

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia Birth Registration No.*  
*1999-59-017333 (Re),*  
2011 BCSC 830

Date: 20110624  
Docket: N1167  
Registry: New Westminster

In the Matter of the Adoption Act,  
R.S.B.C. 1996, c. 5 and

In the Matter of a Female Child,  
British Columbia Birth Registration No. 1999-59-017333

Before: The Honourable Mr. Justice N. Brown

Corrected Judgment: The names of the parties were changed to  
initials throughout the judgment on July 11, 2011

## Reasons for Judgment

Counsel for Petitioner:	B. C. Hirsch
Counsel for Respondent:	S. Sim
Place and Date of Hearing:	New Westminster, B.C. June 3, 2011
Place and Date of Judgment:	New Westminster, B.C. June 24, 2011

### The Application

[1] The petitioner seeks an order that:

- jointly with the birth mother, E.R., he become a parent of the child, whose particulars of birth are set out in the birth registration;
- consent of the father be dispensed with pursuant to s. 17 of the *Adoption Act*, R.S.B.C., 1996, Ch. 5; and
- the child assume the surname of the petitioner.

[2] The petitioner is 36. Since November 2003, he has been in a stable common law relationship with the birth mother. In February 2012 they intend to marry. The respondent birth father does not consent to the adoption. The child is 12. She has confirmed her wish to be adopted by the petitioner.

[3] The relevant statutory principles are:

#### Purpose of the Act

2 The purpose of this Act is to provide for new and permanent family ties through adoption, giving paramount consideration in every respect to the child's best interests.

#### Best interests of child

3 (1) All relevant factors must be considered in determining the child's best interests, including for example:

- (a) the child's safety;
- (b) the child's physical and emotional needs and level of development;
- (c) the importance of continuity in the child's care;
- (d) the importance to the child's development of having a positive relationship with a parent and a secure place as a member of a family;
- (e) the quality of the relationship the child has with a birth parent or other individual and the effect of maintaining that relationship;
- (f) the child's cultural, racial, linguistic and religious heritage;
- (g) the child's views;
- (h) the effect on the child if there is delay in making a decision.

(2) If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests.

#### Who must consent to adoption

13 (1) The consent of each of the following is required for a child's adoption:

- (a) the child, if 12 years of age or over;
  - (b) the birth mother;
  - (c) the father;
  - (d) any person appointed as the child's guardian.
- (2) For the purpose of giving consent to adoption, the child's father is anyone who
- (a) has acknowledged paternity by signing the child's birth registration,
  - (b) is or was the child's guardian or joint guardian with the birth mother,
  - (c) has acknowledged paternity and has custody or access rights to the child by court order or by agreement,
  - (d) has acknowledged paternity and has supported, maintained or cared for the child, voluntarily or under a court order,
  - (e) has acknowledged paternity and is named by the birth mother as the child's father, or
  - (f) is acknowledged by the birth mother as the father and is registered on the birth fathers' registry as the child's father.

A younger child's views

30 (1) Before applying to court for an adoption order relating to a child who is at least 7 years of age and less than 12, the applicant must arrange for a person authorized by the regulations to meet the child privately so the person can make a written report under subsection (2).

- (2) The report must indicate whether the child
- (a) understands what adoption means, and
  - (b) has any views on the proposed adoption and on any proposed change of the child's name.

[4] Counsel referred to *J.A.F., and R.P.F.*, [2000] B.C.J. No. 766; *H.E.E. v. B.J.E.* [2009] B.C.J. No. 2287; *A.J. v. S.J.M. and J.M. and J.J.L.*, 1994 CanLii 264 (BCSC) *British Columbia Birth Registration 77-09-010612 (Re.)*, [1989] B.C.J. No. 2383; and *R.T.M. v. T.S.S.*, [2010] B.C.J. No. 729 [*R.T.M.*].

[5] *R.T.M.* confirms the principle that the welfare of the child must be the paramount consideration. And, where the petitioner seeks to dispense with the consent of a natural parent, that parent's fitness and elementary parental rights must also be considered: citing para. 9 of *Waldron v. Adams* (1978), 2 R.F.L. (2d) 220 (B.C.C.A.).

[6] At para. 23 of *R.T.M.* the court explains the strict nature of the test for dispensing with the consent of a birth parent.

The test to dispense with consent is a strict one, due to the finality of adoption and the fact that it severs the relationship between the child and his or her natural parent. The welfare of the child must be the dominant consideration. However, the fitness and rights of the natural parents must also be considered, and only the most serious and important reasons should justify dispensing with their consent. Nevertheless, parental claims will be viewed from the perspective of their significance to the child, not their significance to the parent.

#### **Facts**

[7] The 36 year old petitioner is a British Columbia resident. Since 2003, when he and E.R. started their common law relationship, he shared responsibility with the birth mother for the primary care of the child, who was four at that time. The couple jointly own and operate a plumbing and drainage company. There is no question the petitioner has been an actively involved primary caregiver. For example, on school mornings, he helps the child get ready for school and takes her to and from school. In the evenings, he has put her to bed at night. With the birth mother, he regularly partakes in numerous activities with the child. They have taken her on numerous holidays, such as trips to Big White, Whistler, Disneyland, Jamaica and the Dominican Republic. The child calls the Petitioner "dad." An August 24, 2010, *Younger Childs Views Prior to Adoption* report prepared by Ms. Victoria Hurst-Martin, MSW, RSW confirms the child has specifically requested that the petitioner adopt her.

[8] The petitioner's extended family members are involved in the child's life. The child has regular contact with his parents, who she refers to as grandparents. The petitioner's brother lives nearby. At least once weekly he and his children, aged 1½ and 4, see the child. The petitioner's children from a previous relationship, who are aged 15 and 17, live with the biological mother in Vernon. However, they visit on a regular basis, and the child refers to them as her brothers.

[9] The petitioner deposes he has not witnessed the respondent playing any sort of active role in the child's life. In the last twelve years, the respondent birth father

has seen the child a total of twelve times. In the past twelve months, he has not seen her at all. So far as the petitioner is aware, the respondent has never bought the child a birthday present and has never spent a birthday with her. He is unaware of the respondent ever having attended the child's school for any reason. He is also no aware of his ever having attended the child's extracurricular activities or of his ever making a financial contribution to them.

[10] The child's father has aboriginal heritage, the mother European (Austrian) heritage. The petitioner is aware the child is a Status Indian. He deposes that he believes it is "important for her to be aware of, and exposed to her ancestors." He and the birth mother have collectively enrolled the child in the aboriginal program at her school, where she is exposed to education and projects relating to her aboriginal heritage. He further deposes that as aboriginal events, such as aboriginal artwork display during the Olympics, occur, he and the birth mother take the opportunity to further expose the child to her heritage. The petitioner says he is not aware of the respondent ever having taken any steps to help educate the child about her aboriginal heritage.

[11] The petitioner is concerned about kidney disease the birth mother suffers from and that could significantly shorten her life. In his supporting affidavit, he states, "although her condition is under control at the moment, I am very concerned about what will happen to the child if the birth mother should die. If that should happen, I want to continue to care for the child." This is in accord with the birth mother's wishes.

[12] The birth mother, E.R., consents to the adoption. She confirms the respondent has played a sporadic role as the child's father. He did share custody and care of the child from her birth to when she was age 3, which is when the birth parents separated. E.R. expressed concerns about marihuana use by the respondent and his friends when the respondent was looking after the child. She also refers to a 2003 altercation that directly affected the child: the respondent was with his girlfriend on the Sky Train. She became involved in a physical altercation

with another individual. Police attended and contacted E.R. and asked her to pick up the child, which she did.

[13] Because of E.R.'s concerns about suspected marihuana use and that police incident, she and the respondent birth father, D.A.M. on November 19, 2004, agreed to a consent order which effectively reduced the amount of time the respondent spent with the child and also forbade his smoking of marihuana while in his care.

[14] E.R. again raised concerns about his marihuana use in the presence of the child during access visits as well as about what she considered inappropriate posters on the walls of his residence. These concerns led to a further consent order limiting access and attaching conditions to it. The August 11, 2006, order states:

2. THIS COURT FURTHER ORDERS THAT [E.R.] shall visit [D.A.M.'s] house to ensure that there are no inappropriate decor. There shall be no smoking inside either residence;

3. THIS COURT FURTHER ORDERS THAT [D.A.M.] is to make best efforts to locate a new residence with an extra room for [the child], within the next 2 months;

4. THIS COURT FURTHER ORDERS THAT the weekend access be varied to alternate weekends with [D.A.M.] from Friday, evening to Sunday, evening with times to be agreed upon between the parties, commencing August 18, 2006. Such other access as agreed upon between the parties.

[15] Another incident in late 2006, when the respondent and his then girlfriend had "gotten into a fight" and the child had gone to a neighbour's house, leading eventually to a further amendment by the Provincial Court that further restricted D.A.M.'s rights of access. On February 15, 2008, the Provincial Court granted access from 1:00 p.m. to 3:30 p.m., March 7, 2008, and March 28, 2008, or as agreed to by the parties, to be supervised by E.R.. D.A.M.'s use of non-prescription drugs and alcohol was prohibited 48 hours before access. The order granted D.A.M. specified telephone access and required both him and E.R. to enrol in counselling to help to help D.A.M. integrate back into the child's life.

[16] E.R. said she set up counselling sessions as required but says D.A.M. would not commit to attending. She also deposes he did not attend parenting counselling

or a parenting after separation course, ordered on September 18, 2006, by the Provincial Court (D.A.M. says it was E.R. who refused to facilitate counselling).

[17] E.R. confirms statements made by the petitioner in his affidavit, including his deposing that the respondent has never attended at the child's school for any reason, has never volunteered to help with any school activities and has never made a financial contribution to her child care expenses; this, despite E.R.'s requests he do so. On March 2, 2002, the birth mother applied for child support. By consent the court ordered monthly support of \$157 monthly, based on guideline income of \$18,720. Due to D.A.M.'s defaults, E.R. enrolled in the Family Maintenance Enforcement Program. They were unable to collect any child support in 2004, 2005 or 2006, but, due to their garnishment steps, the respondent is no longer in arrears.

[18] Regarding efforts of the petitioner and E.R. to expose the child to her aboriginal heritage, E.R. confirms the petitioner's evidence, likewise saying she is unaware of any steps D.A.M. has taken to expose the child to her aboriginal heritage.

[19] Regarding her health and related concerns about who will care for the child should she die, at para. 30 of her affidavit sworn December 13, 2010, she deposes:

I have a kidney disease which might significantly shorten my life. It is currently under control, however, the condition could deteriorate at any time. I want the Child to be in the care of the Petitioner if anything should happen to me. I have watched him be a father to her since the beginning of our relationship. I am scared of the child being put in the care of the Respondent if I were to die.

**Respondent's position**

[20] D.A.M. has refused to consent to the adoption and opposes the petition. He points out he still has joint custody and guardianship with E.R.. The November 19, 2004, separation agreement provides that the birth parents were to have joint custody of the child. Primary residence was to remain with E.R.. The agreement confirmed joint guardianship, expressed in terms of the parties each having a "full and active role in providing a sound moral, social, economic and educational environment for the said child and that the parties will consult and share in the

decision-making and planning for the religious upbringing, education and health care (excluding emergency health care) of the said child.” The parties agreed that if one of the parties should die, the surviving guardian would become the sole guardian of the child.

[21] D.A.M. complains E.R. has failed to give him access stipulated in court orders consistently. He alleges she has made excuses for not his not being allowed to see the child. He deposes that she has not responded to his requests for the child’s report cards at the school or the names of her doctor and dentist. He believes E.R. and the petitioner have represented the petitioner to the child as her father, “thus cutting me out.”

[22] D.A.M. also complains he could not exercise telephone access to the child as stipulated in the Court’s order. He alleges E.R. offered excuses why the child could not come to the phone. He says E.R. refused to attend court ordered counselling intended to reintegrate him into the child’s life. He deposes:

I believe that [E.R.] has been systematically cutting me out of the Child’s life and replacing me with the Petitioner. Despite written agreement and court orders specifying me access to the Child, [E.R.] has repeatedly breached them and denied me access. I have done my best to comply with all of [E.R.’s] requests in order to see the Child but I saw no change in [E.R.’s] attitude.

[23] D.A.M. also deposes to his belief E.R. has influenced the child, in particular child’s expressed wish the petitioner adopt her.

[24] With respect to D.A.M.’s own extended family, he confirms he was adopted as a child. He has four siblings. He attempted to foster relationships with them but has been successful only in the case of two of his four sisters.

[25] He says he does not consent to the adoption because he loves the child and has done his best to be a part of her life. He says he has been constantly shut out and slowly replaced by the petitioner. He says he believes the petitioner and E.R. are influencing the child and making promises to her in exchange for her stating she wants to be adopted. He alleges the birth mother has cut his entire family out from

the child's life, complaining that since the birth of the child his own adoptive parents have seen her only once.

[26] With respect to D.A.M.'s defaulting in his child support obligations, he says he has caught up with his child support arrears, but I note that this was only as a result of garnishment proceedings. He said he has not been able to pay in the past month but says he intends to pay in the near future.

[27] D.A.M. is in what appears to be a common law relationship. He has another young child from that relationship. He says he wants the child meet her brother, which she has not done so far. He expresses fears that if adoption is granted, not only will he lose a child, but his son will also lose a sister. He states at para. 36 of his affidavit:

I strongly feel that if the adoption is granted that [E.R.] and the Petitioner will never allow me to contact the Child as I have been having considerable difficulties having a relationship with her now, despite court orders granting me physical access and telephone access.

[28] Regarding the child's aboriginal ancestry, he says he does not believe the petitioner is fully aware of the child's ancestry, which he deposes is not something that can be learned from a book or a workshop. He says it has to be passed on through family. D.A.M.'s aboriginal heritage lies in the Kehewin Cree Nation Band in Alberta. He says he has been a part of "sweat lodges, smudges and pow wows." He asserts he is in a position, and has the knowledge, to pass on aboriginal traditions to the child. He deposes his band wants to be more involved with the child and teach her more about her roots. However, I see no independent confirmation of their desire to be involved in the child's life, or what form that involvement might realistically take, given the band is in Alberta.

[29] As for concerns about his smoking of marihuana, D.A.M. says he does not smoke it, or cigarettes, in front of the child when the child is in the residence. He deposes he did complete the parenting after separation course but says he misplaced his certificate. He denies E.R. ever contacted him to set up counselling sessions.

[30] In his second (responsive) affidavit sworn April 15, 2011, D.A.M. deposes both his biological parents are aboriginal. He says that when the child turns 18, she will, due to her aboriginal status with the band, receive trust money from it. The specifics of this were not stated. He says he finds it very concerning that the petitioner and E.R., consider their exposing the child to aboriginal art at the Olympics "a substitute for what could be learned with him and through his connections." He further deposes he cannot expose the child to her ancestry during short supervised access visits and states that some activities, such as participating in a sweat lodge, occur outside the home.

[31] Regarding his failure to exercise his rights of access he deposes at para. 8:

It has been incredibly difficult for me to exercise any access to the Child. The Petitioner and [E.R.] have moved from Port Coquitlam, which was where they were residing when I consented to the most recent access order, to Maple Ridge. Even if I found it straightforward to make arrangements for access, the practical difficulties of exercising short periods of supervised access in Maple Ridge are onerous as I do not drive and do not have access to a vehicle.

[32] However, evidence before the court shows that at the time of the most recent, February 6, 2008, access order, the birth mother and petitioner were residing in Maple Ridge. D.A.M.'s signature on a form dated February 21, 2007, that granted E.R. permission to take the child to the Dominican Republic, gives a Maple Ridge address. Further I accept that the petitioner and birth mother have resided in Maple Ridge since 2006, five years ago.

[33] Regarding frustrations D.A.M. states he experienced contacting the birth mother, he says he does not have records of phone calls he made to E.R.'s residence for the past several years; and, he says, his email account does not save outgoing emails. He did, however, attach some emails to his responsive affidavit. Reviewing these, I cannot find a basis for reasonably inferring E.R. was standing in the way of D.A.M. exercising his rights of access. Discussions in the emails relate mostly to child support obligations and to E.R.'s desire to make arrangements, in the event of her death, for the petitioner to assume custody of the child.

[34] An email dated January 5, 2010, confirms the location of an access visit at a bowling centre on January 10, 2010, as requested. I understand this was the last time D.A.M. saw the child. Nothing in the email setting up the access suggests anything other than E.R.'s cooperation in setting up access and civility on her part.

[35] In E.R.'s May 19, 2011, affidavit, responsive to D.A.M.'s responsive affidavit, she deposes the respondent had advised her his father was not aboriginal, as he had deposed, but German. She states D.A.M. has never suggested to her that medical and dental benefits D.A.M. says are available from the band could be used; and she states she has never used those benefits for the child.

[36] Regarding D.A.M.'s criticism of efforts made by her and the petitioner to expose the child to her aboriginal heritage, she points out that visits such as the one to the Olympics aboriginal pavilion supplement the aboriginal program the child is enrolled in full time at her school. The petitioner's counsel points out that D.A.M. cannot demonstrate any efforts he has ever made to expose the child to her aboriginal heritage.

[37] In her responsive affidavit, E.R. explains the child's Austrian heritage and the child's opportunities to be exposed to that. E.R. speaks German about 10 to 20% of the time to the child. Her Austrian brother, wife and their two children visit from Austria every summer and the child is exposed additionally to her Austrian heritage during those visits.

[38] E.R. responsively states she has always promptly answered D.A.M.'s emails. Again, I found no animosity expressed by E.R. in the emails and they are responsive. I note there was some discussion about unanswered telephone messages. E.R. states she passed on to the child the messages left on the answering machine.

[39] As regards D.A.M.'s concern E.R. might have reported drug use and drug trafficking in his residence to the *Vancouver Aboriginal Child and Family Services Society*. I accept neither E.R. nor the petitioner made any such report. I note this

report was followed by a Society investigation that confirmed the fitness of D.A.M. and his common law wife to parent their young child. I find no basis for implicating the petitioner or E.R. in this.

#### **Wishes of the child**

[40] The August 24, 2010, Report on a Younger Child's Views Prior to Adoption written by Victoria Hurst-Martin, MSW, RSW, is short enough and important enough to be set out in full:

##### **UNDERSTANDING OF ADOPTION**

[The child] has an age appropriate understanding of adoption. She understands that the adoption process will make [the petitioner] her legal, "adopted" father and she is looking forward to formally changing her last name to M. They lovingly joke about it being "adding a vowel". As [the petitioner] has been parenting [the child] for the past eight years there should not be any difference in their relationship after the adoption.

##### **VIEWS ON THE PROPOSED ADOPTION**

[The child] is "excited" about being adopted and she is looking forward to making it "official". She appears to have an age appropriate understanding of adoption and already uses her prospective adoptive father's name.

##### **RELATIONSHIP WITH OTHER PERSONS**

[The child] has never had any contact with any of [D.A.M.'s] extended family.

##### **ASSESSMENT AND RECOMMENDATIONS**

The prospective adoptive father provides for and cares for [the child] as though she were his own daughter. They demonstrate a loving and close relationship and it is clear that [the child] wishes to be adopted by [the petitioner]. She understands that the adoption will make him her legal father. She understands that her name will be legally changed to M. I therefore recommend that this adoption proceed.

#### **Discussion and Findings**

[41] The petitioner has, to all intents and purposes, been a father to the child since she was four. He has shared fully in all child care responsibilities. The child considers him to be his father and she refers to him as such. I find the familial and paternal bond between them is strong and that he has been a responsible and loving father to the child. I note D.A.M. has acknowledged as much.

[42] The child has been in a safe, loving and stable family home for going on 9 years. She is healthy and appears to be developing well. I reject any suggestion the petitioner or E.R. in any way put her up to expressing her wishes as expressed in the 'Child's Views Report.' It is not unnatural to hear a child in her situation, having for two-thirds of her life lived in a stable and loving family home, to seek out and welcome the sense of security associated with her adoption by the petitioner, who she refers to as her father.

[43] I accept D.A.M. may have experienced occasional difficulties communicating with the child by telephone. However, I accept that telephone messages left were received by the child. However, that remains one comparatively minor facet of D.A.M.'s access rights. In my view, a serious difficulty D.A.M. faces here is his poor record of access visits. As counsel for the petitioner fairly pointed out, some parents travel great distances to see their children. Given the distances between Maple Ridge and Vancouver and available transit services, D.A.M.'s lack of a vehicle is far from an insurmountable obstacle to his seeing the child. I accept D.A.M. has not abandoned the child, but given the record of visits it is impossible to conclude he made anything resembling reasonable efforts to meet his parental obligations and maintain contact with the child.

[44] As for his financial support obligations, these were met only through garnishment proceedings; and otherwise, D.A.M. has contributed nothing to child-rearing expenses.

[45] Regarding the aboriginal side of the child's heritage, despite the emphasis D.A.M. has placed on the need of the child to be educated in it, since separation he has taken no steps to do so. Participation in a sweat lodge is a facet of D.A.M.'s aboriginal heritage but there must be other practices and traditions suitable for a child that he could have introduced in various ways on a visit, had he chosen to do so. I find the child's participation in the aboriginal program in her school, augmented by her exposure to aboriginal events presented in the community, can accomplish what is one of the main objectives of such exposure at this stage of her life, which is

to encourage in her a natural sense of pride in her aboriginal heritage, which, in turn, can help her, as she matures, to develop a greater sense of self-confidence. Under the Act, I should not overlook the Austrian part of her ethnicity, which is also a part of the child's heritage that she can learn about and appreciate. However, in these proceedings, I am not concerned about that, given there is no question the child will remain in the care and custody of the petitioner and E.R. for the near foreseeable future.

[46] Considering the desultory way D.A.M. exercised his rights of access and the materials before me, I cannot accept E.R. refused to participate in any counselling sessions or inhibited in any significant way D.A.M.'s exercising of his access rights. D.A.M. failed to make seeing the child a great enough priority in his life.

[47] Regarding the submission of counsel for D.A.M. that concerns relating to E.R.'s health and custody arrangements in the event of her death can best be dealt with through Provincial Court proceedings and amendments to the guardianship agreement, I reject that submission. I must consider, above all else, the best interests of the child. I cannot do so when an important consideration is left in such an amorphous and tentative state. I note from emails exhibited by D.A.M. that E.R. had expressed her concerns about the guardianship agreements and had expressed her desire that in the event of her death, the petitioner have custody. D.A.M. did not agree to that when E.R. raised it. I must decide based on the facts and on what can be reasonably anticipated, not as they might stand after proceedings, negotiations and discussions. As it is, nothing prevented D.A.M. from agreeing to an amendment of the guardianship agreement in advance of these proceedings.

[48] I am also satisfied E.R.'s health is a circumstance I should consider under s. 17(1)(d). On page 2 of the June 2, 2011, report of Dr. D. Patidar, E.R.'s family physician, he states:

[E.R.] has been a known chronic renal failure (CRF) patient of mine. She has had chronic renal failure from the age of 6. She had to have renal dialysis for two years and then she has been put on medications to control her renal failure.

Due to her chronic renal failure she gets fluid retention, high blood pressure, body swelling, feet pains and lethargy. She needs to stay on her medications regularly. She had to be on a low salt diet to prevent fluid retention.

She is followed regularly by the Renal Clinic in Abbotsford. Her nephrologist, Dr. Constantine follows her chronic renal failure regularly (see enclosed recent consultation report).

[E.R.] has been followed by the renal team regularly which includes dietician, social worker, occupational therapist and psychologist.

She has been treated by me on a monthly basis from December 9, 2009. She has been responsible and compliant with her medications. Her blood pressure has been very well controlled. Her mood has been stable. Her renal function has been stable as well.

[E.R.'s] condition is a chronic condition. It will not be cured but can be controlled. She will have to stay on her renal failure and blood pressure medication for the rest of her life.

Her prognosis remains guarded as her chronic renal failure makes her immunity lower and she is prone to getting more infections. Renal failure can get worse at anytime and it is impossible to predict if it suddenly deteriorates.

[49] Counsel for D.A.M. critically pointed, however, to an attached September 6, 2010, clinical note by Dr. C. T. Constantine, E.R.'s treating nephrologist, with mention that she was doing well with the medication prescribed, was doing well at that time in her life, and no specific concerns at that time were identified. I note E.R. was to continue seeing Dr. Constantine for blood work every three months, and there was also regular follow up at the Abbotsford Kidney Care Centre. This bespeaks a need for close monitoring. I do not find this brief clinical record is in any way inconsistent with Dr. Patidar's conclusions or with a finding that E.R.'s condition warrants serious concern about custodial and guardianship arrangements for the child in the event of her death from her kidney condition, keeping mindful the child requires parental care for at least six more years of her life. There is no question the petitioner would be the appropriate custodial parent in the event of E.R.'s death. D.A.M.'s comments about the petitioner's good qualities as a parent lend this view support.

[50] I commend D.A.M. for his interest in the child and understand the concerns he has raised. As stated during the proceedings, in my view D.A.M. should continue to have a right of access, and I specifically so find: see, for example, *R.D. v. W.B.S.*, 1 B.C.A.C. 213; 81 D.L.R. (4<sup>th</sup>) 137; 33 R.F.L. (3d) 1; and, 27 A.C.W.S. (3d) 250. In

that regard, nothing stands in the way of D.A.M. seeing the child, should he wish to be involved in the child's life. The petitioner and E.R. encourage this, as they have in the past. Even so, at present the relationship between the child and D.A.M. is a tenuous one, and some sensitivity and transitional steps might be required. However, it will be D.A.M.'s responsibility to act in a more responsible and predictable way – in other words, make spending time with the child a greater priority in his life than he has hitherto.

[51] That said, this is not a variation of an access hearing that is before the court, but a petition for adoption, one requiring careful consideration of whether D.A.M.'s consent to the adoption should be dispensed with. As such, though I must seriously consider the rights of the respondent, I must view those rights from the child's perspective as well, and be paramountly concerned with her best interests. I have no doubt an adoption order would give the child a greater sense of security and self-confidence, and instil in her a strong sense of her full acceptance into what for her has become for all intents and purposes her core family and protector in life. Seeing the petitioner as her father, both in relation to his caring for her and protecting her, but also formally, in the legal sense, in my view could very well incidentally encourage closer ties between the child and D.A.M., as she sees her wishes have been respected and she gains a greater sense of confidence and security about her place in the world, now and in the future.

[52] In summary, having considered all the factors set out in s. 3 and given paramount consideration in every respect to the child's best interests, I find the petitioner's adoption of the child is in her best interests.

[53] I am also satisfied it is in the child's best interests to dispense with the birth father's consent, and find there are sufficiently serious and important reasons that justify dispensing with his consent, particularly considering that his parental claims should be viewed from perspective of their significance to the child, not their significance to the father.

[54] In coming to this point, I find D.A.M. has failed to make reasonable efforts to meet his parental obligations to the child, especially in the maintaining of the bonds of familial love and support. I am influenced as well by the child's strongly expressed wishes, which, given her age, the particular circumstances of her life since the petitioner became involved in her life, and the strong familial and parental bonds she has developed with him and his extended family, is deserving of particular weight. As remarked in the report on her views, she understands the adoption process will make the petitioner her legal "adopted father." She is "excited" about being adopted and is looking forward to making it official.

[55] Another very serious and important reason for dispensing with the respondent's consent are concerns relating to the child's mother, E.R.. Given the significant and unpredictable risk of E.R.'s premature death, the child's best interests lie with her remaining in the care, custody and guardianship of the petitioner. The child deserves the security of knowing she will be cared for by the second most significant person in her life if her mother is unable to do so.

[56] This order should not be taken as a finding D.A.M. is not a fit parent. The report prepared by the *Vancouver Aboriginal Child and Family Services Society*, mentioned earlier, confirmed, after an investigation, that both he and his partner are diligent parents of their young son. His participation in this hearing confirms his desire to remain involved in the child's life. As already discussed, I accept D.A.M. loves his daughter and wishes to maintain some involvement in her life and I encourage and endorse that.

[57] I order and declare:

1. The petitioner becomes a parent of the child, whose particulars of birth are set out in the birth registration, jointly with the birth mother, E.R.
2. Consent of the birth father be dispensed with under s. 17.
3. The child assume the surname, of the petitioner under s. 36.

4. This order does not extinguish D.A.M.'s right of access to the child. Terms of continuing future access shall be those either agreed to by the parties and birth mother in writing, or such as may be decided by a court of competent jurisdiction.

[58] Each party will bear their own costs.

"N. Brown J."