheduled for Five Day Hearing. Affidavit of Service filed – both Respondents served on 27th February 2014.

Seeking waiver on J.S.V. - he just returned to the Province on Monday. The Minister is requesting a finding of reasonable and probable grounds - child to remain in interim care and custody of the Minister with access to both

Respondents.

Respondents have contacted Legal Aid and B.A.J. has been assigned a lawyer.  
Possibility of a family placement.

Court makes the necessary finding that there are reasonable and probable grounds to believe that the child, M.J.J., is in need of protective services, access to both Respondents. All other matters will be deferred to completion of Interim Hearing.

Matter adjourned for completion of interim hearing (15 mins.) with Justice Beaton - thereafter to be returned to Justice MacDonald

March 25, 2014

Matter re-scheduled to this date due to impending storm on March 26th, 2014; Minister is not asking to complete hearing today, just to extend outside date to early next week; Ms. Webb will send J.S.V. a letter to advise him of next court appearance; all parties in agreement to extending outside date. Outside date extended (to April 2nd, 2014). Parties to return for Completion of Interim Hearing on April 2nd, 2014 for 15 minutes (before BAM).

April 2, 2014

The 30-day Hearing was held on this date. OUTSIDE DATE IS - May 26, 2014 - The Minister is seeking to complete the Interim Hearing on this date with a Temporary Care & Custody Order placing the child in the Agency's care. The Respondents will have supervised access as arranged by the Agency. The Minister is wanting the Court to grant Orders for Production from the IWK Health Centre and the QEII Health Sciences Centre. B.A.J.'s mother has come to NS from Mexico. Mr. Matheson's client is consenting to the Interim Order and the Orders for Production.

B.A.J. is hoping for a family placement with her mother. J.S.V. is also consenting and supports B.A.J.'s plan. J.S.V. has started his counselling. The Minister will work with J.S.V. in setting up an access schedule.

By consent the Court finds that there continues to be reasonable and probable grounds to believe that the child is in need of protection and grants the Minister's order as well as the Orders for Production.

Matter Adjourned to April 30, 2014 Pre-trial to Protection Hrg. (LJD)

April 30, 2014

A pretrial prior to protection was held on this date. Outside date is May 26, 2014. The Minister is proposing, under a third-party supervision order, that the child be placed in the care of R.O. the child's grandmother (speaks very little English, B.A.J. translated for the court and to Mr. Matheson). The child will be transitioned back to the home, with the hopes that an Order will be granted before the protection date of May 26, 2014.

In the Order the Minister will be requesting that J.S.V. will not be residing with the child and have not contact, unless supervised with the agency office.

Matter adjourned to a Protection Hearing on May 21, 2014 (BAM).

As agreed on by all parties Ms. Webb will appear with and an Order during a 15 minute appearance to get the courts consent to the Order prior to May 26

May 21, 2014

Order presented, signed and returned to counsel for issuance and distribution. Matter remains adjourned for pre-trial prior to Disposition Hearing on June 17/14.

June 17, 2014

Pre-Trial Prior to Disposition held today, with the outside date for a disposition finding being August 21, 2014.

The Minister will be seeking a Disposition Order on the same terms and conditions as the Protection Order of May 21, 2014.

The parties are working on a parenting plan to address their parenting issues and to ensure what has brought them before the court does not reoccur, and wish to return closer to the outside date for disposition.

Adjourned to August 13, 2014 (BAM).

August 13, 2014

Ms. Gordon advised the court that the spelling of B.A.J.'s name is incorrect in the style of cause and seeking permission to change that going forward. Seeking to continue the order of June 17 on the same terms/conditions. A case conference is going to be scheduled. Gerald Hann is able to do a psychological assessment on B.A.J. and a report will be available in November.

Mr. Matheson advised that his client is prepared to proceed as indicated, however is looking for unsupervised access.

Ms. Logan consents and advised that her client is also looking for unsupervised access.

The court grants the order of June 17 to continue. It is noted that there is the issue of moving forward to expand access which will be discussed at the case conference.

MATTER ADJOURNED FOR REVIEW (15 mins)

December 17, 2014

Review Hearing held on this date. Ms. Webb advised the Court that there is no need for the new order and same terms and conditions of the current order will continue; case conference is to be held in January to discuss access. Ms. Logan is consenting. Mr. Matheson advised that he will finalize parenting plan with his client by the end of next week and there is also possibility of filing new MCA Application.

Matter adjourned for further Review Hearing in February.

February 26, 2015

Minister is in a position should the parties come to an agreement under the MCA, the Minister is willing to terminate the CFSA; child in the care of her mother; Ms. Gilmer has had some difficulty re: solicitor/client relationship; B.A.J. has prepared her own documents in the form of affidavits she wishes to file; the court advised her that her documents needed to be filed the way they would normally be; Ms. Logan has commenced an MCA; waiting for draft order.

Parties to return in 4 weeks for a 15 minute Review Hearing (before BAM).

Court Adjourned

April 7, 2015

Review Hearing scheduled for today's date. There is agreement to terminate CFSA proceedings on the condition of MCA Order going forward. Ms. Gilmer will prepare MCA Order: child in primary care and custody of the mother and silent on access. Ms. Webb shall prepare Termination Order and give it to Ms. Gilmer who is to submit both Orders together to the Court for issuing.

[11] The trigger for the involvement of the child protection authorities in 2014 was the fact the parties' child was left alone by her mother, when J.S.V. was out of the Province. The mother was threatening or planning to commit suicide when J.S.V. left her because of conflict in the relationship. As part of the ensuing child protection proceeding, the mother was ordered to undergo a psychological assessment.

[12] The report prepared details a history of serious mental health conditions experienced by her. Mental health assessments dated 2004 and 2005:

“indicate Axis II personality features and traits including personality disorder and Cluster B (erratic and dramatic) features and traits. Her reported history is consistent with the early childhood experiences, which create such character disturbances in individuals with borderline and Cluster B personality disturbances.

Clearly the history reported above does not match what B.A.J. reported to the current assessors. Rather than characterize B.A.J. as being untruthful to the undersigned, her unrealistic reports of her childhood may be more indicative of her psychological defenses, and unconscious factors. However, it is also possible that she likely realized the present assessment could impact her parental rights and she may have chosen to misrepresent her history, consciously or unconsciously.”

[13] J.S.V. testified that he only agreed to the term of the 2016 order giving care and custody of his child to his then partner because he believed it would result in the child protection file being closed. He did not intend to sever his relationship with his child nor did it. As observed, he, the child and the child's mother cohabited until December 2015.

[14] For ease of reference, I reproduce clauses 1-4 of the 'private' consent order flowing from the April 7, 2015 appearance:

1. B.A.J. is granted care and custody of the child, M.J.J., born on \*\*.
2. The issue of child maintenance is adjourned without day.
3. B.A.J. is hereby authorized by the Court to obtain or renew a passport for the child, M.J.J, born on \*\*, at any time, without the need for the consent of any other person.

4. B.A.J. is hereby authorized by the Court to travel with M.J.J., within or outside of Canada, at any time, without the need for the consent of any other person.

[15] J.S.V. came home in December 2015 and discovered his family had left. He has been attempting to find his child ever since.

[16] J.S.V. exchanged text messages with B.A.J. wherein he sought to make arrangements to see his child and she purported to be interested in cooperative in this regard.

[17] However, she was not. In response to J.S.V.'s efforts to locate his son, B.A.J. applied for and was granted an emergency protection order in January 2016.

[18] Clearly, in reality, B.A.J. was contemplating a way to exclude J.S.V. from the child's life and hers. By seeking an emergency protection order 'EPO', she accomplished this objective immediately. An 'EPO' is an '*ex-parte*' order, i.e. one that can be sought and granted solely on the evidence and submission of one party to a Justice of the Peace and considered and granted in the absence of the other party. It is provided for by the provisions of the *Domestic Violence Intervention Act*, S.N.S. 2001, c 29. The statute provides that the order may be reviewed/challenged before a Supreme Court Judge within thirty days of its issuance.

[19] In an effort to find his child, J.S.V. approached this Court in March 2016. He first appeared before me on April 19, 2016. The Court Running File relevant to the private litigation was reactivated and contains the following record:

March 11, 2016

Notice of Variation Application filed by J.S.V., pursuant to the MCA s.37, seeking a variation of access.

March 14, 2016

Notice of Variation Application and supporting documents filed by J.S.V., forwarded to Intake for review.

March 17, 2016

NSEAF done over the phone this date with Joshua.

NSEAF is an assessment tool used to assess the presence or risk of domestic violence which all parties must respond to.

**Current Proceeding April 19, 2016 forward**

[20] The following is a snapshot of the Court's dialogue with J.S.V., beginning on April 19, 2016:

April 19, 2016

J.S.V. first appeared before me. He advised the Court of his efforts to serve the Respondent and that he wished to locate his child and see his child. He said he had some email communication with the Respondent and someone named Mark, but that was all he knew of her situation.

He said she told him to leave her alone. He told the Court he had contacted the Halifax Regional Police and was advised to go through the Court process. The matter was adjourned until June 2, 2016 to give the Court an opportunity to locate the Respondent.

The Court described the situation as serious and undertook to maintain close management of the file.

June 2, 2016

The Court again discussed with J.S.V. ways of locating the Respondent and reported the Court had not been successful in locating her. The Court raised the possibility of obtaining the assistance of the R.C.M.P. J.S.V. was advised to return the matter to Court when he could and to ask that the matter be returned to Associate Chief Justice O'Neil. Discussions pertained, in part, to subpoenaing a person in Cape Breton who may know of the Respondent's location.

July 27, 2016

J.S.V. appeared before me again on July 27, 2016 and reported on his renewed contact with the Halifax Regional Police and his conversation with one Constable Mandru. J.S.V. said he was told the Respondent was in the Witness Protection Program and that he, Constable Mandru, would make sure she received a subpoena. J.S.V.'s first conversation with Constable Mandru was June 10, 2016.

He told the Court he received a follow up phone call from Constable Mandru the week preceding the July 27, 2016 court appearance and was advised he should stop trying to find the Respondent and if he did not, he could be charged. J.S.V. expressed dismay that the Respondent would be in the Witness Protection Program.

The Court and J.S.V. then proceeded in the belief that the Respondent was in the Witness Protection Program and protected by state agencies and special legislation.

September 28, 2016

On September 28, 2016 the matter was again before the Court. This time, Justice Legere Sers filled in for me. A lawyer with Nova Scotia Legal Aid appeared for the first time. In response to why she was there, the Court was told she was there on Nova Scotia Legal Aid's behalf and not on behalf of any of the parties.

J.S.V. said he had served his affidavit and related documents on Constable Mandru in response to his having told him that he would ensure they were delivered to the Respondent. J.S.V. advised the Court, the police told him once again, the preceding week that the Respondent was in the Witness Protection Program and someone would be in Court (on the 28<sup>th</sup>) to answer questions. It now appears this reflected the expectation of the Halifax Regional Police that a representative of Nova Scotia Legal Aid would be providing that information.

The Court repeated that proof of service on the Respondent was necessary for the matter to proceed and to have the merits of J.S.V.'s application considered.

J.S.V. described recently meeting Constable Mandru and a second police officer in the parking lot near the Cole Harbour Canadian Tire.

The matter was adjourned to permit Constable Mandru to be served. Again, J.S.V. spoke of the caution he had received about attempting to contact the Respondent.

October 21, 2016

The matter was before me on October 21, 2016. J.S.V. reported that he called the Halifax Regional Police on September 29, 2016 to express concern that no one from the police force appeared in Court on September 28. He said he received a return call from Sergeant Chambers on the 30<sup>th</sup> and was assured someone would be in Court on October 21, 2016.

The Nova Scotia Legal Aid lawyer was again in Court.

The matter was again adjourned to permit J.S.V. to subpoena a representative of Halifax Regional Police.

November 17, 2016

J.S.V. confirmed having served the police. He said he met Sergeant Bart Ross since the last Court appearance. Sergeant Ross suggested he talk to the Nova Scotia Legal Aid lawyer who has been observing the proceedings. That lawyer was again in Court this day. In response to a question from the Court, she said she has been observing on behalf of Nova Scotia Legal Aid.

J.S.V. said he was told by Sergeant Tanya Chambers on November 8 that he should get some answers on November 17, 2016 because Constable Mandru would be present. J.S.V. also said he was told by Sergeant Ross the Respondent may be the subject of 'federal relocation'. Constable Mandru did not appear November 17, 2016.

The matter was put over to December 13, 2016 to permit J.S.V. to subpoena the Police Chief.

December 13, 2016

At the commencement of proceedings on December 13, I reviewed, in detail, the chronology of the appearances in the current proceeding.

The Legal Aid lawyer who had been in attendance was once again in attendance. She had been subpoenaed by J.S.V. In addition, Constable Mandru was present.

Constable Mandru testified and confirmed he believed the Respondent was aware of the proceeding and was served. He confirmed having discussed the proceeding with Constable Ian Nielsen, "the liaison Constable from the Halifax Regional Police with the Witness Protection Program".

Constable Mandru confirmed his July 18, 2016 telephone call to J.S.V. cautioning him about his efforts to locate the Respondent and his child. He said he had done so at the request of Constable Nielsen. He confirmed he was told to reference the Witness Protection Act and the fact J.S.V. might be charged if he persisted. He said he was told to communicate this by the Agency that had the Respondent in witness protection.

Constable Nielsen works in the regional office of the RCMP located in the Burnside Business Park, Dartmouth.

Constable Mandru explained that local police forces have liaison officers with the Witness Protection Program but in fact, the RCMP runs the entire program.

He further confirmed having provided Constable Nielsen with documents J.S.V. gave to him when he and J.S.V. met in the parking lot next to the Cole Harbour Canadian Tire store.

Constable Mandru also said he believed the Respondent had legal counsel.

The Court also advised the lawyer for Nova Scotia Legal Aid that the role of Nova Scotia Legal Aid gave rise to obvious questions.

The matter was adjourned to February 21, 2017

February 21, 2017

On February 21, 2017 Ms. Melissa Grant appeared on behalf of Constable Nielsen. Ms. Grant is a lawyer employed by the Federal Department of Justice. In advance of her appearance on February 15, 2017, Ms. Grant filed a written submission.

In her submission she said she represented the Attorney General of Canada and was counsel for the RCMP and writing in response to a subpoena directed to Constable Nielsen. She confirmed that Constable Nielsen is an officer with the Halifax Regional Police, working on secondment with the RCMP.

In her submission, the Court is told the following:

In particular, Constable Nielsen has no personal knowledge as to whether B.A.J. was ever actually provided with court-issued subpoenas, and he does not know either the current or former address of or contact information for B.A.J.. Further, even if he did, he could not discuss that in open court without revealing information protected by public interest privilege and without potentially violating paragraph 11(1)(c) of the *WPPA*.

At all material times, Constable Nielsen was acting in a liaison capacity between Constable Mandru/J.S.V. and another police agency [which I will refer to here as “police agency X”] who had B.A.J. in their protection and who knew of her exact whereabouts. Constable Nielsen does not know where B.A.J. resided in the fall of 2016 nor where she may currently reside. Constable Nielsen mailed the subpoena to police agency X, whose officers could communicate with B.A.J. directly. Constable Nielsen followed up with an officer with police agency X (whom I will refer to as “Officer Y”) at police agency X on September

15, 2016. Consequently, I note that Constable Nielsen no longer has a copy of that document which forms the second part of the documents/information demanded by the subpoena to Constable Nielsen because he sent it to police agency X, and receipt was confirmed on September 15, 2016 by Officer Y.

In her oral submission in response to questions from the Court. Ms. Grant confirmed the Respondent is not subject to the protection of the Federal Witness Protection Program.

Also, on February 21, 2017 J.S.V. confirmed that in January, Constable Nielsen had given him the name of a police officer in Quebec to contact to obtain further information about his child. He said he spoke to that officer. The Court later learned the police officer in question is Lieutenant Benoit Vigneault. That officer spoke to the Court via video in the presence of his counsel on April 11, 2017. He participated by telephone on April 7, 2017 solely to obtain permission to appear by video on April 11, 2017 in lieu of personally appearing.

On February 21, 2017 J.S.V. described his communication with Lieutenant Vigneault as conciliatory in tone and approach with the objective of resolving what was becoming a complicated (messy) situation. Lieutenant appeared frustrated that he and his police force were being asked to justify their involvement in this matter. He viewed that involvement to be in response to a specific request from another police force and pursuant to a resulting obligation to assist.

Ms. Grant advised the Court that Constable Nielsen provided the documents delivered to him and originating with J.S.V. to the Surete de Quebec who subsequently confirmed that the Respondent had received the documents.

The Court declined an offer from Ms. Grant to consider Constable Nielsen's affidavit addressing the matters before the Court given the offer was premised on the affidavit not being publicly available or available to J.S.V.

Subsequent to her appearance on behalf of Constable Nielsen on February 21, 2017, on March 15, 2017 Ms. Grant provided the Court with a copy of the redacted affidavit of Constable Nielsen.

Paragraph 17, 20, 21, 22, 23, 29, 30, 31, 32, 46, 48, 49, 51 and 60 of that affidavit reads as follows:

17. .... Further told me that the .... Legal counsel would contact legal aid in Halifax to make arrangements. I provided .... With the contact information for the Nova Scotia Legal Aid worker in charge of our of province requests, Ms. Bev Bishop. .... stated that he would contact

Ms. Bishop to make arrangements for legal counsel to be present on behalf of B.A.J. at the September 28, 2016 hearing.

20. On October 21, 2016, I received a phone call from Sgt. Chambers who indicated that J.S.V. had called and that, again, no legal counsel had appeared on behalf of B.A.J. at the trial earlier that day and that he was now threatening to subpoena the members of HRP that he has been dealing with in order to try to obtain further information as to what is going on with B.A.J..
21. I immediately called ..... Who was on the road but stated that he would look into this first thing Monday morning. I told ..... that I thought it was paramount that someone with Legal Aid be present to represent B.A.J. at the next scheduled court date which I understood from Sgt. Chambers to be November 17, 2016.
22. On October 24, 2016, I received a phone call from ..... [I believe this is the correct spelling of his last name, but I am not 100% sure], another member of ..... [I do not know his rank], who advised of his understanding that a lawyer from Nova Scotia Legal Aid would be representing B.A.J. at the next scheduled appearance on November 17, 2016.
23. .... stated that he informed Nova Scotia Legal Aid that he had concerns about J.S.V. sending subpoenas to police officers in an attempt to locate B.A.J. as this could lead to a compromise of their client's safety.
29. On that same date I attempted to contact ..... and ..... at which time I left a voice message for both advising that J.S.V. had filed a complaint against Cst. Mandru of HRP. Later that same date I received a text message from ..... who indicated he would speak with Nova Scotia Legal Aid and call me back.
30. On November 7, 2016, I received a voice message from Sgt. Chambers who stated that she had spoken to Krista Forbes, a lawyer with Nova Scotia Legal Aid and that Ms. Forbes had told her that she had not been formally retained to represent B.A.J. in court proceedings. I then contacted ..... and told him this information.
31. At that time ..... indicated that Ms. Forbes would not discuss matters with him directly, and I expressed my concern that there was a strong possibility that Sgt. Tanya Chambers and/or Cst. Mandru would be required to testify on November 17, 2016, and that, as a result, my involvement in this matter, which to this point has been restricted to

officer to officer communications, may become known publicly and that J.S.V. may attempt to subpoena me in the future.

32. On November 15, 2016, I received a phone call from ..... At this time, ..... told me that he had received a phone call from B.A.J. on that date and that she told him that she and her son had moved and he should not try to find her. .... told me that B.A.J. was angry when she called and that she blamed the police for having to move. .... then told me that she ..... would no longer be involved with these clients and that if anything changes in the future he will contact me.
46. .... also asked me to contact the person he understood to be B.A.J.'s lawyer, Ms. Forbes, to let her know that this was being done. I told ..... that I would do this. I then attempted to contact Ms. Forbes at Nova Scotia Legal Aid and spoke to her assistant, Ms. Lynn Wade. I told Ms. Wade that I would be contacting J.S.V. that day and providing him with a contact number for the ..... I left Ms. Wade my cell phone number, and she stated that she would pass this information on to Ms. Forbes.
48. On that same date I received a phone call from ..... who asked me if I had spoken to Ms. Forbes yet. I said no, but that I had passed on the information to her assistant. .... told me that he wanted me to ask Ms. Forbes if it was okay to pass on the phone number to J.S.V. and to speak with her first before calling J.S.V. I told ..... that was not what he had told me, only that he wanted me to inform her of this information, not to ask her opinion. I also told him that I had called J.S.V. that morning. .... stated that he would look into this matter further.
49. On that same date I received a phone call from Ms. Forbes. I told Ms. Forbes that ..... wanted me to talk to her about forwarding the telephone number for ..... J.S.V., which I had already done. Ms. Forbes stated that it appeared that they were asking for a legal opinion from her and that due to the ethical rules and policies that she is bound by that she would not be able to comment on this matter even if I had called her earlier before giving the telephone number to J.S.V..
51. .... said that it was unfortunate that J.S.V. now knows what Province the client is currently residing in due to J.S.V. having the phone numbers. I then told ..... that ..... had given me the number earlier that day to pass on to J.S.V. and that he was fully aware that I would be forwarding this number. .... agreed that J.S.V. was going to find out what agency was protecting the client eventually as he has been persistently trying to find out further information through various court appearances.

60. On that same date I called ..... at which time he explained that B.A.J. was requesting an immediate identity change through ..... and that she was threatening legal action against both himself and ..... As such, ..... stated that the client was spoken to by ..... and I understand ..... informed her that ..... the matter would be referred back to the agency who originally requested their assistance .....

### **Change of Circumstance**

[21] I am satisfied on a balance of probabilities there has been a change of circumstances that permit the Court to consider J.S.V.'s application to see his child. Clearly, the parties contemplated that his relationship with the child would continue. The Respondent secretly left with the child and has actively avoided this Court process and actively hidden the child from J.S.V..

### **Notice to the Respondent**

[22] I am satisfied the Respondent is aware of these proceedings. This has been confirmed by witnesses who gave evidence on behalf of the police. These witnesses confirmed what J.S.V. told the Court of his conversations with them in which they confirmed that she had knowledge of these proceedings.

[23] I am satisfied the Respondent has repeatedly chosen to not appear; is ignoring this process and she continues to conceal her whereabouts and that of J.S.V.'s child. I am further satisfied that her efforts have been and continue to be aided by 'the police'.

### **Role of Police**

[24] J.S.V. is in the unenviable position of not being able to turn to the police for assistance in locating his child. Given the role of individual police officers and police departments or leadership at various levels of these police forces in assisting the Respondent to hide the subject child from her father, this is understandable. This Court shares some of J.S.V.'s concern given the real possibility that errors were made by police forces in responding to the circumstances of this family. Asking these forces to participate in exposing their "errors" places them in a real or perceived conflict of interest which may affect their motivation to assist. To date, these forces have not voluntarily come forward to assist the Court.

### **Is the Respondent in Witness Protection?**

[25] For months J.S.V. was lead to believe that the Respondent was in a witness protection program; managed by the RCMP and he was told the Halifax Regional Police were aware of the same and could ensure she received ‘Court documents’ flowing from this proceeding. A series of subpoenas resulted in the appearance and testimony of a police officer, Constable Mandru, an officer with the Halifax Regional Police on December 13, 2016 and later the appearance of Melissa Grant, legal counsel from the Federal Department of Justice on behalf of an undercover RCMP officer on February 21, 2017. As a result, evidence has been placed before the Court which is inconsistent with the role of these police forces as first described in other evidence.

[26] In addition, J.S.V. has given evidence to the Court as to what he was told.

[27] The earlier summary of the reports to this Court highlight the fluid, changing nature of ‘the facts’ and more particularly, the status of the Respondent mother as a person in witness protection; the whereabouts of the subject child and the role of at least three (3) police forces in aiding and abetting the Respondent’s efforts to avoid this process and to conceal the child’s location from his father.

### **Conclusion**

[28] The Court is satisfied that the Respondent is aware of these proceedings and has chosen to not participate. The Court accepts the explanation of J.S.V. that he consented to the Respondent mother having care and custody of his child as a necessary step to ending a child protection proceeding. I am also satisfied that neither party contemplated, at the time, that the child would be forever removed from her father and have no contact with him.

[29] I am satisfied that J.S.V. is, as he testified to, a call centre manager - diligently working and supporting himself and had been supporting his family. This observation is relevant to an assessment of the possible basis for Respondent mother being in the witness protection program. Persons are put in a witness protection program in exceptional circumstances arising from their having evidence relevant to terrorist activities or the activities of organized criminals.

[30] The Department of Justice lawyer who appeared before me on February 21, 2017 conceded there was no reason to believe J.S.V. was a terrorist or involved in organized crime.

[31] I am satisfied on a balance of probabilities the subject mother will not respond to court processes and further that she has chosen to take steps to conceal the location of the subject child from her father and to avoid the reach of any court interested in having the merits of the father's application considered. I find it is in the best interests of the child to have the application of J.S.V. considered by this court.

[32] Regrettably and notwithstanding the opportunity and in in my view the obligation for a more fulsome accounting of their respective roles; the police forces involved have not satisfactorily explained their actions in assisting the mother to hide J.S.V.'s son. It appears, at this point, the involved police forces were duped by or on behalf of the subject mother.

[33] A warrant authorizing the arrest of the mother will issue. She is to be brought before this court. Obviously, a determination as to whether criminal charges are warranted given provisions of the Criminal Code dealing with child abduction is not for me to make.

[34] The *Parenting and Support Act* at s.18(6) requires me to consider a non-exhaustive list of circumstances when determining the best interests of the subject child at this juncture of the process:

18(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

(a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

- (d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;
  - (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
  - (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;
  - (g) the nature, strength and stability of the relationship between the child and each parent or guardian;
  - (h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;
  - (i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child; and
  - (j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on
    - (i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
    - (ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.
- (6A) In determining the best interests of the child on an application for contact time or interaction by a grandparent, the court shall also consider
- (a) when appropriate, the willingness of each parent or guardian to facilitate contact time or interaction between the child and the grandparent; and
  - (b) the necessity of making an order to facilitate contact time or interaction between the child and the grandparent.

[35] Given the evidence before me, J.S.V. offers the more stable and secure circumstances (s.18(6)(a)); obviously, B.A.J. does not support the child having a relationship with J.S.V. but the reverse is true of J.S.V. (s.18(6)(b) and (i)); J.S.V. has a history (s.18(6)(c)) and J.S.V. offers a stable and predictable life for the child (s.18(6)(d)).

[36] I have considered the issue of domestic violence as provided by s.18(6)(j). These parents parented together for six months after the child protection authorities were involved. The trigger for the involvement of the child protection authorities being involved was the mother's decision to leave the child alone.

[37] I am further satisfied that J.S.V. will meet his responsibilities mandated by s.18A of the Statute.

[38] A custody order transitioning primary care of the subject child to J.S.V. will also issue. Transitioning the "care" of the child shall begin within seventy-two (72) hours of the child being returned to Nova Scotia. I will oversee the terms of the child's transition to J.S.V. and hear from child protection authorities if such an opportunity is requested by them. Once located, the child shall be removed immediately from the care of the mother. This direction reflects the court's concern about the state of the mother's mental health, a state that may be affected by the pending removal of her child from her care. The child shall be immediately entrusted to the care of the local child protection authority when taken from the mother.

[39] Twenty-four (24) hours before delivering the child to J.S.V., the Nova Scotia Minister of Community Services shall be advised of the same. Any application deemed appropriate and relating to the care and custody of the subject child shall be presented to me on an urgent basis for consideration.

[40] Finally, a more thorough inquiry into the role of state authorities in this matter is outside the capability of this Court. It is hoped that the organizations involved in this saga do make the appropriate inquiries. In addition, those bodies and individuals with a mandate to oversee these organizations may wish to do the same.