

CHILDREN'S COURT OF VICTORIA

Applicant: (Name removed) "the protective worker"
[Department of Human Services]

Child: (Name removed) "JB" [08/09/2007]

<u>JUDICIAL OFFICER:</u>	PETER T. POWER
<u>WHERE HELD:</u>	MELBOURNE
<u>DATE OF HEARING:</u>	12-13, 20 February 2009
<u>DATE OF DECISION:</u>	20 February 2009
<u>CASE MAY BE CITED AS:</u>	DOHS v Mr O & Ms B
<u>MED. NTRL. CITATION:</u>	[2009] VChC 2

REASONS FOR DECISION¹

Child protection – Protection application – Likelihood of sexual abuse and associated physical & emotional abuse – Father found guilty of possession of child pornography and using service carrier to offend – Father a registered person under the *Sex Offenders Registration Act 2004* – Mother willing to return to Tasmania - Whether in best interests of infant daughter aged 1y5m to place her in mother's full time care on supervision order or to place her on a custody to Secretary order – Whether respite care condition may be included in supervision order - Whether father's access may occur at his home in Victoria and be supervised by paternal grandmother – *Children, Youth and Families Act 2005*, ss.8, 10, 162(1)(c), 162(1)(d), 162(1)(e), 280

PARTY	COUNSEL	SOLICITOR
Department of Human Services [Child Protection]²	Mr S Gelfand	Court Advocacy Unit – Ms Armstrong
Mother	Mr M Turner	Dowling & McGregor
Father	Mr M Kats	Victoria Legal Aid
JB	Unrepresented – Too young to give instructions	

¹ Any party or legal representative who wishes an electronic copy of these Reasons for Decision and/or of my notes referred to therein should provide an email address to the Principal Registrar at Melbourne Children's Court and the requested file(s) will be provided without charge.

² Hereinafter 'DOHS' or 'the Department'.

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1. STRUCTURE OF FAMILY & EXTENDED FAMILY

1.1 THE CHILD & HER PARENTS

The child the subject of this case is (name removed) “JB” [1y5m, 08/09/2007]. Her mother is (name removed) “the mother” [33y, 09/03/1975]. Her father is (name removed) “the father” [32y, 16/03/1976]. The mother and the father commenced living together in about May 2006.³ Since then their relationship has been “off and on”.⁴ It was certainly “off” when the mother made a very fulsome and detailed statement to police on 12/02/2008 about the father’s offending.⁵ However it was revived on at least two occasions since then and the mother is currently approximately 3 months pregnant with a second child by the father.⁶

Two days after she had returned from Tasmania with JB on 10/12/2008, the mother said to protective workers (name removed) “the protective worker” & Ms (name removed) “Ms K” that “she strongly wants to be with the father”⁷. Although the mother has remained living in the same house as the father and his mother, I accept her evidence on oath in this Court that the relationship is now “dead” and I consider it likely to remain so:

Mr Turner- “What’s your current position re your relationship now?”

The mother- As I put it, it’s dead. There is nothing between us to keep us together. It’s pointless staying together just for the sake of a child. You need more than that to stay in a relationship.

Mr Turner- When did you switch [your opinion]?”

The mother- Mainly because he still had a negative attitude in life and wasn’t trying to improve things or work things out or stuff.

Mr Turner- Historically you have left and come back, left again and come back. Why is this different?”

The mother- I was hoping things would be different so we could be a natural family for JB.

Mr Turner- You have made a decision you are not going to reunite?”

³ Information contained in the mother’s statement to police dated 12/02/2008. In her *viva voce* evidence at p.21 the mother was unsure of the month but she was vague on dates generally. I draw no inference against her for that. On 30/12/2008 the father told Dr (name removed) Dr GP that “he had been with his current partner for 2½ years”: see Dr GP’s report at p.3.

⁴ Information provided by the father to Dr GP on 30/12/2008 and referred to at p.3 of Dr GP’s report.

⁵ See p.1 of the mother’s statement.

⁶ See DOHS’ Addendum report of the protective worker dated 06/02/2009 at p.2.

⁷ See DOHS’ Application & Disposition report of Ms (name removed) “Ms S” dated 02/01/2009 at p.8.

The mother- I've realized now it's pointless. Nothing has changed or is going to change. It's not worth it."⁸

The central issue in this case is whether the parental relationship is indeed "dead" and whether or not the mother can be trusted to ensure that JB has no unsupervised contact with the father.

1.2 THE MATERNAL EXTENDED FAMILY & HALF-SIBLINGS

The mother's mother, Ms (name removed) "the maternal grandmother", lives at (address removed), a suburb of (location removed). She is 59 years old. The maternal grandmother also has a brother and sister. Her brother lives in (location removed) and her sister lives in (location removed).⁹

The mother's father lives in (location removed), a suburb of Melbourne. She says that she has "heaps of family members scattered around in Victoria"¹⁰. However, none of the Victorian extended family members are able to provide her with accommodation:

"There is no room at my dad's place. My cousin (name removed) "A" has given me one chance. I can't go back again. None of the other relatives will give me a chance. That's why I prefer to go back to Tassie with my daughter and be in a settled environment and stuff."¹¹

Asked whether she had more important supports in Tasmania or in Victoria, the mother answered, reasonably enough:

"I don't know how to answer except I would like to keep in contact with both. But I have more to rely on in Tasmania than over here."¹²

The mother has 3 older children all of whom have for a significant period of time resided out of her care: (name removed) "AB" [14y2m, 30/11/1994] lives with her maternal grandmother pursuant to Family Law Act orders; (name removed) "RB" [11y2m, 30/12/1997] lives with his maternal aunt on a long-term guardianship order which lasts until his 18th birthday under the relevant Tasmanian child protection

⁸ At p.24 of my notes.

⁹ This information was provided by the mother through her counsel in answer to questions by me.

¹⁰ Answer of the mother in cross-examination by counsel for the father at p.25 of my notes.

¹¹ Evidence of the mother in cross-examination by counsel for DOHS at p.28 of my notes.

¹² In cross-examination by counsel for the father at p.25 of my notes.

legislation; (name removed) “CB” (aka (name removed)) [02/11/2000, 8y3m] lives with his father.¹³

1.3 THE PATERNAL EXTENDED FAMILY & HALF-SIBLING¹⁴

The father is an only child.¹⁵ His mother, Ms (name removed) “the paternal grandmother”, lives at (address removed). She is aged 58 and is currently employed as an activities worker with the elderly. His father, who had worked as a public servant in two different positions of some responsibility and authority, committed suicide by hanging in 1996 at the age of 42 following allegations of rape.

The father’s parents separated when he was about 3 years old. His mother remarried and the father regards his step-father, a police officer, as having been a very positive figure in his life. However, the father has not had much contact with his step-father since he and his mother separated when the father was about 11 years old.

After having had relationships at the age of 18 which lasted for 18 months and again at the age of 23 which lasted for 2 years, the father had another relationship from the age of 25 which subsisted for 4 years. From this issued a son (name removed) “S” who is now aged 5 and whom the father has not seen since the relationship ended.

2. CURRENT PROTECTION APPLICATION & ORDERS

2.1 PROTECTION APP’N BASED ON LIKELIHOOD OF FUTURE HARM

On 12/12/2008 at DOHS’ request the father took JB to DOHS’ offices at (location removed).¹⁶ There DOHS apprehended her and filed a protection application on the grounds set out in s.162(1)(c), 162(1)(d) & s.162(1)(e) of the *Children, Youth and*

¹³ See p.10 of my notes. It appears that until early 2008 RB had been living in fostercare but was returned to live with extended family because his behaviour in fostercare was out of control: see answer of the protective worker in response to a question by me.

¹⁴ The information in this sub-section is taken from the report of Dr GP dated 31/12/2008 at pp.2-3.

¹⁵ His mother had been informed that she would be unable to conceive following complications after the father’s birth.

Families Act 2005.¹⁷ Each of those sections has two limbs, an actual harm limb and a likelihood of harm limb:

“(1) For the purposes of this Act, a child is in need of protection if any of the following grounds exist-

- c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child’s parents have not protected, or are unlikely to protect, the child from harm of that type;*
- d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child’s parents have not protected, or are unlikely to protect, the child from harm of that type;*
- e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child’s emotional or intellectual development is, or is likely to be, significantly damaged and the child’s parent have not protected, or are unlikely to protect, the child from harm of that type.”*

There is no evidence that JB has suffered actual harm. The Department’s case is squarely based on the likelihood of harm limbs of paragraphs (c), (d) & (e) of s.162(1) as is tolerably clear from the inelegantly expressed disposition recommendation in the Application & Disposition report dated 02/01/2009:

“JB has been assessed as likely to suffer significant harm...In the absence of effective intervention or change, it is believed likely that JB may suffer future harm of these/this type(s) and that has not and is unlikely to protect JB from harm of this type.”¹⁸

2.2 COURT ORDERS

On Friday 12/12/2008 a Bail Justice at (location removed) made an interim accommodation order placing JB in an out of home care placement. On Monday 15/12/2008 at Melbourne Children’s Court, the Department, the mother and the father were all legally represented. Uncontested by the parents Magistrate Heffey placed JB on an interim accommodation order in out of home care arranged through Ozchild. The IAO had the following 11 conditions:

- 1. Mother must accept visits from and cooperate with DOHS.**
- 2. Father must accept visits from and cooperate with DOHS.**
- 3. Mother must accept support services as agreed with DOHS.**
- 4. Father must accept support services as agreed with DOHS.**
- 5. Mother must go to counselling as agreed with DOHS and must allow reports to be given to DOHS.**
- 6. Mother must go to family violence counselling as agreed with DOHS and must allow reports to be given to DOHS.**

¹⁶ See DOHS’ Application & Disposition report of Ms S dated 02/01/2009 at p.8.

¹⁷ Hereinafter ‘the CYFA’.

¹⁸ DOHS’ Application & Disposition report of Ms S dated 02/01/2009 at p.3.

7. Father must go to counselling on anger management as agreed with DOHS and must allow reports to be given to DOHS.
8. Mother & father must allow the child to be taken to a paediatrician for assessment, must allow any recommended treatment to be carried out and must allow reports to be given to DOHS.
9. Mother must make best endeavour to find a suitable home.
10. Mother may have access with the child for a minimum of 3 times per week for 2 hours at times and places as agreed between the parties. DOHS or its nominee will supervise access unless DOHS assesses that supervision is not necessary.
11. Father may have access with the child once per week at times and places as agreed between the parties. DOHS or its nominee will supervise access unless DOHS assesses that supervision is not necessary. DOHS will assess any paternal family member as a suitable person.

This IAO was extended in the same terms every 21 days until the commencement of this contest on 12/02/2009. Since then I extended it on 12/02/2009 and on 13/02/2009.

3. POSITIONS OF THE PARTIES IN THIS CONTEST

This contest was listed as an interim accommodation order contest. At the outset counsel for DOHS said that the Department was seeking a continuation of the IAO to out of home care and ultimately a custody to Secretary order.¹⁹ However, both counsel for the parents opened with an implied request that the contest be converted to a final contest.

Counsel for the mother said:

“My client would consent to a supervision order. She would like to be allowed to return to Tasmania with the child on the basis she remains in Tasmania and has no contact with the father and be allowed to bring up her child in Tasmania with limited contact with the father being supervised. The change in circumstances is that she accepts there is no prospect of reunification in any form with the father. She is aware he has been convicted of child pornography and other charges. She understands there is no emotional or physical connection with him. She wishes to remain away from him and has no intention of reunifying. She sees no risk of him interfering with JB on the basis that she is domiciled in Tasmania and he in Victoria and he would only see her during strictly supervised contact...As early as next Tuesday she is in a position to afford the necessary air fares to go back to Tasmania with the child. She is happy to comply with any conditions DOHS deems appropriate to the best of her abilities. She appreciates DOHS has serious concerns about the father and she accepts those concerns are legitimate and does have the concerns herself. She acknowledges she didn't always have those concerns but the situation has changed in recent times. The major reason for the shift is that the father has

¹⁹ Opening statement of counsel for DOHS at p.1 of my notes.

pleaded guilty to various offences which he had previously indicated he would plead not guilty to.”²⁰

The father’s position was very similar to the mother’s and clearly demonstrated that he was putting JB’s needs well above his own. Counsel said:

“My client doesn’t oppose JB and the mother residing in Tasmania under a supervision order. His view is that the trauma suffered by JB by being separated from her mother is too great for him to make any demands in relation to JB living in Victoria. This is to ensure that JB doesn’t suffer trauma by separation from her mother. He agrees to access being supervised and wishes that to take place but acknowledges that it is going to be difficult with the distance involved. The orders that the father are subject to [namely community-based orders and registration under the *Sex Offenders Registration Act*] prohibit him from leaving the State of Victoria. Access can only occur in Victoria. Preferably access could be supervised by the paternal grandmother but the priority at the moment is allowing JB to return to her mother. Realistically that can only occur if the mother resides in Tasmania. The father emphatically denies allegations in relation to risks of him harming JB.”²¹

At the start of the second day of the contest counsel for DOHS advised that he had been instructed that the Department agreed with the IAO contest being transmogrified into a final contest in which the Department was seeking that JB be placed on a 12 month custody to Secretary order with 13 conditions:

1. Mother must accept visits from and cooperate with DOHS.
2. Father must accept visits from and cooperate with DOHS.
3. Mother must accept support services as agreed with DOHS.
4. Father must accept support services as agreed with DOHS.
5. Mother must go to family violence counselling as agreed with DOHS and must allow reports to be given to DOHS.
6. Father must go to family violence counselling as agreed with DOHS and must allow reports to be given to DOHS.
7. Father must go to counselling on anger management as agreed with DOHS and must allow reports to be given to DOHS.
8. Mother must make best endeavour to find a suitable home.
9. Mother & father must allow the child to be taken to a paediatrician for assessment, must allow any recommended treatment to be carried out and must allow reports to be given to DOHS.
10. Mother must attend a specialist assessment with VicPsychPlus to assess her capacity to protect the child from risk of harm from sexual abuse and/or sexual exploitation as directed by DOHS and allow any reports to be given to DOHS. Mother must follow any recommendations from the Specialist Assessment.
11. Father must attend a specialist assessment with VicPsychPlus to assess the level of sexual risk he poses as directed by DOHS and allow any reports to be given to DOHS. Father must follow any recommendations from the Specialist Assessment.

²⁰ Opening statement of counsel for the mother at pp.1-2 of my notes.

²¹ Opening statement by counsel for the father at p.2 of my notes.

12. Mother may have access with the child for a minimum of 3 times per week for 2 hours at times and places as agreed between the parties. DOHS or its nominee will supervise access unless DOHS assesses that supervision is not necessary.
13. Father may have access with the child once per week at times and places as agreed between the parties. DOHS or its nominee will supervise access unless DOHS assesses that supervision is not necessary.

Counsel for the Department said:

“Some consideration has been given overnight about the matter of a final disposition. In accordance with the wishes expressed by my friends, it would be in JB’s best interests for a final disposition to be made as a result of these proceedings. The Department wouldn’t be relying on any further evidence [over and above those already being called on an IAO contest] and would be working towards facilitating JB being in her mother’s care in Tasmania regardless of the outcome and to commence those as quickly as possible and the Department would be satisfied if the Court would be prepared to make a final order.”²²

In my view the Department’s concession about this being converted to a final contest was appropriate and correct.

In relation to condition 13, the Department does not agree that the father’s access be held at his mother’s home supervised by his mother.²³ Apart from the central issue of whether the more appropriate protection order for JB is a custody to Secretary order or a supervision order to the mother, the issue of the location and supervisor of the father’s access is the only other contested issue in this hearing.

4. REPORTS & OTHER DOCUMENTS

I have read the following tendered reports and other documents, all of which were tendered by DOHS:

	SHORT DESCRIPTION OF DOCUMENT	DATE
1	Pre-sentence report on the father prepared for Magistrate Grinberg [(location removed) Magistrates’ Court] by Dr GP ²⁴	31/12/2008
2	DOHS’ Application & Disposition report of Ms SS	02/01/2009
3	DOHS’ Addendum report of the protective worker	06/02/2009
4	Undertaking under s.272 of the CYFA signed by the mother	11/04/2008
5	Varied intervention order in which the respondent is the father	13/06/2008
6	Report of Dr (name removed) “Dr JG”, Forensic Physician ²⁵	11/04/2008

²² Comment by counsel for DOHS at the start of the second day at p.12 of my notes.

²³ See section 23 below.

²⁴ I draw no inference against the father for refusing to give permission for this report to be released to DOHS. As it was prepared by order of a magistrate, it ought only be released by order of a magistrate.

7	Police summary of offences prepared by Detective Sgt (name removed) “ Det. Sgt. McK”	25/01/2008
8	Police summary of offences prepared by LSC (name removed) “LSC B” ²⁶	18/01/2008
9	Police statement of the mother re the father’s offending	12/02/2008
10	Diagram of (address removed) drawn by the mother	---

5. WITNESSES

I heard evidence from the 5 witnesses detailed below:

THE FOLLOWING WITNESSES WERE CALLED BY DOHS		
	NAME	DESCRIPTION OF WITNESS
W1	Dr GP	Consultant Psychiatrist employed <i>inter alia</i> by the Community Forensic Mental Health Service of the Victorian Institute of Forensic Mental Health who conducted an assessment of the father on 30/12/2008 and provided a pre-sentence report dated 31/12/2008 to (location removed) Magistrates’ Court.
Adopted document 1		

W2	The protective worker	DOHS’ protective worker originally assigned to this case in September 2008 and currently allocated protective worker since 10/12/2008.
Adopted documents 2-5 Document 6 tendered through her		

W3	Det. Sgt. McK	Police officer who was the informant in the sex charges against the father.
Adopted documents 7-9		

THE FOLLOWING WITNESS WAS CALLED BY THE MOTHER		
	NAME	DESCRIPTION OF WITNESS
W4	The mother	The child’s mother.

THE FOLLOWING WITNESS WAS CALLED BY THE FATHER		
	NAME	DESCRIPTION OF WITNESS
W5	The paternal grandmother	The child’s paternal grandmother.

All of the witnesses were credible. All appeared honest. Although ultimately I have not adopted the protective worker’s recommendation of a custody to Secretary order, this is simply because I hold a different opinion on the outcome of an

²⁵ This report was tendered by consent. No party required Dr JG to be called to give evidence.

²⁶ This summary was tendered by consent. No party required LSC B to be called to give evidence.

application of the law to the facts in this case. It is not because I have any questions about her honesty, her integrity or her professionalism.

The father did not give evidence in this case. In certain circumstances the failure of a person to give evidence on behalf of a party when he or she might reasonably be expected to be called entitles the trier of fact to infer that that person's evidence would not have helped the party's case.²⁷ However, in this hearing neither the father nor the mother took issue with the fact that JB was in need of protection nor did the father dispute any factual matter other than the suitability of his mother to supervise his access. It was therefore my view that there was no need for him to be called. When Mr Kats was undecided whether or not to call the father, I told him of my view. While it is true that the father could have been expected to give relevant evidence on the significant issue of whether or not his accessing of child pornography was driven, at least in part, by "deviant sexual arousal towards minors"²⁸, it is not necessary to answer that question for the determination of this case. Where the answer to that question will become relevant is in relation to DOHS' ongoing decision whether or not the father's access should continue to be supervised. The question will be much more comprehensively and satisfactorily answered by the specialist sex offender assessment which the father has been ordered to undergo under a community-based order than out of the father's own mouth.²⁹ I draw no inference against the father as a consequence of his decision not to give evidence in this hearing.

6. MOTHER'S EVIDENCE PREFERRED IF CONFLICT

The primary function of the adversarial system, refined over centuries in the common law world, is to determine which of two or more conflicting issues of past fact is more likely to be correct. However, in the majority of Family Division proceedings, conflict of past fact is not the central issue. The contest is usually about the best future outcome for the child within the framework of either an

²⁷ See, for instance, dicta of Newton & Norris JJ in *O'Donnell v Reichard* [1975] VR 916 at 920 citing dicta of the High Court in *Jones v Dunkel* (1959) 101 CLR 299.

²⁸ See report of Dr GP at p.5.

²⁹ See section 7.2 below.

uncontested or a very lightly contested factual matrix. The best future outcome is usually the outcome which provides the lowest risk of harm to the child within the legislative “best interests” framework. The present case is no exception. There were very few factual matters actually in issue. Apart from the suitability and/or capacity of the paternal grandmother to supervise the father’s access, the only other significant factual conflict was between reports received by DOHS of alleged comments by the mother and the contrary evidence of the mother herself. For example, the report of 09/04/2008 included the following allegation:

“The mother was also alleged to have stated that ‘He molests and touches the child’ and she would not allow him to change the baby’s nappy however he does insist *[sic]*. In addition, mother stated that closes the door *[sic]*, he molests the child, he told her *[sic]*. He had tried to get her involved in the abuse, but she is dead against it. The mother said that she would not talk to the police as she is scared of what the father would do to her.”³⁰

The mother presented as an honest witness. The reporter’s allegation that the mother said that she would not talk to the police is clearly wrong. She had made a very detailed statement to the police on 12/02/2008. In her sworn evidence the mother denied the substance of the comments attributed to her by the reporter:

Mr Turner- “It has been suggested that you told DOHS [the father] molests and touches the child. He would insist on changing the nappy and locked the door.
The mother- He has never done that.”³¹

Mr Kats- “Have you ever said to anyone that the father molests and touches the child?
The mother- Never to anyone.”³²

She also denied these reports when she spoke to the Forensic Physician Dr JG when he examined JB at (name removed) Medical Centre on 11/04/2008:

“The mother advised that the subject’s father rarely has any time alone with the subject. At most, he is with her alone for a few minutes only when the mother goes to the toilet. She states that the father never changed JB’s nappy or bathed her as she would [not] allow him to do this. The mother specifically denies that the father has changed the subject’s nappy or locked her out and

³⁰ This badly written extract is from DOHS’ Application & Disposition report of Ms SS dated 02/01/2009 at p.5.

³¹ At p.22 of my notes. The suggestion in counsel’s question that the mother made these complaints to DOHS is not correct and is not alleged by DOHS: see comment by counsel for DOHS at p.25 of my notes.

³² At p.25 of my notes.

away from JB.³³ The mother does not trust the subject's father but specifically denies making any allegation that the father has sexually assaulted JB."³⁴

Where there is a conflict between the mother's evidence and the content of any report received by DOHS, I prefer the mother's evidence.

7. THE PROTECTIVE CONCERNS

The Application & Disposition report dated 02/01/2009 details three child protection reports received by DOHS in relation to JB during 2008.³⁵ The first was dated 09/04/2008. The second was dated 08/09/2008. The third was dated 10/12/2008. The first report detailed concerns about the father in two areas: (1) as a perpetrator of domestic violence against the mother; and (2) as a sexual offender. The second and third reports focused on the father's sexual offending and the concerns occasioned by the mother's and JB's return to live with him.

7.1 MOTHER SUBJECT TO DOMESTIC VIOLENCE BY FATHER

The first report alleged that the mother had been the subject of domestic violence at the hands of the father: "Specifically the report stated that the mother had been sighted with extensive bruising to her face. Mother is alleged to have disclosed that this had been caused by the father and that she was also scared of him."³⁶

In her Application & Disposition report, Ms SS made the following fairly ungrammatical comment on the issue of domestic violence:

"JB has been exposed to Family Violence and based on pattern and history there is high likelihood [*sic*] that she will be further exposed to this should be[*sic*] returned to her parents' care. JB is described as being 'scared of men' and whilst this [*sic*] may be many reasons for this the research into Family Violence indicates that any exposure to such behaviour will be experienced as a trauma to the child with the resulting trauma [*sic*] effect to the child's development. JB may be exhibited [*sic*] a 'flight' response in her behaviour when she has contact with men.

The mother has a history of relationships that have been characterized as being abusive in nature. Her older children are permanently placed out of her care

³³ Her denial is supported by evidence in chief of the paternal grandmother: see p.32 of my notes.

³⁴ Report of Dr JG dated 11/04/2008 at p.2.

³⁵ See DOHS' Application & Disposition report dated 02/01/2009 at pp.5-6, 7-8 & 8-10 respectively.

³⁶ *Op.cit.*, p.5.

because she was unable to protect the children from such ongoing and extreme violence.”³⁷

The mother was asked about domestic violence in her relationship with the father. In her sworn evidence she said there had been one incident only and that had given rise to an intervention order which police obtained on her unwilling behalf:

Mr Turner- “Has there been any domestic violence in the course of that relationship?

The mother- [PAUSE] Once only.

Mr Turner- How do you explain it?

The mother- How do I explain it? It was sexual thing.

Mr Turner- Did you sustain injury?

The mother- Bruising to my face.

Mr Turner- There has been an intervention order taken out. Did that lead to the intervention order?

The mother- Yes.

Mr Turner- Did you ask for it?

The mother- The police do it automatically. I didn’t want it.

Mr Turner- Do you understand the terms of the intervention order?

The mother- Yes.

Mr Turner- Was JB around?

The mother- She wasn’t in the same room, no.

Mr Turner- In relation to your day to day relationship with the father were there a lot of arguments, violence?

The mother- Definitely no violence. There were definitely some disputes because he doesn’t have a lot of understanding and no emotional connection which makes it awkward.

Mr Turner- Arguments which got heated?

The mother- Not into violence.

Mr Turner- Yelling and screaming?

The mother- No.”³⁸

The protective worker also raised historical concerns about the mother being a “victim” of domestic violence by “a majority of partners” and commented that the three older children were “permanently out of her care mainly due to domestic violence”³⁹. Despite that, it appears that the mother’s youngest boy is in the care of his father.

I accept the mother’s sworn evidence about the sole incident of violence perpetrated on her by the father. I also accept that JB was not in the same room at the time. Being in another room does not necessarily mean that a child is not exposed to

³⁷ See DOHS’ Application & Disposition report dated 02/01/2009 at p.11.

³⁸ At pp.21-22 of my notes.

³⁹ Evidence in chief of the protective worker at p.9 of my notes.

violence committed in the same house but the Department has not led evidence to satisfy me on the balance of probabilities that JB was exposed to this incident which led to police attending and ultimately obtaining an intervention order.⁴⁰ Nor am I satisfied on balance that JB's reported fear of men – if the report is correct – is a consequence of exposure to family violence.

Ms SS's bald assertion that "research into Family Violence indicates that any exposure to [family violence] will be experienced as a trauma to the child with the resulting trauma [*sic*] effect to the child's development"⁴¹ is completely wrong. There is no such research. On the other hand there is a great deal of modern research that exposure to chronic family violence may be traumatic to a child and may have a consequential negative effect on the child's development.⁴² There is a world of difference between the two statements. To say that harm will be experienced by a child as a result of harmful events and experiences ignores the reality of resilience and treats a child as a automaton. Some children may be harmed by exposure to relatively minor events. Other children may not be harmed by exposure to relatively traumatic events. It all depends on the resilience of the child. I am not satisfied that there is evidence in this case that JB has actually been physically harmed or psychologically harmed by exposure to life events nor that she has actually been exposed to family violence. It is disturbing that a professional of Ms SS's experience would make such fundamentally wrong statements in a report for the Court, a report on which the Court is entitled to rely.

The protective worker was asked about her understanding of the protective concerns in September 2008. In her answer domestic violence appeared to me to be very much an after-thought:

"The father was charged with possession of child pornography and my understanding was that he was also charged with producing child pornography. That's pretty much the extent of it. Also there were concerns in relation to domestic violence between the father and the mother."⁴³

⁴⁰ See section 13 below.

⁴¹ See DOHS' Application & Disposition report dated 02/01/2009 at p.11. The emphasis is mine.

⁴² Some of this research is referred to in section 5.2 in chapter 5 of the Research Materials on the website of the Children's Court of Victoria: www.childrencourt.vic.gov.au. See, for example, papers by Perry, Newman, Goldfeld, Shonkoff, Glaser, Osofsky & Rolfe.

⁴³ Evidence in chief of the protective worker at p.8 of my notes.

Had the allegations of domestic violence been the only protective concern, I may not have found the protection application proved although the mother's need for vigilance in relation to the father and his moods may have justified it.⁴⁴ On any view, the primary issue in the case is the risk of sexual abuse of JB by her father and the concomitant risk of significant related physical and emotional harm.

7.2 THE CRIMINAL CHARGES AGAINST THE FATHER ⁴⁵

In January 2008 the father was charged with a number of sexual and other offences. On 17/09/2008 at (location removed) Magistrates' Court he entered pleas of guilty to a number of these charges. Some other charges were struck out. These included charges of producing child pornography which had been laid as alternatives to the two charges of using a service carrier (mobile phone) to offend. The case was adjourned for the preparation of a pre-sentence report by Dr GP and the father was ultimately sentenced on 02/02/2009 as follows:

CHARGE	SENTENCE
POSSESS CHILD PORNOGRAPHY	Convicted and sentenced to 6 months imprisonment wholly suspended for 18 months. Order that the defendant is a registrable offender under the <i>Sex Offenders Registration Act 2004</i> for a period of 8 years.
USE CARRIAGE SERVICE TO OFFEND (2 charges)	Convicted and placed on a community-based order for 18 months. Special conditions that the defendant: (1) be under the supervision of a community corrections officer; (2) undergo assessment and treatment for alcohol and drug addiction or submit to medical, psychological or psychiatric assessment and treatment as directed by the Regional Manager; and (3) undergo assessment for a sex offender program.

⁴⁴ As to which see section 11.3 below.

⁴⁵ The details in this section are taken from the Magistrates' Court "Courtlink" computer system.

<ul style="list-style-type: none"> ➤ DRIVE WHILE AUTHORIZATION SUSPENDED ➤ IMPERSONATE A MEMBER OF THE POLICE FORCE 	<p>Convicted and placed on a concurrent community-based order for 18 months with a special condition that the defendant be under the supervision of a community corrections officer.</p>
<ul style="list-style-type: none"> ➤ OWN ANTI-SPEED MEASURING DEVICE ➤ USE UNREGISTERED MOTOR VEHICLE ➤ USE UNROADWORTHY MOTOR VEHICLE 	<p>Convicted and fined an aggregate of \$500.</p>

7.3 THE FACTS CONSTITUTING THE FATHER'S OFFENCES ⁴⁶

The summaries of the offences which were produced by the two informants for the purposes of the criminal case heard at (location removed) Magistrates' Court are as follows:

POSSESS CHILD PORNOGRAPHY

On 25/01/2008 police attended at the defendant's home address of (address removed) and executed a search warrant. The defendant was at home with his defacto and their baby. The defendant made admissions in relation to the possession of child pornography and indicated several computer discs in his study and bedroom. The defendant's computer, in excess of 500 discs and a number of pornographic DVDs were seized.

At (location removed) police station the defendant admitted to downloading child pornography off the internet and saving it on to discs. The reason he gave was "*To see if it was real or not real.*"

On 22/01/2008 the defendant had had his hard drive professionally formatted, effectively wiping the entire content of the hard drive. On 23/01/2008 he accessed child pornography and downloaded a child pornography movie file.

An analysis of the seized computer discs revealed 7 discs containing child pornography all of which was in movie file format. It consisted of 43 movie clips of children of various ages being sexually assaulted.

[Some of the above summaries of offences that were included in the original judgment have been removed for the purposes of publication due to their graphic nature.]

⁴⁶ The details in this section are taken from summaries prepared by Det Sgt McKe & LSC B.

USE CARRIAGE SERVICE TO OFFEND

When visiting AB in Tasmania, the defendant made inappropriate comments to her. Back in Victoria, the defendant often requested the mother to pass on offensive comments to her daughter when she was on the phone to her. The defendant would make comments such as “[Comment included in original judgment removed for the purposes of publication due to its graphic nature.]”

In December 2007 the mother was holidaying in Tasmania for the Christmas period. On 07/12/2007 the defendant created and sent a text message to the mother’s mobile phone. The message read: “[Message included in original judgment removed for the purposes of publication due to its graphic nature.]”

On Christmas Day 2007 the defendant created and sent another text message relating to AB which read: “[Message included in original judgment removed for the purposes of publication due to its graphic nature.]”

TRAFFIC OFFENCES & IMPERSONATE POLICE OFFICER

On 18/01/2008 at approximately 4.45pm police observed the defendant driving a white Holden Commodore sedan (registration no. removed) west along (location removed). Checks conducted revealed the vehicle registration to have been cancelled.

While conducting a vehicle safety inspection, police located a pair of blue and red flashing emergency lights fitted on the rear parcel shelf facing to the rear. The switch to operate these lights was fitted in the console beside the driver’s seat. When tested these lights were found to be fully operational with a flasher unit in the boot which made the headlights and reverse lights flash as well. A further search of the defendant’s vehicle revealed a Victoria Police badge which was located in a clear sleeve inside the defendant’s wallet. This looked almost identical to the police identification badge which is issued to Victoria Police officers.

Also found in the defendant’s vehicle was a radar detector on the passenger side foot well of the vehicle which was connected to the cigarette lighter and was fully functional.

The defendant’s vehicle was found to have numerous defects including bald tyres, faulty brake lights and restricted forward vision caused by a large tachometer fitted on the dash. A major defect notice was issued requiring a full roadworthy certificate to be completed.

8. MOTHER’S STATEMENT RE FATHER’S OFFENDING

On 12/02/2008 the mother attended at (location removed) Police Station and made a long and detailed voluntary statement about the father’s offending. At the time she made this statement she had recently separated from the father and she and JB were living apart from him. Her statement painted a much blacker portrait of the

father than did the summaries which were produced for the (location removed) Magistrates' Court. Some of the additional matters stated by the mother which are relevant to this case are as follows:⁴⁷

- **The father has trouble communicating and bottles things up. He gets moody. He is disrespectful to females and their feelings. He looks at them as a piece of meat. We planned to have JB, but when I was pregnant and also after I had JB, he told me that he did not want to be a dad.**
- **In the early stages of our relationship I found out that the father had been having internet sex with other people.**
- **The father was always on the computer looking at porn. Any time of the day or night, he would be on the computer. He would be looking at porn rather than helping me with the baby or even simple things like his own personal hygiene and refusing to have a shower.**

[Some of the additional matters stated by the mother that were included in the original judgment have been removed for the purposes of publication due to their graphic nature.]

- **The father told me he did not mind looking at kiddie porn, it was no different to the other stuff he was looking at. I asked the father if he would ever have sex with a child. He told me he would have sex with a 13 year old if he could. He then stated he would go down to a 10 year old or younger if he could get away with it.**
- **The father had a sexual interest in my daughter AB. The father has been with me when we visited AB in Tasmania. The father would perve on AB and make inappropriate comments all the time.**
- **The father has also impersonated police. I was with him when he was pulled over by the police in (location removed) last month. The police found a Victoria Police badge in his wallet, a radar detector and some blue and red flashing lights in the rear window of his car. The father told me he got the police badge from when he was a recruit at the police academy. He told me he did not stick with it because it was not his line of work. I have been with the father on at least 10 occasions when he has used the Victoria Police badge to get discounts on food.**
- **I have only been in the car with the father on one occasion when he used the red and blue flashing lights. It was some time after JB was born. We were driving along the (location removed) Freeway and all of a sudden I saw lights flashing in the back of the car. We were travelling really fast, over the speed limit. I could see the father was trying to keep up with another Commodore that was also speeding and in front of us. I was concerned because JB was in the car. We eventually left the Freeway and went home.**

⁴⁷ The following information is taken from the sworn statement of the mother made at (location removed) on 12/02/2008 and witnessed by Det. Sgt. McK.

Nothing in this statement was challenged in cross-examination of the mother by counsel for the father. I am satisfied on the balance of probabilities that her allegations are entirely correct.

9. SCREENING PSYCHIATRIC ASSESSMENT OF FATHER

At the request of Magistrate Grinberg in the (location removed) Magistrates' Court, Dr GP, a consultant psychiatrist employed by the Victorian Institute of Mental Health, performed a "screening assessment" of the father on 30/12/2008 and prepared a pre-sentence report dated 31/12/2008. Dr GP described his report as:

"A pre-sentence psychiatric report, the main purpose of which is a screening assessment for the presence of any significant mental health disorders relevant to sentencing and recidivism and also to explore the offences in relation to behaviours of the mind which may be relevant."⁴⁸

In preparing his report Dr GP met with the father for approximately 1¾ hours on 30/12/2008 and read the following materials:

- (1) Request for a psychiatric report.
- (2) Report of charges in consolidated case.
- (3) Copy of undertaking of bail.
- (4) Summary of charges.
- (5) LEAP Victoria Police Outcomes Report.
- (6) Copy of psychological report by (name removed) "Dr DB", Forensic Psychiatrist, dated 10/11/2008."⁴⁹

In the current hearing the only one of these six documents to which I had access was document (4). I do not feel particularly disadvantaged by that although it might have been of assistance had document (6), Dr DB's report, been provided to me. However, I had one great advantage that Dr GP did not have. I had a copy of the mother's statement to police dated 12/02/2008. Dr GP was the first witness called in this hearing. At that time I was unaware of the existence, let alone the content, of the mother's statement. In retrospect it would have been interesting to find out whether the detail in the mother's report changed Dr GP's tentative view of the likely cause of the father's offending.⁵⁰

⁴⁸ Evidence in chief of Dr GP at p.3 of my notes.

⁴⁹ Report of Dr GP at p.1.

⁵⁰ However, I did not regard this as sufficiently important to have Dr GP recalled.

9.1 FATHER'S BACKGROUND

Although on the surface the father's background was unremarkable, underneath there was a maelstrom of abuse and trauma, as the following extracts from Dr GP's report graphically illustrate:

- From the age of 3 while at kindergarten the father was getting into trouble for throwing things at others, but not otherwise being disruptive or aggressive. He attributes this behaviour to being severely physically abused by his father and experiencing the process of separation of his parents.
- After his parents separated, the father experienced ongoing physical and also penetrative sexual abuse from his father when he would stay with him from the ages of 6 to 12. At the age of 12 his father broke the father's right arm. He also had cuts from stab wounds inflicted by his father during his childhood that required minor hospital treatment.
- Although the father's step-father was a very positive figure, his teenage step-brother sexually abused him from the ages of 8 to 10. The abuse ceased after the father informed his mother.
- During his primary schooling the father felt alone and inadequate because of his home circumstances. He found it difficult to mix with his peers and as a result he only ever had one school friend. He was satisfactory to borderline in his learning ability. He denied any disciplinary issues. He attended his first secondary school from years 7 to 10 where he was more able to mix with others and made a few friends. He was able to keep up with school work but with a good deal of struggle. He engaged in fights with peers over usual teenage male rivalry but did not initiate such behaviour and was never suspended. He was otherwise settled and compliant with authority.
- The father moved to another school in year 10 after his mother and step-father separated. He settled in well and made friends easily. He completed the year but coped poorly with his studies as he continued to be physically abused but not sexually abused by his father.
- Throughout his childhood the father felt constantly sad and angry because of the trauma he was subjected to but "bottled it up". He never sought help because he felt a sense of shame and that he couldn't be helped.

9.2 FATHER'S EMPLOYMENT, PHYSICAL HEALTH & INTERESTS⁵¹

After leaving school the father worked in a car wash for 2 years, then as a night shelf stacker in a supermarket for 5 years and then as a car detailer for 2 years. He then ceased work because he was experiencing relationship problems and depression. He had been a conscientious worker who never had any difficulties in the workplace.

⁵¹ The information in this section is taken from the report of Dr GP at pp.2 & 4.

Over the past 10 years the father has had erratic eating with binges. He has suffered with migraines from his teens, for which he uses bed rest and Panadeine Forte.

In 2000 the father was involved in a motor vehicle accident as a pedestrian. He did not experience any loss of consciousness but sustained whiplash and a fracture to his left knee. In 2008 he had a screw removed from his left knee.

Dr GP's summary of the father's social history is short and stark:

“Since the operation earlier this year on his knee, the father has been placed on a Disability Support Pension. He enjoys building and repairing computers as a hobby. His main supports are his mother and to a lesser extent his de facto. He has no other social contacts or activities.”

9.3 FATHER'S MENTAL STATE⁵²

The father's mother had a brief hospitalization with a 'nervous breakdown' after she discovered that her son's father had been sexually abusing him. She has continued to remain on anti-depressant medication through her general practitioner but is not under psychiatric care. His father was apparently on tranquillising medication and had a short admission to a private psychiatric facility prior to his suicide. There is no other family history of mental disorder.

The father is a non-smoker. He infrequently has a social drink. He has never used illicit substances or abused prescription medication. There is no significant family history of alcohol or substance abuse and no family criminal history.

Following the suicide of his father the father felt worse in himself and had frequent suicidal thoughts. One month after his father died, the father attempted suicide by hanging but stopped himself because he did not want to end up like his father. He has also made cuts to his wrists to “release the pain”. He has taken one minor overdose.

The father told Dr GP that every second day he feels that his mood is better and he feels more positive about his life. He also said that:

⁵² The information in this section is taken from the report of Dr GP at pp.3-4.

- since his father's suicide he has had experiences of seeing an image of his father at night when he is in bed;
- he has heard a male voice in his mind that he describes as "half my father and half Lucifer";
- the voice is present when his mood is low and at nights when he is having trouble sleeping; the voice tells him to do things, for example to change direction when he is driving or to change his direction in life.

The father denied any other unusual mental phenomena but stated that he experiences some anxiety socially about what others may be thinking of him. He has never had any formal mental health intervention.

Summarizing his mental state examination of the father, Dr GP said:

"The father was a pleasant anxious eager to please young man who was neatly and casually attired. There was no abnormality of mood, affect, perception, cognition or thinking apparent. He appeared very keen to impress the interviewer with his sense of being a passive victim of circumstances and the abuse from and demands of others. His intelligence appears to be in the low average range."

9.4 DR GP'S TENTATIVE ASSESSMENT & RECOMMENDATIONS

Dr GP's assessment of the father included the following opinions:⁵³

- He had experienced severe physical and sexual abuse throughout his childhood that has left him emotionally disturbed and with psychological difficulties in coping with life situations. As a consequence he is a highly dependent individual whose capacity to function independently at a psychological level has been compromised such that he is prey to giving in to others as well as to psychological impulses.
- He has not at any time had a major depressive episode of a moderate to severe nature. Rather he has a dysthymic disorder which is a lesser degree of chronic low mood. It is unlikely that this condition will be responsive to any form of psychiatric treatment or medication and is most likely to be dealt with through psychological support and intervention such as counselling.

⁵³ These opinions are taken from p.5 of Dr GP's report dated 31/12/2008 and were substantially reiterated in his evidence in chief of at p.4 of my notes.

- The voices he describes are not true psychotic symptoms but are dissociated phenomena relating to an ongoing psychological grief state following the suicide of his father who was clearly a deeply ambivalent figure in the father's mind.

In cross-examination Dr GP was asked "Are you very confident there were no psychotic symptoms?" He replied: "Yes I am."⁵⁴ Asked about the distinction between psychotic symptoms and dissociated phenomena, Dr GP said:

"A psychotic symptom is usually present with other abnormal mental phenomena and in the context of someone experiencing psychotic episodes which usually renders them much more disturbed but in dissociated phenomena there is a clearer link between the nature of the symptoms and the basis of the symptoms. Dissociated phenomena are less prone to be present with other similar symptoms and the person's functioning in other respects tends not to be impaired as it is with psychotic illness.

It is quite common in the situation of perceptual disturbances e.g. voices which can be encouraging behaviour the person feels compelled to carry out whereas with psychosis it is driving the person."⁵⁵

I accept Dr GP's opinion that the father was not psychotic at the time of his offending or at the time of the assessment. If the father's account of hearing voices "half my father and half Lucifer" is correct, I accept that these were dissociated phenomena relating to an ongoing pathological grief state following the suicide of his father.

10. FATHER'S EXPLANATIONS FOR HIS SEX OFFENDING

10.1 POSSESS CHILD PORNOGRAPHY

The father told Dr GP that he had pleaded guilty but then disputed that he had intentionally downloaded the child pornography found in his possession. He went on to say that he wanted to see if such material existed and added "Lucifer was telling me to do it, to punish me for being who I am."⁵⁶ However he also indicated to Dr GP that at the time he was downloading the material he did not know what it was until he subsequently viewed it. He then "put it aside" for a week or so before

⁵⁴ In cross-examination by counsel for the father at p.7 of my notes.

⁵⁵ Evidence in chief of Dr GP at p.4 of my notes.

⁵⁶ See report of Dr GP dated 31/12/2008 at p.4.

he was apprehended. These various statements appear somewhat inconsistent to me and I have great difficulty accepting that his possession of the pornography was unintentional.

10.2 USE CARRIER SERVICE TO OFFEND

In relation to the obscene texts about AB sent to the mother in Tasmania, the father said to Dr GP that this was a “crude humour thing” which his partner had used against him when their relationship went sour. He accepted that his actions were wrong but felt “Lucifer/father” were to blame and had done it through him.⁵⁷ Dr GP gave the father the benefit of the doubt in his “crude humour” explanation:

Mr Turner- “His explanation re crude humour, did you accept that?”

Dr GP- I felt it was lacking. It is difficult for me to be absolutely certain. The nature of the texts sent sounded extreme for that to be considered as humorous play between 2 adults.

Mr Turner- The assessment is either poor humour or actual intent. Can you say which in your opinion?

Dr GP- My view it is most likely an inept, inappropriate attempt at humour. I can’t say for certain that’s the case but it seemed to me that was probable even though highly inappropriate.”⁵⁸

11. RISK POSED TO THE CHILD BY FATHER

11.1 LIKELY CAUSE OF THE FATHER’S OFFENDING

A central issue in Dr GP’s screening assessment was the cause of the father’s sexual offending and the risk of recidivism. In his report he concluded:

“It is likely that the father’s accessing of child pornography may have been driven by a psychological need to try and explore his own abuse through seeing such images. Nevertheless on the basis of today’s assessment and the father’s attempts at explanation I cannot confidently exclude the presence of deviant sexual arousal towards minors.”⁵⁹

In his evidence in chief Dr GP noted that he had only conducted a screening assessment and although he didn’t get any clear evidence provided which indicated ongoing or deviant arousal or behaviour, he felt a further assessment was called for:

⁵⁷ *Ibid.*

⁵⁸ At p.5 of my notes.

⁵⁹ From p.5 of Dr GP’s report dated 31/12/2008. This opinion was substantially reiterated in his evidence in chief of at pp.4-5 of my notes.

Mr Gelfand- “You said that you cannot confidently exclude the presence of deviant sexual arousal towards minors. What is your conclusion on the risk of recidivism?”

Dr GP- We try to comment about the risk of recidivism if we are able to. In the father’s case on the basis of the assessment I conducted I felt the most likely explanation was that the accessing of pornography was driven by a psychological need on his part to explore his experience of childhood abuse. As this is a screening assessment I couldn’t exclude the possibility absolutely of deviant sexual arousal towards children which led me to make a recommendation of a further evaluation of any potential sexual arousal towards children.

Mr Gelfand- What form would that further evaluation take?

Dr GP- Corrections have a sex offender program in Carlton and he would be seen by a psychologist who would conduct further evaluation through 2 or 3 sessions including the use of standardized tools in relation to assessment of risk. The options are that he could be enrolled in a program at the Carlton office or if it was felt appropriate Corrections could make a subsequent referral to us at Forensic for further management.”⁶⁰

In cross-examination by counsel for the father, Dr GP reiterated and provided a justification for his opinion that the accessing of pornography was likely to have been linked to the father’s own abuse:

Mr Kats- “Your conclusion was that it was likely - but more investigation is needed – that my client’s accessing of child pornography was driven by a need to explore his own abuse issues?”

Dr GP- Yes, certainly. That’s something not uncommon in men who engage in sexual offending of all types. Childhood sexual offending is often a feature and the need to address that on an ongoing basis is a common factor.”⁶¹

The mother’s statement to police - which Dr GP has not seen but which I accept is true – made a number of very serious allegations about the father. These included-

- his expressed wish to have sex with a 13 year old if he could and his statement that he would go down to a 10 year old or younger if he could get away with it;
- his sexual interest in the mother’s daughter AB, then 13 years old; and
- what can only be described as his addiction to deviant internet material of all kinds [as the mother put it “[details included in original judgment removed for the purposes of publication due to their graphic nature]”].

The mother’s statement was much more concerning to me than the police summaries, bad as the latter were. Seen through the prism of the mother’s statement, I consider that Dr GP’s acceptance of the “humour” defence was

⁶⁰ At p.4 of my notes.

generous to the father, as was his opinion that the accessing of child pornography by the father was likely to have been driven by a psychological need to try and explore his own childhood abuse. However, it is not necessary for the purposes of this hearing for me to make a finding as to whether or not the father can properly be labelled a “paedophile” and I do not do so. Any such finding must await the completion of the more detailed sex offender assessment (recommended by Dr GP) which was a special condition of the community-based order on which the father was placed on 02/02/2009.

11.2 UNACCEPTABLE RISK IF FATHER’S CONTACT UNSUPERVISED

In answer to questions by counsel for the father, Dr GP gave expert opinion evidence about the limited current understanding of the link (if any) between accessing child pornography and practicing paedophilia:

Mr Kats- “You have conducted a degree of research in appropriate behaviour of the type you assessed the father for?”

Dr GP- I know a little bit about the issue of child internet pornography.

Mr Kats- Is there a clear link between accessing child pornography and sexual offending?

Dr GP- We would have to say at this stage while there is clearly an increased occurrence, the connection between accessing and likelihood of engaging in paedophilia is something we have very limited knowledge at this stage to make any sorts of pronouncements.

Mr Kats- The link between the two is increased by other evidence of inappropriate behaviour?

Dr GP- I can’t really say. It is making an intuitive link rather than an actual link I have no evidence for.”⁶²

Despite the amorphous nature of the relationship between “looking” and “doing” and although it is clear that JB has not to date been sexually abused by her father, the evidence of his offending coupled with the mother’s police statement satisfies me to the requisite level that JB would be at unacceptable risk of harm of sexual abuse if she was at present to have unsupervised contact with her father.⁶³

That much is conceded by the father because he is not seeking that JB be placed in his joint or sole care and he is not seeking unsupervised contact with her. He must

⁶¹ At p.7 of my notes.

⁶² At p.6 of my notes.

⁶³ In coming to this conclusion I have also taken into account the case law summarized in section 4.8.3 in chapter 4 of the Research Materials on the website of the Children’s Court of Victoria. I make this finding

be given significant credit for this decision whether it arises from his own intuition or from acceptance of legal advice.

11.3 MOTHER'S VIGILANCE CONCERNING CONTACT BY FATHER

I am satisfied that the mother has exhibited a high degree of vigilance so far as the father's physical handling and care of JB is concerned. Evidence of this comes both from the mother herself, from the evidence of the paternal grandmother⁶⁴ and from the protective worker's report, the latter of which noted:

"In regards to the mother's care of JB, the paternal grandmother informed the writer that she does not allow the father any unsupervised contact with JB. The paternal grandmother recalled that she had seen the mother take JB to the toilet with her to not allow the father any unsupervised contact with her."⁶⁵

The mother's cautious vigilance is not entirely due to the father's sexual offending for she has frequently said that the father "would never do that to JB"⁶⁶. However, his possession of pornography is one ingredient:

Mr Turner- "In the context of JB how did you deal with his looking at pornography? How did that affect his relationship with JB?

The mother- That's why I made sure I constantly kept an eye on him. She was in my sight all the time."⁶⁷

Her vigilance is a product of her general lack of trust in the father's emotional functioning. She had told Dr JG on 11/04/2008 that she "does not trust [JB's] father".⁶⁸ She was asked about and explained this in cross-examination:

Mr Gelfand- "Did you say that to Dr JG?

The mother- Yes. It was mainly the way he reacted to JB in hospital when she was crying. She was obviously in pain due to a bowel problem at the early stages. Loud screaming cries brought on [his] migraines.

Mr Gelfand- What were you worried about?

The mother- Quick tempered, bad mood.

Mr Gelfand- What were you worried might happen?

The mother- I wouldn't let nothing happen to her.

Mr Gelfand- In order to make sure nothing happened, you made sure you had her in your sight all the time?

The mother- Yes. That's true.

notwithstanding his mother's belief, which I accept is an honest belief: "I know there is nothing the father would do to hurt JB. I just know that. That would not happen." See p.34 of my notes.

⁶⁴ For details of which see section 23 below.

⁶⁵ DOHS' Addendum report of the protective worker dated 06/02/2009 at p.3.

⁶⁶ See e.g. the conversation with the protective worker reported in DOHS' Addendum report dated 06/02/2009 at p.3.

⁶⁷ At p.22 of my notes.

⁶⁸ Report of Dr JG dated 11/04/2008 at p.2.

Mr Gelfand- Because you were worried about what could possibly happen to JB?

The mother- I don't know 'worried'. Just being extra cautious with my daughter.

...

Mr Gelfand- What were you being cautious from?

The mother- His mood.

Mr Gelfand- Were you worried how his mood might affect JB?

The mother- It's a known fact it can emotionally affect children. I know from RB what he had to put up with what I went through."⁶⁹

At this point the mother – who up to then had been very calm and measured – broke down and wept copiously. When we resumed the case, I asked the mother what had caused her such distress and she said: "I miss my daughter heaps."

11.4 NO UNACCEPTABLE RISK IF FATHER'S CONTACT SUPERVISED

However, it is also clear that JB will not be at unacceptable risk of harm in having contact with the father in any environment provided the supervision is appropriate.

I entirely agree with Dr GP on this:

Mr Kats- "Provided access with the child were supervised by someone, do you believe the inappropriate behaviour engaged in re child pornography poses a risk in relation to the child?

Dr GP- Certainly if the access were supervised I can't perceive any particular risk the father poses to the child.

Mr Kats- Provided the father receives treatment and there is supervision is the risk increased if supervised contact takes place in a home environment rather than a DOHS' office:

Dr GP- I don't believe that the environment is a factor. It would be the level of supervision at the time.

Mr Kats- Provided the supervision were appropriate?

Dr GP- Yes."⁷⁰

12. PRIOR CHILD PROTECTION INVOLVEMENT IN 2008

It appears to me that the main reason that the Department is reluctant to agree to JB being placed immediately in her mother's care on a supervision order is that the mother failed the two chances it gave her in 2008 to demonstrate that she was willing and able to ensure that she and JB did not live with the father.

⁶⁹ At pp.25-26 of my notes. In the last answer in this extract the mother was apparently referring to the impact on RB and her of psychological abuse by RB's father.

On 10/04/2008 the Department apprehended JB and issued a protection application on the grounds set out in ss.162(1)(c), 162(1)(d) & 162(1)(e) of the *CYFA*. The triggering incidents were the father's offending and the violent incident in which the father had caused bruising to the mother's face.⁷¹ The case was resolved very quickly with the protection application being struck out on 11/04/2008 upon the mother giving a written undertaking under s.272 of the *CYFA* that:

1. she will travel with the child to Tasmania at 8pm on 11/04/2008 on the Spirit of Tasmania as agreed with DOHS; and
2. she will not have any contact or allow the child to have any contact with the father.

The mother did take JB back to Tasmania. However, in breach of her undertaking signed on 11/04/2008 she and the child came back to stay with the father about 4-5 weeks before 08/09/2008.⁷² She showed the protective workers who attended at the paternal grandmother's home the travel tickets for her return to Tasmania that very day. Her explanation in sworn evidence for having breached the undertaking was that she visited Victoria to allow the father to see his daughter.⁷³ She conceded that she knew she was in breach of the undertaking and that she should have told DOHS what she was doing but added: "I know for a fact they would have stopped me."⁷⁴

The protective worker was perceptive enough to make a generous concession about the mother's rationale in bringing JB to see the father:

Mr Turner- "There may have been some utility in bringing her daughter to see her biological father?

The protective worker- I can understand the mother's reasoning, yes I can."⁷⁵

The mother returned to Tasmania with JB on 08/09/2008 but came back to Victoria - again without notifying DOHS - on 10/12/2008. This time she was not in breach of any court order, the s.272 undertaking having expired on 10/10/2008. Interviewed

⁷⁰ At p.6 of my notes.

⁷¹ See section 7.1 above.

⁷² Evidence in chief of the protective worker at p.9 of my notes. See also evidence in chief of the mother at p.23 of my notes.

⁷³ Evidence in chief of the mother at p.23 of my notes. She had earlier had the intervention order varied so as not to be in breach of it when she returned: see section 13 below.

⁷⁴ *Ibid.*

by DOHS' workers on 12/12/2008, the mother gave the following detailed explanation about her return to live with the father:

"The mother confirmed that she was residing with the father. She stated that the 'Court' (Magistrates' Court) had apparently stated to her that she could live with the father with JB. The mother appeared to be referring to a variation of the Intervention Order. She confirmed that she was aware that the father was due to appear in Court in February 2009 in relation to charges of producing child pornography.

The mother stated that the father 'is not normal in the head'.⁷⁶ The mother stated that she does not leave JB with the father on her own and always supervised by herself [*sic*] or the father's mother did [*sic*]. The mother stated that she is aware of the father's criminal history though felt this was 'of no concern'. She stated that she had seen the father looking at porn but said she was not aware that he had been charged with producing child pornography.⁷⁷

The mother stated that the father 'has not done anything to JB and never will'. The mother also informed the protective worker that she is pregnant with the father's child.

The mother was asked why she had left Tasmania and returned to Melbourne. The mother stated that she clashes with her mother and that her mother had been taking all her money. The mother stated that the father's mother was willing for her and JB to reside at her home with the father. The mother confirmed that she arrived in Melbourne on Wednesday 10th December 2008 and has been residing with the father since then.

The mother stated that in her opinion the father is serious about working out their relationship and getting his life on track and that he is willing to do anything to do this. The mother stated regarding the father's thought pattern that 'his mother smothered him for too long and that he is a mummy's boy'. The mother continued by stating that she is annoyed that it is documented that she said that the father 'insists on changing JB's nappy, locks the door and molests her' and she stated she never said this."⁷⁸

Given this history, DOHS' action in issuing a protection application by apprehension on 12/12/2008 was entirely justified.

⁷⁵ At p.15 of my notes.

⁷⁶ Asked in cross-examination to explain what she meant by this, the mother said: "It's hard to explain. He doesn't know how to deal with his emotions or communicate. He is not affectionate, compassionate plus everything in general which has been going on in his life." See p.23 of my notes.

⁷⁷ That was a reasonable enough response by the mother. The charges of producing child pornography (which were ultimately withdrawn) involved the sending of two obscene text messages to the mother's mobile phone and were alternatives to the more appropriate charges of using a carrier service to offend.

⁷⁸ DOHS' Application & Disposition report of Ms SS dated 02/01/2009 at pp.8-9.

13. INTERVENTION ORDER & VARIATION THEREOF

On 14/04/2008 (location removed) Magistrates' Court heard a complaint for an intervention order against the father laid by Constable (name removed) "Const. RB". The complaint named the mother and JB as aggrieved family members. The father was present at court. The mother was not. Magistrate Betts made an intervention order of 12 months' duration prohibiting the father, *inter alia*, from:

1. assaulting, harassing, threatening, intimidating or behaving in an offensive manner towards the aggrieved family members;
2. approaching, telephoning or contacting the aggrieved family members but subject to certain exceptions including (b) by order of any court or (c) to arrange and/or enable JB to spend time or communicate with the father;
3. knowingly being at or within 200 metres of any premises where the aggrieved family members live, work, attend school or child care except (a) by order of any court or (b) in the company of a police officer.⁷⁹

Subsequently the mother made an application to vary that order and on 13/06/2008 Magistrate Betts varied the order by removing all of the prohibitions except the first. I assume that the police complainant did not oppose the variation.

In the course of the mother's interview with the protective worker & Ms K on 12/12/2008 there was a discussion about this varied intervention order:

"She also stated that she had the Intervention Order changed as [*sic*] to allow contact with the father. In regards to this variation the protective worker challenged the mother about this. The mother stated that she told the Judge about the situation and the Judge varied the Intervention Order. The protective worker explained that despite this the mother still had an active Undertaking to the Melbourne Children's Court stating that she would not allow JB to have contact with the father."⁸⁰

It is true that the varied intervention order was not inconsistent with the mother's undertaking of 11/04/2008 but one can hardly blame a lay person for being mistaken about the inter-relationship between an intervention order and a child protection

⁷⁹ Details of this intervention order are taken from the Magistrates' Court "Courtlink" computer system.

⁸⁰ DOHS' Application & Disposition report of Ms SS dated 02/01/2009 at p.9.

order. Indeed it is clear from the protective worker's evidence⁸¹ that she mistakenly believed as a general proposition that a child protection order prevailed over an inconsistent intervention order whereas the opposite is in fact the case.⁸²

14. THE CHILD'S DEVELOPMENT & HEALTH

There are no problems about JB's physical or emotional health or her development and there is no evidence that she has been the victim of sexual abuse or any other sort of child abuse.

Of his forensic examination of JB on 11/04/2008 Dr JG reported:

“Examination of JB revealed a well kept, clean and asleep child. An examination of the genital and anal region only was conducted. Examination of the genito-anal region revealed a normal genital area with an intact crescentic hymen. There was no evidence of either old or recent injury. Examination of the anal region did not reveal any signs of recent or old injuries.”⁸³

Writing on 02/01/2009 the Team Leader Ms SS said of JB:⁸⁴

HEALTH AND DEVELOPMENT

“JB appears to be reaching all her age appropriate development [*sic*] milestones in terms of her fine and gross motor skills. She has been observed to pull herself to standing and crawl on her hands and knees. JB appears to be within the right height and weight range for her age and she has been described as having a healthy appetite. There are no reported concerns in respect of her hearing or sight and she has a good sleep routine. The mother has engaged with her local Maternal and Child Health Nurse and...the Department has not received any reported concerns in relation to JB's development. JB is thought to be up to date with her immunisations and she is described as being generally healthy and well.”

SOCIAL

“JB presents as a sociable child who easily interacts with people. She vocalizes sounds and is able to indicate her needs through pointing or other ‘social’ cues such as crying or smiling. JB's behaviour would indicate that she has regularly had her basic care needs met...JB seeks and maintains eye contact and actively engages others around her through her socialisation [*sic*] behaviour.”

EDUCATION

“In terms of JB's cognitive and language development there is much evidence in her behaviour that she is meeting these milestones appropriately. JB is able to vocalise and engage with babble and she has a small variety of sounds and noises which are all age appropriate. She is interested in her environment and

⁸¹ See e.g. her concessions in cross-examination by counsel for the father at p.18 of my notes.

⁸² See s.173 of the *Family Violence Prevention Act* 2008.

⁸³ Report of Dr JG dated 11/04/2008 at p.3.

⁸⁴ DOHS' Application & Disposition report of Ms SS dated 02/01/2009 at pp.2-3.

she engages in play through exploration. JB will reach out to toys and put them in her mouth and she will also focus her attention on smaller shiny things (such as earrings) demonstrating that she is gaining proficiency in both gross and fine motor coordination.”

EMOTIONAL AND BEHAVIOURAL DEVELOPMENT

“JB presents as a contented child who has a happy disposition. She engages well with people around her and her behaviour indicates that her care needs have been consistently responded to. She is easily soothed and settles well.”

Writing on 06/02/2009 the protective worker said of JB:⁸⁵

“JB has remained in her Ozchild placement and has been progressing well. JB is now eating more solid food and beginning to walk, which indicates that JB is meeting her developmental milestones. JB is continuing to teeth and has had an episode of nappy rash. The mother requested that a specific cream be applied and the rash improved dramatically within a 5 day period. Overall, JB is progressing well and no significant concerns have been raised.”

I accept all of the positive observations detailed above. The only possible cloud on JB’s horizon is a comment in Ms SS’ report that “JB has been described as being scared of men.”⁸⁶ I do not know from whom this observation originated or the factual basis on which it was made. I cannot therefore give the comment any significant weight.

15. PROTECTIVE CONCERNS IN RELATION TO MOTHER

The Department has no concerns about the mother’s parenting skills. It concedes that “there is much evidence to suggest that the mother as the primary carer has been able to respond appropriately to JB’s everyday care needs”⁸⁷. I am also satisfied that there is a secure attachment between JB and her mother:

“The interaction between JB and her mother has been observed to be appropriate. JB demonstrates positive and secure attachment behaviour such as ‘safe base’ behaviour and proximity seeking. She engages her mother in eye contact and holds her gaze.”⁸⁸

⁸⁵ DOHS’ Addendum report of the protective worker dated 06/02/2009 at p.2.

⁸⁶ *Op.cit.*, p.3.

⁸⁷ *Op.cit.*, p.2.

⁸⁸ DOHS’ Application & Disposition report of Ms SS dated 02/01/2009 at p.3.

It is also clear that there is a deep emotional connection between the mother and JB seen through the mother's eyes. All of the evidence supports that but the high-water mark was the mother's tearful comment: "I miss her heaps."⁸⁹

The only protective concern about the mother which I consider to have any significance is that she may allow JB to have contact with the father without the Department's knowledge. In cross-examination the protective worker conceded that was the crux of the Department's case:

Mr Turner- "The Department says that while there was no legal obligation for her to stay in Tasmania, she should have acted protectively and stayed there rather than coming back to the father?"

The protective worker- Yes.

...

Mr Turner- She never left JB by herself. That demonstrates protective concerns?

The protective worker- To some degree, yes. In waking hours. We can't say when she is sleeping.

...

Mr Turner- Are you aware that the father has been registered as a sex offender for 8 years and that he has to notify the authorities if he chooses to leave the state or change addresses?

The protective worker- Yes.

Mr Turner- The father can't go to Tasmania without permission or without DOHS knowing about it?

The protective worker- Yes.

Mr Turner- In the short term there are no concerns about the father travelling to Tasmania without your knowledge?

The protective worker- Yes.

Mr Turner- The only concern is the mother returning to Victoria to see the father without your knowledge?

The protective worker- Mainly, yes.

Mr Turner- What DOHS wants to be satisfied of is that the mother won't take JB into the presence of the father without DOHS' knowledge?

The protective worker - Correct.

Mr Turner- DOHS would still support contact between JB and her father subject to supervision?

The protective worker - Yes.

Mr Turner- Do you understand that the mother also supports that?

The protective worker - Yes.

Mr Turner- There is no reason why you would doubt those instructions?

The protective worker - The only concern is that the mother hasn't demonstrated that she can stay away."⁹⁰

⁸⁹ Answer to a question by me: see section 11.3 above.

⁹⁰ At p.15-16 of my notes.

16. ACCESS BETWEEN THE CHILD & PARENTS

Under the current IAO the mother has access with JB for 2 hours each Monday, Wednesday & Friday and the father has access once per week for 2 hours at the same Friday access. The accesses occur at the Department's (location removed) office but the mother is now permitted to leave the office with JB during access although the access still remains supervised. The father's access is confined to the office.⁹¹

By and large the accesses have been uneventful although the mother has much greater involvement with JB than the father does. The protective worker said of the parents' access:⁹²

“Both attend access regularly. The mother interacts well, reads cues quite well. There is some concern that 2 hours is a long time and JB is able to play on her own.⁹³ The mother does the routine quite well. The father sits on chairs, mostly reading magazines. JB sought the father out on 2 or 3 occasions but in the reports received [from the access supervisors] she hasn't been seeking him out and he hasn't been seeking her out.”

17. RELATIONSHIP BETWEEN THE PARENTS IS “DEAD”

When the mother came back from Tasmania on 10/12/2008 one of her aims was to consolidate and develop her relationship with the father. I accept that she has changed her mind, that the relationship is beyond repair and that she is committed to returning to Tasmania to bring JB up there. That appears from the evidence of the protective worker, relating what the mother has told her:

Mr Turner- When JB was removed from [the mother's] care, at the time of writing this letter⁹⁴ the mother was keen to work with the father to develop their relationship?

The protective worker- Yes.

Mr Turner- Because she wanted her daughter to grow up with a mother and a father?

⁹¹ DOHS' Addendum report of the protective worker dated 06/02/2009 at p.3.

⁹² Evidence in chief of the protective worker at p.10 of my notes. Similar comments were made by the protective worker in the DOHS' Addendum report dated 06/02/2009 at p.3.

⁹³ In DOHS' Application & Disposition report dated 02/01/2009 at p.3, Ms SS commented that JB “vocalises and she explores her environment through play during access”.

⁹⁴ This was a letter specifically denying making allegations to a reporter about the father which are discussed in section 6 above.

The protective worker - I don't know.

Mr Turner- She was committed to developing that relationship?

The protective worker - Yes.

Mr Turner- Subsequent to making that commitment or telling DOHS of that, the father has pleaded guilty to a number of charges in relation to child pornography?

The protective worker - Yes.

Mr Turner- I suggest that as a result of that and other factors the mother has made it clear that she doesn't want to continue a relationship with the father.

The protective worker - Yes. She has told me once.

Mr Turner- She has also said that she doesn't receive the affection she needs and there are personal reasons why she doesn't want to continue the relationship?

The protective worker - Yes.

Mr Turner- She is genuine and sincere when she has told you those things?

The protective worker - She appears so at the time.

Mr Turner- And she has indicated a willingness to return to Tasmania?

The protective worker - She has.

Mr Turner- And she has made attempts to obtain a property in Tasmania?

The protective worker - Yes.

Mr Turner- She has contacted Tassie Home Loans which may be able to provide her with funds to purchase a home?

The protective worker - Yes.

Mr Turner- When her child is born the amount of funds will increase?

The protective worker - Yes.

Mr Turner- And in the interim period she is able to stay with her mother?

The protective worker - Yes.”⁹⁵

In an extract of evidence reproduced on the first page of this judgment, the mother described her relationship with the father as “dead” and gave coherent reasons for coming to this rather belated decision.⁹⁶ After detailing her longer term plans to try to get finance to purchase a home in either (location removed) or (location removed), she spoke about her shorter term plans, her commitment not to permit unsupervised contact between JB and the father and her attitude to a counselling type condition:

Mr Turner- “If you are able to return to Tasmania in the next week or month who would you stay with?

The mother- With my mother.

Mr Turner- Have you had a discussion with your mother?

The mother - She only would consider it because I told her about Tassie Home Loans. Mum wants me to get JB back into my care.

Mr Turner- How long are you able to stay with your mother?

The mother - Personally I reckon maybe one month, two months at max. I hope to get full bond money from Anglicare and rent privately until after I have had the baby.

⁹⁵ At p.16 of my notes.

⁹⁶ See section 1.1 above.

Mr Turner- In the event that you are able to return to Tasmania, you couldn't take JB to see the father.

The mother - I understand it and I accept it and I'll stick to it this time for sure.

Mr Turner- What's different now?

The mother - Circumstances. Evidence against the father. Also a stable environment for me and the kids.

Mr Turner- If you were allowed to return, what would be your attitude if DOHS were able to impose conditions re courses, counselling?

The mother - I'm happy. If it keeps them happy, I'll do it and I'm happy to notify them so they are satisfied I'm staying in Tasmania."⁹⁷

18. CHILD HARMED BY SEPARATION FROM MOTHER

It is fortunate for JB that she has lived with one foster family since she was removed from her mother's care.⁹⁸ However, this placement is short-term, the foster mother is expecting her own second or third child and if I was to place JB on a custody to Secretary order and the Department chose to keep her in out of home care in Victoria, she would have to move into another foster care placement at the end of March 2009.⁹⁹

It is no criticism of the current foster carers to say that it is highly likely that JB has suffered psychological harm as a consequence of being separated from her mother.

Ms SS conceded this in her report of 02/01/2009:

"JB has suffered harm by being separated from her mother. Until recently, JB was cared for on a full time basis by the mother and there is much evidence to suggest that she has secure attachment behaviour towards her mother. The disruption to the attachment process will be experienced as potentially traumatic for JB however, this needs to be weighted [*sic*] against the real possibility of sexual abuse and/or sexual exploitation and from exposure to ongoing Family Violence."¹⁰⁰

The protective worker did likewise in cross-examination by counsel for the father:

Mr Kats- "Do you agree that JB has suffered harm by separation?"

The protective worker - Yes.

Mr Kats- And disruption to the attachment process?

The protective worker - Yes.

Mr Kats- Do you agree that is essentially traumatic to JB?

The protective worker - Yes.

Mr Kats- One concern was the mother's transit [*sic*]?"

⁹⁷ At pp.24-25 of my notes.

⁹⁸ This foster care placement is under the auspices of Ozchild.

⁹⁹ This evidence was fairly and properly led from the protective worker by counsel for DOHS at p.12 of my notes.

¹⁰⁰ DOHS' Application & Disposition report dated 02/01/2009 at p.12.

The protective worker - Yes.

Mr Kats- The mother's family and supports are in Tasmania?

The protective worker - Yes.

Mr Kats- Attachment and stability are very important for JB?

The protective worker - Yes.

Mr Kats- Yesterday you stated that JB will have a change of carers at the end of March?

The protective worker - Yes.

Mr Kats- Three different carers in six months?

The protective worker - Yes.

Mr Kats- Ms SS' report at p.8 says there is much evidence to suggest she has secure attachment behaviour and some resilience. Are you sure of that?

The protective worker - Yes. Since JB has been in care there is no indication she isn't coping or has caused concern to the carers.

Mr Kats- I suggest that didn't take into account the further change of carers in March.

The protective worker - We didn't know at that time.

Mr Kats- Do you agree it would have some impact?

The protective worker - Yes it would.

Mr Kats- Even though JB may have some resilience, it may not be enough to overcome a second move?

The protective worker - That is always a possibility but there is no sign she hasn't got enough resilience at this time."¹⁰¹

19. THE "BEST INTERESTS" PRINCIPLES

Section 8(1) of the *CYFA* requires the Court to have regard to the principles in Part 1.2 (where relevant) in making any decision or taking any action under the *CYFA*. Section 8(2) places the same obligation on the Secretary when making any decision, taking any action or providing any service under the *CYFA* to children and families.

The relevant principles binding on the Court and the Secretary in relation to JB are set out in s.10 of the *CYFA*. The fundamental principle, set out in s.10(1), is that for the purposes of the *CYFA* the best interests of the child must always be paramount. Section 10(2) requires the decision-maker, when determining whether a decision or action is in the best interests of a child, always to consider the need to protect the child from harm, to protect his/her rights and to promote his/her development (taking into account his age and state of development). Section 10(3) provides that, in addition to ss.10(1) & 10(2), when determining what decision to make or action to take in the best interests of a child, the decision-maker must have regard to 18 listed

¹⁰¹ At p.17 of my notes.

matters so far as they are relevant. For the purposes of the present case, the following 12 matters in s.10(3) appear to have some potential relevance:

- (a) The need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child.
- (b) The need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child.
- (e) The effects of cumulative patterns of harm on a child's safety and development.
- (f) The desirability of continuity and stability in a child's care.
- (g) A child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child.
- (h) If the child is to be removed from the care of the parent, consideration is to be given first to the child being placed with an appropriate family member or other person significant to the child before any other placement option is considered.
- (i) The desirability, when a child is removed from the care of the parent, to plan the reunification of the child with his or her parent.
- (j) The capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the parent to give effect to the goals set out in the case plan relating to the child.
- (k) Access arrangements between the child and the child's parents, siblings, family members and other persons significant to the child.
- (l) The child's social, individual and cultural identity and religious faith and the child's age, maturity and sex.
- (p) The possible harmful effects of delay in making the decision or taking the action.
- (q) The desirability of siblings being placed together when they are placed in out of home care.¹⁰²

It is not uncommon to find cases in which a number of the matters set out in ss.10(2) & 10(3) of the *CYFA* are difficult to reconcile but this case is not one of them. In my view all of the matters point in the one direction, namely towards reunification of JB with her mother in Tasmania on a supervision order as soon as the mother is able to travel to Tasmania.

20. P.A. PROVED ON LIKELIHOOD ON ALL 3 GROUNDS

The question whether any of the grounds under s.162(1) of the *CYFA* are established is to be determined objectively - as opposed to deciding whether such risk or harm

¹⁰² Section 10(3)(p) is not strictly relevant in the terms in which it is expressed. However, a related consideration of some – albeit minor – relevance is the desirability of JB and AB residing in the same household.

was intended by the parent(s)' actions - and is to be determined as at the time when the protection application was made.¹⁰³

In *In re H. & Others (Minors)(Sexual Abuse: Standard of Proof)*¹⁰⁴ Lord Nicholls of Birkenhead (with whom Lord Goff of Chieflly & Lord Mustill agreed) held that in the similar provision in s.31(2)(a) of the *Children Act 1989* (Eng):

“Parliament cannot have been using likely in the sense of more likely than not. If the word likely were given this meaning, it would have the effect of leaving outside the scope of care and supervision orders cases where the court is satisfied there is a real possibility of significant harm to the child in the future but that possibility falls short of being more likely than not...[L]ikely is being used in the sense of a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case.”¹⁰⁵

Neither the mother nor the father dispute proof of the protection application on the likelihood limbs of ss.162(1)(c), 162(1)(d) & 162(1)(e) of the *CYFA*. They were right not to contest it. For the reasons set out above,¹⁰⁶ the evidence of the father’s offending and the concerns expressed about the father by the mother – including her statement to police dated 12/02/2008 – lead me overwhelmingly to the conclusion that had DOHS not issued a protection application on 12/12/2008 there was a real possibility, a possibility that could not sensibly be ignored, that JB would suffer sexual abuse by her father, together with the concomitant possibility of significant related physical and emotional harm.

The protection application is proved on the likelihood limbs of ss.162(1)(c), 162(1)(d) & 162(1)(e) of the *CYFA*.

21. SUPERVISION ORDER TO MOTHER

The protection application having been proved, what (if any) protection order should be made?¹⁰⁷ I have no doubt that a supervisory role remains for the

¹⁰³ See *MS & BS v DOHS* [County Court of Victoria, unreported, 18/10/2002] per Judge Cohen at p.18 {An application for judicial review pursuant to O.56 was dismissed: *Mr & Mrs X v Secretary to DOHS* [2003] VSC 140 per Gillard J}.

¹⁰⁴ [1996] AC 563.

¹⁰⁵ At p.585. The emphasis is mine.

¹⁰⁶ See section 11 above.

¹⁰⁷ See ss.274 & 275 of the *CYFA*.

Department in JB's life and indeed the parents concede that a supervision order is appropriate.¹⁰⁸ However, DOHS is seeking a custody to Secretary order on the basis, as counsel put it in opening:

“Ultimately DOHS does acknowledge that should reunification take place – and that’s the aim of a custody to Secretary order – that in the long term that’s only viable if the mother returns to Tasmania. At the moment DOHS isn’t satisfied, given the breach etc, that the mother would remain in Tasmania with JB and exhibit the relevant degree of protectiveness.”¹⁰⁹

In answer to a question about DOHS' proposal if a custody to Secretary order was made, the protective worker explained the Department's position in similar terms:

“Ultimately for the mother to return to Tasmania, stabilize there and reunite with JB there, demonstrate she can get her own accommodation and engage with counselling etc and demonstrate she is not going to allow JB to have contact with the father, especially in an unsupervised circumstance.”¹¹⁰

While I understand DOHS' frustration about the mother failing on at least two occasions to demonstrate appropriate protective behaviour by bringing JB back to live in the father's house, I believe that the protective worker's proposal has an unacceptably high chance of resulting in significant additional emotional harm to JB. As I understand it, for the mother to demonstrate to the Department's satisfaction that she is able to keep separate from the father she would have to return to Tasmania alone for a period. That would mean that JB's thrice weekly access with her mother would have to be suspended for that period. It might even coincide with JB being moved to another foster carer. A terrible thought! The Department concedes that the current disruption to the attachment between JB and her primary attachment figure is and has already been potentially traumatic for JB. In my view its proposal is almost certain to increase that trauma. When this is weighed against the possibility of sexual abuse arising from unsupervised contact between JB and her father, it is my strong view that separation trauma is substantially more likely, especially when one adds to the balance the mother's vigilance in relation to the father's contact with JB.¹¹¹

¹⁰⁸ See section 3 above.

¹⁰⁹ See p.3 of my notes.

¹¹⁰ Evidence in chief of the protective worker at p.12 of my notes.

¹¹¹ See sections 11.3 & 18 above.

At the end of cross-examination by counsel for the father, the protective worker conceded that little had changed on the “risk front” since 11/04/2008 when the Department had been prepared to allow JB to return to her mother on a s.272 undertaking:

Mr Kats- “What has changed to increase the level of risk is the mother returning to Melbourne and living with the father and his mother?

The protective worker- Yes.

Mr Kats- That’s what has changed?

The protective worker - Mostly, yes.

Mr Kats- And that existed when the undertaking was given?

The protective worker - Yes.”¹¹²

I believe there is a greater change than appears from the above evidence and it is a change which significantly reduces the risk to JB. The community-based orders and the registration order under the *Sex Offenders Registration Act 2004* made against the father at (location removed) Magistrates’ Court on 02/02/2009 prohibit him from leaving the State of Victoria without permission and hence significantly reduce the risk of him following JB & the mother to Tasmania.

Schedule 1 of the *CYFA* provides for transfer of child protection orders between Victoria and another State or Territory of Australia. Whether such transfer is an administrative transfer pursuant to clause 3 or a judicial transfer pursuant to clause 8 of the Schedule, the consent of both the Victorian and the interstate child protection authority is a condition precedent to transfer. The protective worker had been advised that “Tasmania will only accept custody to Secretary orders and above”.¹¹³ However, it subsequently appears that day to day case management of a supervision order placing JB with the mother may be able to be performed by Tasmanian child protection authorities but counsel for DOHS raised a potential problem about the enforceability of such an order interstate:

“If the Court is minded to make a supervision order in contemplation of the mother and JB returning to live in Tasmania, there is a problem in relation to the enforceability of that order for the Department. Enquiries have revealed it may be that day to day case management can be by Tasmanian child protection authorities. However in the event of a breach – if for example the father went to Tasmania – Victorian authorities wouldn’t be in a position to act on that breach unless the parties were in the jurisdiction. This is raised as a practical

¹¹² At p.19 of my notes.

¹¹³ Advice provided by Ms CC and referred to at p.12 of my notes.

consideration. An option is to have the Tasmanian authorities issue their own protection application.”¹¹⁴

However, it is my view that a breach of the order in Tasmania is very unlikely given:

1. the high standard of care provided to JB by the mother¹¹⁵; and
2. that any departure by the father unauthorized by both Corrections Victoria and the relevant authority under the *Sex Offenders Registration Act 2004* is likely to place him at risk of imprisonment and of having his suspended sentence activated.¹¹⁶

Consequently I am not prepared to place any significant weight on any potential problem of enforceability of a breach in Tasmania of a Victorian order.

There are some cases in which a Victorian child protection order involving a child living interstate could not properly be administered remotely from Victoria. This is not one of them. Given the limited protective concerns about the mother¹¹⁷, the only matters likely to require DOHS’ supervision or input are:

- (1) checking up from time to time on the mother and her daughter’s whereabouts;
- (2) arranging such access as is possible between JB and the father and ensuring it is supervised by the paternal grandmother or another appropriate person if she is not available; and
- (3) arranging a course in Tasmania to educate the mother on the risk factors associated with child sexual abuse.

None of these matters require that the supervision order be transferred. In fact it is better that the order remains a Victorian responsibility since Victoria is where any access between JB & the father will have to occur.

¹¹⁴ Part of final submission by counsel for DOHS at p.35 of my notes.

¹¹⁵ As to which see section 15 above.

¹¹⁶ See for example s.46(1) of the *Sex Offenders Registration Act 2004*. See also closing submission by counsel for the father at p.36 of my notes.

¹¹⁷ As to which see section 15 above.

Taking into account all of the evidence and applying the “best interests” principles in s.10 of the *CYFA*, I am satisfied that at the present time:

- To be placed on a supervision order in the care of her mother to live in Tasmania is in JB’s best interests and will adequately and optimally protect her from harm, protect her rights and promote her development [ss.10(1) & 10(2)].
- Intervention into the relationship between JB and her mother to an extent greater than that provided by a supervision order is not necessary to ensure her safety and wellbeing [s.10(3)(a)].
- The need to strengthen, preserve and promote positive relationships between JB and her parents is best achieved by returning her to her mother’s care and making provision for her to have such supervised access with her father as can be facilitated given the geographic separation of mother and father [ss.10(3)(b) & 10(3)(k)].
- There is no foreseeable risk of cumulative harm affecting JB’s safety and development if she is placed in her mother’s care in Tasmania [s.10(3)(e)].
- The ‘continuity and stability of care’ consideration is best given effect to by returning JB to her primary care giver [s.10(3)(f)].
- JB is not at unacceptable risk of harm if placed in her mother’s care in Tasmania but she would be at unacceptable risk of harm at the moment if she was to have unsupervised contact with her father [s.10(3)(g)].
- The mother has the requisite capacity to provide for JB’s needs on a full-time basis [s.10(3)(j)].
- Any significant delay in returning JB to her mother’s care is likely to increase her separation trauma [s.10(3)(p)].

Section 280(2) provides that a supervision order must be for a period not exceeding 12 months unless there are special circumstances which warrant the making of an order not exceeding 2 years. In my view there are no such special circumstances in this case. However, given the seriousness of the protective concerns about the father and the mother’s history of involvement with child protection services, the supervision order should be for 12 months, the maximum period permitted in the absence of special circumstances.

22. JB IS NOT TO BE RETURNED IMMEDIATELY

The mother has nowhere else to live in Victoria other than at the father's home. Neither she nor the father can reasonably be expected to supervise JB for 24 hours a day. There will be times when they have to sleep. Given my finding that JB would be at unacceptable risk of harm of sexual abuse if she was to have unsupervised contact with her father, she is not to be returned to her mother's care until next Tuesday 24/02/2009, the day on which her mother is booked to fly to (location removed) departing Melbourne Airport at 3pm.¹¹⁸

How can this be achieved in law? Under s.281(2) of the CYFA a supervision order must not include any condition as to where the child lives unless the condition relates to the child living with one or both parents. In my view it is a moot point whether this would bar a condition allowing for the child to be in unspecific respite care from time to time even if the periods of respite are not so great as to constitute an effective change in the child's custody.¹¹⁹

Counsel for DOHS made a submission – from which counsel for the parents did not demur – that there were two alternative mechanisms open in law:

“A respite condition as specific as identifying the time or event at which a child would then go back into the care of the mother would fall foul of the provision in s.281(2). It might be that the Court could make a general condition for respite as agreed between the parties with some sort of notation to the effect that it has been agreed between the parties that respite occur until the mother leaves the jurisdiction. However, in a situation such as this where DOHS maintains its application for a custody to Secretary order, that option becomes even more difficult to achieve. If the Court was minded to make an order in the terms canvassed, the Court could extend the interim accommodation order and recall the matter for a mention at the time a supervision order can be made that would allow JB to be in her mother's care from that time forwards.”¹²⁰

It is clear that if I was minded to make a supervision order counsel for DOHS strongly favoured the latter alternative. Given that it is only the space of a long weekend that JB needs to remain out of her mother's care and given the additional

¹¹⁸ Information provided on 20/02/2009 by counsel for the mother. The Booking Number is H138GL.

¹¹⁹ See section 5.15.3 in chapter 5 of the Research Materials on the website of the Children's Court of Victoria.

¹²⁰ Part of final submission by counsel for DOHS at p.35 of my notes.

costs of legal representation which would be incurred by Victoria Legal Aid and possibly by the Department in listing a mention for next Tuesday morning, I preferred to adopt the first alternative. However, had there been any significantly greater delay in the mother returning to Tasmania, I would have adopted the second alternative.

23. FATHER'S ACCESS CONDITION

Giving proper weight to s.10(3)(k) of the *CYFA*, I must ensure that there is provision for at least some access between JB and her father notwithstanding the geographical separation between them. But the tyranny of distance does prevent me including in the access condition any timetable or any minimum frequency.

The father wishes any such access to be held in his mother's home and supervised by his mother. The Department wishes it to be held in a DOHS' office and be supervised by DOHS.

I agree with Dr GP that the location of access is not a relevant factor. What is relevant is the level of supervision of any access.¹²¹

The protective worker completed an assessment of the paternal grandmother on 22/01/2009.¹²² She says of this assessment:

“The paternal grandmother gave some concerning answers to the writer, but also demonstrated her willingness to prioritize JB's needs during access with the father and the mother. At this time it is the writer's opinion that the paternal grandmother cannot supervise access due to the following reasons:

- The father has been placed on the Sex Offender Register as further assessments need to be carried out by Corrections Victoria.¹²³
- The father has been convicted of serious charges involving children. This places JB at significant risk of harm when with the father.
- The father has little interaction with JB and an improvement needs to be demonstrated.
- The father's interactions with JB, and interactions with the mother require further assessment by DOHS.

¹²¹ See his evidence in cross-examination by counsel for the father at p.6 of my notes which is set out in section 11.4 above.

¹²² The detail of this assessment is set out in DOHS' Addendum report dated 06/02/2009 at pp.3-4.

¹²³ Read literally this suggests that the reason for the father being placed on the Sex Offenders Register is because further assessments are required. That, of course, is not the reason.

- Access needs to remain in a controlled environment where it can be effectively monitored and effective feedback can be given to the writer.
- Both the paternal grandmother and the mother have little insight into how the father's action places JB at risk, and they cannot appropriately protect JB without this insight.

While it is the writer's assessment that it is not appropriate for the paternal grandmother to supervise access at this time, it is the writer's intention to continue to review the access to determine if the paternal grandmother can supervise access in her home."¹²⁴

The "concerning answers" to which the protective worker referred appear to be centred on the paternal grandmother's statements that her son would "never" sexually abuse JB and that although it was not appropriate for her son to have been looking at pornography, she did not believe that this would impact on JB's safety.¹²⁵ In relation to the latter, it should be noted that Dr GP, an expert in the area, was of the opinion that "the connection between accessing and likelihood of engaging in paedophilia is something we have very limited knowledge at this stage to make any sorts of pronouncements" and went on to speak of an "intuitive link" rather than an "actual link" between looking and doing.¹²⁶ It seems unfair to criticize the paternal grandmother – or for that matter the mother - for being reluctant to make the "link" which Dr GP considers to be "intuitive" rather than "actual".

The only one of the protective worker's six dot points in the above extract which relate directly to the paternal grandmother is the sixth, her alleged lack of insight into how the father's offending places JB at potential risk of harm from sexual abuse. Given the Department's assessment of the paternal grandmother, I felt that I could not determine her suitability as an access supervisor in the absence of evidence from the paternal grandmother herself. The case was therefore adjourned for this purpose.

In my view the paternal grandmother was quite a good witness. Despite her nervousness about being in the witness box, she presented as an honest and

¹²⁴ DOHS' Addendum report dated 06/02/2009 at p.4. This was largely repeated by the protective worker in evidence in chief at p.12 of my notes.

¹²⁵ DOHS' Addendum report dated 06/02/2009 at p.3.

¹²⁶ See p.6 of my notes as reproduced in section 11.2 above.

conscientious person. She is “hoping it will be possible”¹²⁷ for her to supervise her son’s access with her granddaughter. I summarize her evidence as follows:

- She feels “absolutely horrified” about what she had heard in Court about her son viewing child pornography but she knows “in that area it won’t happen again”.¹²⁸
- If JB’s safety were threatened, “it goes without saying that she comes first, the baby”.¹²⁹
- Asked what she would do if she was to go to a supermarket for a few moments while she, JB & the father were at home, she replied: “Either the three of us go or I don’t go or I wait until the mother is there or whatever. Just use common sense.”¹³⁰
- Asked what she would do if the father didn’t listen to her in regard to JB, she said: “I know he would listen to me in any regards to do with JB.” Pressed on this, she said: “He would have to answer to me and I would deal with the situation appropriately at the time whatever it is and deal with the right authorities [DOHS or the police] if it comes to that...depending on whether he is angry or yelling or whatever.”
- Asked about what she would do if she was to supervise access and she had to go to the toilet, she said: “If it was JB and I and the father? Well if it’s only for brief supervisory visits I’d have to do the same thing as the mother and take her with me to do it properly and appropriately.”¹³¹
- Asked about nappy changing of JB, she said: “The mother is so independent she doesn’t want anyone to do anything. She doesn’t let me change the nappy. She wants to do everything by herself...She is just so over-protective not to allow me to help in any way. She is just very protective of JB.”¹³²
- While she had been aware that her son had watched adult pornography she was unaware he had watched child pornography until the police involvement.¹³³
- Her son had told her that he had sent some offensive text messages but she only found out they were about AB afterwards.¹³⁴
- Asked to comment on the mother’s statement about the father having a sexual interest in AB she was momentarily at a loss for words but ultimately said: “He’s talk. He’s all talk. The father is more talking about something but not doing it. How do I explain it? He’ll say silly things and do silly things by looking at things, but no.”¹³⁵
- She hopes that the father “gets a lot out of” the sex offenders program.¹³⁶

The one large area of inconsistency in the paternal grandmother’s evidence lay in her assessment of the risk her son posed. She agreed that her son’s accessing of pornography was inappropriate and when asked whether that was a risk to JB, she

¹²⁷ Evidence in chief of the paternal grandmother at p.31 of my notes.

¹²⁸ *Op.cit.*, p.30.

¹²⁹ *Op.cit.*, p.31.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² In cross-examination by counsel for DOHS at p.34 of my notes.

¹³³ *Op.cit.*, p.33.

¹³⁴ *Ibid.*

¹³⁵ *Op.cit.*, p.34.

¹³⁶ *Op.cit.*, p.35.

replied: “Of course it is. He shouldn’t be doing that and he shouldn’t have done that.”¹³⁷ Subsequently, in cross-examination, she affirmed on a number of occasions that she did not believe that he was a threat to JB. For example, she said: “There is no way there is anything he would do to JB, that I do know.”¹³⁸

At the end I said to the paternal grandmother: “I understand you have known your son for much longer than anyone in this room and I understand the basis of your view that he would not harm JB but if I was to take a contrary view that he was a risk and asked you to supervise access, would you do your best to be vigilant in supervision?” The paternal grandmother gave a very good reply: “It goes without saying. With me supervising I would have control of what’s happening. He wouldn’t.”¹³⁹

In my assessment of the paternal grandmother I am absolutely confident that she will be vigilant in supervision of her son’s access notwithstanding her belief that he would not do anything to harm JB.

In order to protect JB from harm during access, it is not necessary that supervision be conducted by DOHS workers. JB’s safety and wellbeing will be adequately protected by the paternal grandmother. An access condition naming her as supervisor is in accord with ss.10(2), 10(3)(a), 10(3)(b) & 10(3)(k) of the *CYFA*.

To give a little more flexibility to the order, I have included two alternative paternal access conditions. Neither the Department nor the father can pick and choose which one they wish to apply. Condition 11 applies in the event that the paternal grandmother is available to supervise a particular access visit. Condition 12 applies only in the event that she is not available. It is the paternal grandmother’s call whether she is available or not.

¹³⁷ Evidence in chief of the paternal grandmother at p.32 of my notes.

¹³⁸ In cross-examination by counsel for DOHS at p.33 of my notes. See similar answers at pp.34-35.

¹³⁹ At p.35 of my notes.

24. OTHER CONDITIONS ON SUPERVISION ORDER

As the father is already subject to a community-based order requiring him to undergo a sex offender assessment and also to attend treatment as directed by Corrections Victoria, I do not believe that it is necessary or desirable for him to attend a different specialist assessment with VicPsychPlus to assess the level of sexual risk he poses. I shall simply include a condition obliging him to allow copies of any relevant reports prepared or commissioned by Corrections Victoria to be given to DOHS.

It is not necessary to have a VicPsychPlus condition for the mother. What will suffice is a condition that if DOHS arranges it, the mother must go to a course in Tasmania intended to educate her on the risk factors associated with child sexual abuse. She must also allow reports to be given to DOHS.

There is no evidence which would justify a condition requiring the parents to allow JB to be taken to a paediatrician for assessment and/or treatment.

Even though I may not necessarily have found the protection application proved on the allegations of family violence alone, JB is likely to profit from:

- a condition requiring each parent to go to family violence counselling; and
- a condition requiring her father to go to counselling on anger management.

The former is particularly important for the mother given her history as a victim in violent relationships.

I am satisfied that it is in JB's best interests to include conditions on the order:

- requiring the mother to advise DOHS in advance if she wishes to travel to Victoria with the child;
- prohibiting the father from living with or having contact with the child other than during access; and
- requiring the mother to ensure that there is no such cohabitation or contact with the child other than at access.

25. ORDERS ON THE PROTECTION APPLICATION

For the above reasons I make the following findings and orders on the protection application:

- A. The protection application is found proved on the likelihood limb of ss.162(1)(c), 162(1)(d) & 162(1)(e) of the *CYFA*.
- B. Pursuant to ss.280 & 281 of the *CYFA*, JB is placed on a supervision order in the care of her mother, (name removed), for a period of 12 months until 19/02/2010. The order contains the following 13 conditions:
1. Each parent must accept visits from and cooperate with DOHS or its nominee.
 2. Each parent must accept support services as agreed with DOHS or its nominee.
 3. Each parent must go to family violence counselling as directed by DOHS and must allow reports to be given to DOHS.
 4. Father must go to counselling on anger management as directed by DOHS and must allow reports to be given to DOHS.
 5. Father must allow DOHS to be given copies of any reports prepared or commissioned by Corrections Victoria in relation to-
 - (i) any assessment of him for a sex offender program; and
 - (ii) any medical, psychological or psychiatric assessment of him; and
 - (iii) any related treatment undergone by him.¹⁴⁰
 6. If DOHS arranges it, mother must go to a course in Tasmania intended to educate her on the risk factors associated with child sexual abuse and must allow reports to be given to DOHS.
 7. Mother must make her best endeavour to find a suitable home.
 8. Should the mother wish to travel to Victoria with the child, she must advise DOHS prior to arriving in Victoria.
 9. Father must not live with or have contact with the child other than during access.
 10. Mother must ensure that the father does not live with or have contact with the child other than during access.
 11. **IF THE PATERNAL GRANDMOTHER IS AVAILABLE TO SUPERVISE ACCESS:** Father may have access with the child in Victoria at times agreed between the mother, the father, the paternal grandmother and DOHS. This access is to occur at the paternal grandmother's home unless the father, the paternal grandmother & DOHS all agree to it occurring at another location. Access is to be supervised by the paternal grandmother unless DOHS assesses that supervision is not necessary.
 12. **IF THE PATERNAL GRANDMOTHER IS NOT AVAILABLE TO SUPERVISE ACCESS:** Father may have access with the child in Victoria at times and places as agreed between the mother, the father and DOHS. Access is to be supervised by DOHS or its nominee unless DOHS assesses that supervision is not necessary.
 13. Child may have respite as agreed between the parties.

¹⁴⁰ This does not include Dr GP's pre-sentence report dated 31/12/2008 which is not a report prepared or commissioned by Corrections Victoria.

- C. The following notation is placed by the Court on the Court file: “The parties have agreed that JB be allowed to remain in foster care pursuant to respite condition 13 until Tuesday 24/02/2009.”

Peter T. Power

PETER T. POWER
Magistrate
Melbourne Children's Court

