SUPREME COURT OF NOVA SCOTIA
Citation: *M.E.T. v. X.M.T.*, 2015 NSSC 268

Date: 20150928
Docket: *SKD* No. 093943
1204-006136
Registry: Kentville

Between:

M. E. T.

Petitioner

v.

X. M. T.

Respondent

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Justice Michael J. Wood
Heard:	July 30 and August 4-7 and September 3, 2015 in Kentville, Nova Scotia
Final Written Submissions:	August 28, 2015
Counsel:	Daleen Van Dyk and Greg Affleck, for the Petitioner Lloyd L. Berliner and Daniel Boyle, for the Respondent

By the Court:

[1] M. and X. T. were married in British Columbia in June 2004. They have three children: Y. (born August 2005); K. (born March 2007); and C. (born February 2009). Ms. T. has a daughter, J., from a prior relationship. J. lived with the family until 2011.

[2] The Ministry of Children and Family Development in British Columbia became involved with the family as a result of concerns about Ms. T.'s mental health. They undertook an investigation and in May 2011 made a finding that the children were in need of protective services and directed that Ms. T.'s parenting of the children must be supervised.

[3] In July 2011 the family moved to the Annapolis Valley and the Nova Scotia Department of Community Services ("DCS") opened a file based upon a referral from the British Columbia Ministry. One of the reasons for the move to Nova Scotia was the availability of an eating disorder clinic which could treat Ms. T.. Ms. T. entered an inpatient program at the clinic in the fall of 2011.

[4] In December 2011 Ms. T. was discharged from the clinic and subsequently attempted suicide on at least one occasion. She received ongoing care from various treatment providers and mental health professionals throughout 2012. From 2011 until the spring of 2014 DCS required that Ms. T.'s parenting time be supervised because of concerns with respect to her mental health. Mr. T. was to provide the supervision.

[5] In 2013 Ms. T. returned as an inpatient at the eating disorder clinic for eight weeks. She continued to receive treatment from various providers, including from mental health professionals, throughout this year. In January 2014 Mr. and Ms. T. entered into a guardianship agreement in anticipation of Mr. T.'s absence from Nova Scotia for employment training. Each received independent legal advice prior to signing the agreement.

[6] The guardianship agreement recited Ms. T.'s mental health history, including the requirement that her parenting time be supervised. The purpose of the agreement was to provide a custody plan for Mr. T.'s absences. During those periods Mr. T.'s parents would be temporary guardians and reside with the children. Ms. T. would be given access to the children but her parenting time

would be supervised until her psychiatrist, psychologist or other medical professional confirmed that unsupervised parenting time was appropriate.

[7] In January and February 2014 Ms. T. attended the eating disorder program on an outpatient basis in Halifax. While in this program she stayed in Halifax during the week and returned home on weekends.

[8] In early March 2014 DCS decided that Ms. T. could be given limited unsupervised parenting time with the children which would be reviewed in a couple of weeks.

[9] On March 13, 2014 an incident took place where Mr. T. struck Y. with his hand leaving a red mark on his back. Ms. T. reported this to DCS as well as the RCMP. Ms. T. also alleged that Mr. T. had sexually assaulted her. Interviews of the family members took place following which Mr. T. was charged with common assault of Y. and sexual assault of Ms. T.. These charges were ultimately dismissed in February 2015.

[10] Mr. T.'s release conditions relating to the criminal charges included that he not have contact with Ms. T. or the children. In June 2014 those conditions were amended to permit contact in accordance with an order of the Family Court or as directed by DCS.

[11] In April 2014 Ms. T. initiated proceedings in the Family Court of Nova Scotia. On April 10, 2014 the parties reached an agreement for a consent order giving primary care of the children to Ms. T. with Mr. T. being entitled to supervised parenting time once the release conditions for the criminal charges were amended. Mr. T. began supervised access with the children in July 2014.

[12] At the time of the April appearance the Family Court set a further hearing to take place on July 8, 2014 to consider parenting issues including Ms. T.'s request to relocate to British Columbia.

[13] On July 8, 2014 the parties appeared in Family Court and an interim order was granted confirming that Ms. T. would have sole custody and primary care of the children and Mr. T. would have supervised parenting time as approved by DCS. The order provided that neither party would remove the children from Nova Scotia for purposes of relocation without consent of the other party or a court order. November 7, 2014 was scheduled for a review hearing to deal with parenting issues, including Ms. T.'s desire to relocate to British Columbia.

[14] Mr. T. exercised supervised access with the children during July, August and September 2014 through a structured program at a facility known as […]. In September DCS agreed that Mr. T. could exercise some of his supervised access at the family home. Ms. T. was opposed to this and made an emergency application to prevent this from happening. During the Family Court appearance on September 29, 2014 the parties agreed to refer the issue to a settlement conference which was scheduled for October 8. The settlement conference did not take place, however on that date the parties appeared in Family Court and agreed to vary the interim order to permit Mr. T. to have supervised access outside of the structured program which had been used to date. The varied order confirmed the other terms in the July 8 court order.

[15] On Saturday October 11, 2014 Ms. T. took the children to British Columbia. She did not advise DCS or Mr. T. that she was doing so. It was the Thanksgiving weekend and on Wednesday October 15, 2014 Ms. T. and her British Columbia counsel appeared in Provincial Court of British Columbia and obtained an *ex parte* order under the *Family Law Act* restraining Mr. T. from attending, entering or going near anyplace regularly attended by Ms. T. or the children including the residence, school, daycare or place of employment.

[16] The children continue to reside with Ms. T. in British Columbia and Mr. T. has had no contact with them since October 2014.

[17] Mr. T. has initiated divorce proceedings in Nova Scotia and made a motion for an interim order giving him custody of the children, or alternatively requiring that they be returned to Nova Scotia so that he can resume access. The parties have agreed that Nova Scotia has jurisdiction over the children as well as the issues of custody and access.

[18] Evidence on the motion was presented over five days in July and August 2015 during which I heard testimony from the parties, their parents, social workers and mental health professionals. This is my decision on the interim motion.

Evidentiary Issues

[19] The evidence in this case consisted of affidavits, *viva voce* testimony as well as the files of DCS and the supervised access program. No witnesses were qualified as experts or provided expert reports. The witnesses were as follows:

- Crystal Penney, supervised access worker
- Bette Salsman, social worker
- Dr. Lorna Cutt, physician
- Kim Ellison, social worker and counsellor
- William Wagg, clinical counsellor
- M. T.
- Trevor Moores, counsellor
- BriAnna Simons, social worker and counsellor
- D. T.
- K.A.
- A. T.
- C.K.
- M.M.
- A.M.
- Loralee Smith, social worker
- X. T.
- F.S.
- Cheryl Nowshadi, counsellor

[20] The written evidence included a significant amount of material that was not admissible. This included hearsay and opinion. I made it clear to the parties throughout the hearing that I would only consider evidence which was properly admissible and only for permissible purposes. I provided counsel with copies of the decisions in *Catholic Children's Aid Society of Toronto v. J.P.L. 2003* CanLII 57514 and *Avakin v. Natiotis* 2012 ONCJ 584 and advised that I adopted the

principles as described in those cases, particularly as they relate to the contents of the DCS files.

[21] The parties agreed that the DCS file was a business record and could be admitted. This avoids the requirement that entries be individually proven. It does not make opinion or second hand hearsay admissible.

[22] Of particular significance for purposes of this decision is the question of hearsay evidence from the children. There were many reports of what the children allegedly said to various counsellors and social workers. Both parties agreed that these comments were not admissible to prove the truth of the events described by the children but only to establish what was said. There was no attempt by either party to argue that this hearsay evidence was admissible because it was necessary and reliable nor did I have sufficient evidence with respect to the context of the statements to make any assessment on those questions.

[23] Since no witnesses were qualified as experts none of the opinions or diagnoses found in the reports of various psychiatrists, psychologists and social workers were admitted or considered by me. The only exception are statements of lay opinion, such as a person's emotional appearance, which any witness could provide. Factual observations, including descriptions of the interactions between the parties and children, were admissible and taken into consideration.

General Principles

[24] This is an interim motion for custody and access. It is governed by s.16 of the *Divorce Act* and in particular s-s.8 which indicates that the only consideration is the best interests of the children. Conduct of the parties is only relevant to the extent that it relates to their ability to act as a parent. Subsection 10 of s.16 requires me to give effect to the principle that a child should have as much contact with each parent as is consistent with their best interest.

[25] Generally speaking the most important factor in a motion for interim custody and access is to maintain the status quo which existed for the children. There should not be any significant disruption to them until a final determination of parenting issues is made at trial. The status quo which is to be maintained is usually the one in place at the date of separation.

[26] Sometimes a parent will unilaterally take steps to create a new status quo which may give them an advantage in the parenting dispute. This is inappropriate

and must be discouraged. In such circumstances the court should attempt to return the children and parties to the situation which existed prior to the unilateral action provided, of course, that it is in the best interests of the children to do so.

Evidentiary Review

[27] This is an interim parenting motion which involved extensive documentary evidence and five hearing days where witnesses gave oral testimony. I do not intend to comment on every piece of evidence presented but will discuss the most significant circumstances which led me to the conclusion which I have reached. I will focus particularly on the three children and their relationship with each parent. I will examine these issues as they evolved over several distinct time periods.

Prior to March 2014

[28] From the time the family moved to Nova Scotia in 2011 until March 2014 Mr. T. was primarily responsible for the children's care. He had assistance from his parents as well as a babysitter. Ms. T. was absent from the home for significant periods of time while she was seeking medical care. As a result of intervention by DCS Ms. T.'s parenting time with the children was to be supervised. Mr. T. provided that supervision. Ms. T. attempted suicide at least once during this period.

[29] Social workers from DCS visited the home periodically and generally reported that the children were happy and healthy. In October 2013 each child was interviewed by a DCS social worker and indicated that they felt safe with Mr. T. and his parents. They did not indicate any mistreatment by either parent although there was reference to occasional spanking by Mr. T..

[30] On March 13, 2014 Mr. T. slapped Y. on his back because he was misbehaving. Ms. T. reported the incident to DCS and the RCMP became involved. At the same time Ms. T. alleged that Mr. T. forced her to have sex with him against her will.

[31] The children were taken to the RCMP Station in […] to be interviewed. When Mr. T. arrived at the station the children were excited to see him. They waited with Mr. T. and his father during the interview process. The DCS social worker reported that they interacted well and did not appear to be afraid of Mr. T..

[32] All of the children indicated to the RCMP in their interviews that they felt safe at home.

[33] On March 13, 2014 Mr. T. was charged with assault on Y. and sexual assault on Ms. T.. He was arrested and released on condition not to have contact with Ms. T. or the children. Upon being informed of this Mr. T. advised the DCS social worker that he wanted to ensure that the children had all of the comfort items which they needed.

March 14, 2014 to October 11, 2014

[34] During this period Ms. T. had primary care of the children. Mr. T. had no contact with them until June 2014 as a result of the terms of his release.

[35] Mr. T. began supervised access visits with the children in July 2014. Between July and October 2014 fifteen visits took place. According to the reports of the supervisors, the visits generally went well and the children were happy to see their father. In the fall of 2014 plans were underway to have visits take place at Mr. T.'s home.

[36] Although Ms. T. transported the children to the access visits she regularly complained to the DCS social workers that she wanted the visits to stop. She said they were having a negative impact on the children who were anxious and stressed about them. She particularly did not want access visits to take place at Mr. T.'s home.

[37] All three of the children received psychological counselling during the summer and fall of 2014. Y. reported to his counsellor that he missed his father and he was both excited and nervous about visiting him. He was sad when visits were over and excited for the next visit. Sometimes he was worried because he did not want to be hit or yelled at by his father. He wished his dad would not hurt him. Sometimes he felt stuck in the middle between his parents.

[38] K. reported to her counsellor that she was excited for her visits with her father and she missed him. She was sad when the visits ended. She said she wished her dad would be nice and not hurt them so he could live with them.

[39] C. told his therapist that his visit in September with his father was good and he was excited about the next one. He wanted to move to British Columbia and he would like his dad to move too and live next door so he could see him every day.

[40] In early August 2014 Y. told his family doctor that he wanted to stop visits with his father because they made his stomach hurt and he wanted dad to stop hitting.

[41] In August 2014 Ms. T.'s mother came to stay with her from British Columbia to help with the children. She ended up staying for five weeks which was longer than she planned because Ms. T. needed her help. She returned to B.C. for a week and came back again in late September. Ms. T. said she wanted her to stay because she was having difficulty coping with the situation. Ms. T.'s mother said she could only stay until early October when she would have to return to British Columbia for other commitments.

[42] On September 16, 2014 Ms. T. obtained a letter from her MLA addressed to DCS supporting her desire to relocate to British Columbia. She also told DCS that she had accommodations in that province and that supervision could be provided by child protection workers there.

[43] In mid-September, 2014 the DCS social worker advised Ms. T. to stop focussing on stopping the access visits. She agreed the children were under emotional stress, but told Ms. T. that she was not convinced this was the result of the visits, as they appeared to be going well.

[44] On September 29, 2014 Ms. T. made an emergency application to Family Court to prevent Mr. T. from exercising access at his home. She also raised the issue of relocation again. The Court did not grant her request but the parties agreed to refer the issue to a settlement conference scheduled for October 8. For reasons unknown to me the settlement conference was ultimately cancelled. On that date the parties and their counsel attended court and agreed to a variation of the interim order to permit Mr. T. to exercise access outside of the structured supervision program. The order confirmed that the review hearing would take place on November 7, 2014.

[45] In early October, 2014 Ms. T. advised DCS that she could not "take much more" and that her health was suffering. She said she would do better if she was able to move to British Columbia.

[46] On Saturday October 11, 2014 Ms. T., her mother and the children left for British Columbia. She did not advise her friends, Mr. T., DCS, the supervised access workers or the children's counsellors even though sessions had been scheduled for the upcoming week.

October 12, 2014 to Date

[47] October 11, 2104 was the Saturday of the Thanksgiving weekend. By the following Wednesday Ms. T. had taken the children to a transition house in British Columbia, retained legal counsel and obtained an *ex parte* order from the British Columbia Provincial Court restraining Mr. T. from attending, entering or going near anyplace regularly attended by Ms. T. or the children. In support of the application Ms. T. signed an affidavit saying that K. disclosed being sexually abused by Mr. T. and his father, and that both boys disclosed sexual assault by their father. She went on to allege that Mr. T. had been stalking her and that he had administered medication to her resulting in overdoses on nine occasions. She said that he had threatened the lives of her and the children and it was not safe for her to return to Nova Scotia. In her oral testimony before the British Columbia Provincial Court she advised that an RCMP officer and others in Nova Scotia felt she should flee to British Columbia for her own safety.

[48] Ms. T. told the Court that her son Y. did not want to see his father and that he only went because he was forced to and felt he needed to protect his younger siblings.

[49] Ms. T. and the children continue to reside in British Columbia. All of them have been in various types of counselling since shortly after they arrived. The children are enrolled in school and participate in extracurricular activities. Based upon the information provided at the hearing the children appear to be doing reasonably well in British Columbia.

[50] One of the counsellors working with Y. is Cheryl Nowshadi who started seeing him in November 2014. Ms. Nowshadi indicates that she works with children between four and eighteen years of age who have experienced violence. In his first visit with her Y. reported that he had been kicked in the stomach by his father. She had seen him twenty-two times and done a lot of work with him about his anger towards his father. He has never said anything positive about Mr. T.. On many occasions Y. has told her that he is afraid that his father will kill his mother.

[51] In March 2015 the children were interviewed by Dr. Laura Mills, a psychologist who was asked to give an opinion about whether they had been traumatized within the family environment. With respect to Y. Dr. Mills reports that he said the following:

Y. went on to explain he could take other things, like dad punching him because it didn't really hurt. He added that if his dad came here, he would "beat the crap out of him". He also noted that Uncle R. would beat his dad. He claimed he had three years of getting hit by dad. He added that J. was dad's worse nightmare and she was trying to keep them safe. When he was one, Y. claimed, J. was getting hurt too. Y. noted that he wanted to stay with J. but dad wouldn't let them. Now J. is with grandma and grandpa. Y. added that he is not scared now. He used to be scared. When asked when that was, Y. said when I got the handprint.

Y. was asked to draw a picture of a person in the rain. He drew an immature looking picture of a person with a round head and eyes, mouth and smiling face with no hair or other features. It had very long arms and no feet or hands. He drew some circles for the rain. The figure was not on the ground. Y. was asked to draw a house. He drew a very sparse picture with a house, chimney and door, no windows. He turned the page over and drew the back of the house showing the chimney and fire at its bottom. When asked to draw his family, Y. drew immature figures of himself and C. playing a game, K. playing with a doll and his mother at the computer. K. had no facial features and none of the figures had hands or feet. When asked about his dad, Y. drew his father on a separate page. This figure was much smaller than the other figures. He noted his dad was mad at him and was hitting him. Y. added that dad hit mom. He made mom get her head cracked open. Y. was shown an outline of a person and asked where he was hit. He claimed he was hit on his back, arms and legs. Y. also completed the How Do You Feel Questionnaire. He indicated he feels most of the time no one cares about me. He said not often but when he is sent to his room. He indicated he was very afraid of being punished by his dad. He felt he was unhappy most of the time, if he didn't get to pick a show. He sometimes feels like hurting people, which occurs when C. or K. bother him. He sometimes wishes he were dead, this happened when dad hit him. And he is bothered by bullies, just two boys at school.

[52] With respect to K.'s interview Dr. Mills reports as follows:

K. was asked to draw a house. She asked my house or dad's? She decided to draw her dad's house. She commented while she drew the house that she can't think or she gets scared. When asked what gets her scared, K. said because dad pushed mom off the couch and I saw blood. She split her head open. Dad wouldn't let me upstairs but I saw mom go to the hospital. When asked if anything else was scary, K. said, dad's fingers felt like too much soap, it stings but there wasn't soap just his hands. K. was shown a picture of a body outline and asked where on her body this was. She said her clothes were on. She drew a line at the crotch of the figure and then colored this with the red marker. She said it was in the loft to play, dad sitting there, under covers with underpants. K. went on to say she hates him. He said he's going to kill mama next time he sees her.

[53] Dr. Mills' report with respect to C.'s interview indicates the following:

> C. was seen on 12 March 2015. He presented as a friendly, verbal interactive boy with some articulation difficulties. He explored the play room when he came in and chose to play with the wrestlers. He found play mobile figures and guns for them to hold. He was interested and enthusiastic in exploring the toys. When asked about school, C. knew he was in kindergarten but didn't know the name of his school. He was asked who lives with him and he said mom, K. and Y.. When asked about dad, he said no. When asked why. C. said he spanks us and we didn't do anything bad. I asked where on his body he was spanked. He pointed to between his legs. He then said chicken butt and pointed to his rear end.

[54] Mr. T. has had no contact with the children since October 2014. He and his parents have successfully completed a training program given by Family and Children's Services which teaches parenting skills. In particular, the program offers advice and suggestions concerning methods of discipline which could be used in place of corporal punishment.

Interim Parenting Arrangement – Best Interests of the Children

[55] This motion was initiated by Mr. T.. The notice of motion requests that he be given custody with Ms. T. having supervised access. Both parties agreed that since parenting was put in issue I have jurisdiction to make any order I believe is in the best interests of the children based upon the evidence before me.

[56] Although I have broad jurisdiction on this motion I am cognizant of the comments of the Nova Scotia Court of Appeal in *Slawter v. Bellefontaine* 2012 NSCA 48 that principles of procedural fairness require that parties be given an opportunity to make submissions with respect to any potential outcome which the court may be considering. With this in mind I asked counsel for their positions with respect to access in three different scenarios. First if I were to grant Mr. T.'s request and give him custody of the children, secondly if I directed the children to be returned to Nova Scotia but remain in the custody of Ms. T. and finally if the children were to remain in British Columbia in the custody of Ms. T..

[57] The positon of Mr. T. is that if he obtains custody of the children in Nova Scotia Ms. T. should have access, but that it should be supervised. Should the children be returned to Nova Scotia but remain in the custody of Ms. T., Mr. T. requests that his access be unsupervised and as frequent as possible. If the children remain in British Columbia Mr. T. says that he should have weekly access through

electronic means such as Skype or FaceTime and should see the children for two weeks at Christmas and three weeks each summer. For Christmas of this year Mr. T. would travel to British Columbia and see the children every day, although he would not have them overnight. After this year the children would come to Nova Scotia for two weeks each Christmas. In addition Mr. T. would be able to bring the children to Nova Scotia for three weeks each summer.

[58] Ms. T.'s position is that the children should remain with her in British Columbia and Mr. T. would be entitled to electronic access on a weekly basis provided it was supervised. He would also be entitled to see the children for two weeks at Christmas and three weeks each summer. This access would take place in British Columbia, be supervised, and not involve any overnight visits. If the children remain in her custody but are returned to Nova Scotia, Ms. T. says that Mr. T.'s access should be supervised as it was prior to October 2014. If Mr. T. is given custody Ms. T. argues that she should have frequent unsupervised access in Nova Scotia.

[59] Both parents agree that the children should continue with counselling. There are professionals in both Nova Scotia and British Columbia who have worked with them. It is common ground that Mr. T. should be re-introduced into the lives of the children and that this will involve a degree of transition

[60] Both parents have struggled with their parenting skills from time to time. Each of them has had periods where their parenting was required to be supervised in order to ensure the wellbeing of the children. There have been significant changes in the parenting arrangements for this family over the last few years. Both parents have been physically absent from the children's home for lengthy periods of time. In Ms. T.'s case it was while she was receiving treatment for her mental health problems. For Mr. T. it was during the spring and summer of 2014 and after the children moved to British Columbia. It is apparent to me that all of this turmoil has been difficult for everyone in this family and resulted in significant stress and anxiety.

[61] What is not clear to me is what the long term parenting situation will be. Ideally it will involve both parents having significant involvement in the children's lives, but there is no guarantee that this will be the outcome of the divorce trial which is likely to be many months away.

[62] On an interim motion for custody and access, maintaining the status quo and fostering significant contact with both parents is usually in the best interests of the children. I believe that is the case here.

[63] There were two predominant themes which permeated the evidence and argument on this motion. The first was the assertion by Ms. T. that Mr. T. had mistreated her and the children in the past and that contact with Mr. T. would give rise to a risk of physical or emotional harm. The other significant issue was Ms. T.'s move to British Columbia and the impact which this has had on the children and their relationship with Mr. T..

[64] The evidence of Mr. T.'s alleged mistreatment of his family came almost exclusively from Ms. T.. None of the hearsay statements by the children to social workers and counsellors were admitted for their truth. Although criminal charges were laid, that alone does not establish the underlying allegations. This is illustrated by the fact that the charges laid against Mr. T. in March 2014 were subsequently dismissed.

[65] Mr. T. admitted using corporal punishment, although said it was relatively rare. The incident in March 2014 when he hit Y. in the back was wrong and Mr. T. regrets that it happened in a moment of frustration. He also acknowledged tapping the children on their hand with the fork at the table if they were eating with their fingers. I accept Mr. T.'s description of these events. Mr. T. has successfully completed a parenting course provided by DCS which has provided him with additional disciplinary tools so that he no longer needs to resort to corporal punishment.

[66] I do not find Ms. T. to be a reliable or credible witness. I believe that she will exaggerate the seriousness of circumstances if it suits her purpose. Her cross-examination at the hearing demonstrated a very poor recollection of events. For example, she testified that during 2012 she never initiated calls to DCS and simply returned calls from social workers at the agency. The agency's file, which was entered as a business record, shows a number of times when she initiated calls to social workers.

[67] In her affidavit filed on the motion Ms. T. alleges that Mr. T. sexually assaulted her by forcing her to perform sex acts against her will while the children were present in the room. She acknowledged she never told this to DCS and said it was because they never asked her, even though she did complain about him forcing himself on her. Also in her affidavit Ms. T. alleges that Mr. T. would scream at the

children, drag them by their ear to their room and strip them, beat them, spank them and threaten to knock out their teeth. She claims she told DCS of this behaviour, although their file records do not disclose any such statement. Ms. T. said she never told this to the RCMP even though she was interviewed by them with respect to the alleged assault on Y..

[68] Ms. T. alleges that Mr. T. forced at least one of their children to eat their own vomit. She claimed she told DCS of this, but there is no reference to that incident in their file.

[69] Ms. T. filed affidavits with the Family Court of Nova Scotia which were signed on July 7, 2014 and September 24, 2014. These affidavits do not make any reference to the above noted incidents.

[70] When Ms. T. appeared before the Provincial Court in British Columbia seeking the *ex parte* protection order she advised the Court that she had fled Nova Scotia because she was afraid for her safety due to threats made by Mr. T..

[71] On October 4, 2014 Ms. T. advised the counsellor for K. and C. that the Court had suspended Mr. T.'s access visits. That is not true and, in fact, her request for an order limiting visits to the supervised access program had been put over to a settlement conference scheduled for October 8.

[72] Ms. T. advised the British Columbia Provincial Court that several people including social workers in Nova Scotia had recommended that she go to British Columbia for her own safety. There is no evidence that any social worker at DCS ever said this and, in fact, the worker responsible for the file had no idea she had left the Province.

[73] Another reason for my conclusion that Ms. T.'s evidence about mistreatment by Mr. T. should not be accepted is her approach to the Nova Scotia order prohibiting relocation to British Columbia. This was an intentional plan to flee to British Columbia and create circumstances which would make it difficult, if not impossible, for the children to be returned to this Province. She left for British Columbia without informing Mr. T., DCS, the children's school or any of their health care providers. Almost immediately after her arrival in British Columbia Ms. T. alleged significant misconduct on the part of Mr. T. including sexual assault, physical assault and death threats. She entered the support system in British Columbia for victims of family violence and accessed counselling services. She retained legal counsel and immediately obtained an *ex parte* protection order

on the basis of allegations of sexual assault, physical assault and death threats. Ms. T. was not prepared to wait for the scheduled review hearing in early November 2014 at which time her request to relocate to British Columbia would have been decided by the Nova Scotia Family Court based upon the best interests of the children. Ms. T. took the decision into her own hands and made the move in violation of the court order.

[74] When I return to the question of the risk of harm to the children from Mr. T. I am left with very little to support that accusation. Mr. T. is not perfect and acknowledged as much in his cross-examination and affidavit. He used corporal punishment and now understands that that is inappropriate. He has taken the recommended parent training program offered by DCS. Mr. T.'s behaviour with the children, as observed by third parties such as the supervised access program workers and DCS social workers, consistently demonstrated a loving father who interacted appropriately with his children. He acknowledges and regrets the unfortunate incident where he slapped Y. on the back in March 2014. There is nothing in the evidence before me to suggest that there should be any current limitation on Mr. T.'s parenting of his children. I do not believe supervision is necessary as a result of any concern for the welfare of the children.

[75] On the last day of evidence I was advised that an information had been sworn that day charging Mr. T. with offences under ss. 151 and 271 of the *Criminal Code* involving K.. Counsel for Ms. T. agreed that this was not proof of any misconduct but suggested it was part of the circumstances I should consider. I have not relied on these charges in making this decision. I prefer to base my conclusion on the evidence before me. If the criminal court decides to impose restrictions on Mr. T.'s contact with the children he will have to abide by them until they are changed.

[76] There is a presumption that it is in the best interests of children to have maximum contact with both parents. That is particularly so on an interim motion for custody and access. In this case the children's attitude towards their father has deteriorated dramatically since the summer of 2014 despite the fact that they have had no contact with him since October of that year. The children express anger and hatred towards their father and a fear that he will kill their mother. This should be contrasted with the comments attributed to them by counsellors and social workers in 2014. At that time they had no fear of him, enjoyed their time together and felt safe around him.

[77] At this point I am not prepared to come to the conclusion that anyone has been poisoning the children's attitudes towards Mr. T., however something has clearly happened to cause the dramatic and negative shift in their perception of their father. In my view it is essential that that relationship be repaired before any further damage is done. For this reason the current situation cannot continue. If it did I am concerned that the likelihood of these children ever having a positive relationship with their father might be eliminated before any final determination of custody and access could be made.

[78] In assessing the best interests of children in relation to parenting issues, the Court should consider the wishes of the children. In this case the children are relatively young and therefore their wishes have less significance than if they were teenagers. I do not put a lot of weight on the evidence which suggests that access visits with Mr. T. in 2014 were causing anxiety. Some of that evidence comes through the filter of Ms. T. and I would discount it significantly for that reason. In addition, the children's upset and stress may have been due as much to Ms. T.'s reaction to access as anything done by their father. The supervisors did not report any unusual or troubling behaviour on Mr. T.'s part during his time with the children. I put even less weight on the comments attributed to the children in British Columbia. I do not know the reason that their view of their father is so negative, but it can have nothing to do with anything he has done since March of 2014 because he has had only limited supervised contact with them during that time.

[79] It is usually important to maintain the status quo when dealing with issues of interim parenting. The reason for doing so is that this stability is generally in the best interests of the children and also preserves the parental relationships as they existed at the time of separation. In this case there is no stable and positive status quo to maintain. The disruption in the children's lives over the last two years has been significant. The current situation in British Columbia is not in the best interests of the children because of the alienating impact on their relationship with Mr. T.. In addition, this was created by Ms. T.'s intentional breach of the Nova Scotia court order which cannot be condoned.

[80] The situation in the summer of 2014 was not one which had existed for any significant length of time. Ms. T. had primary care for the first time in years and had only recently been allowed to have unsupervised parenting with the children. Mr. T.'s restricted and supervised access was due primarily to the incident with Y. in March 2014 and his acknowledgement that he used corporal punishment for

discipline. The criminal charges have been dismissed and Mr. T. has learned new parenting skills. In my view the circumstances which justified supervision of his access have been dealt with satisfactorily. I believe that a new parenting arrangement should be adopted for the period between now and the date of the divorce trial. It should promote the maximum contact between both parents and the children and equalize, as much as possible, the time spent with each of them.

[81] In my view the only effective way to achieve the desired result is to have the children return to Nova Scotia, and I would so order. Since Ms. T. has had primary care of the children since March of 2014 I believe that that should continue. Mr. T. should have frequent unsupervised access. The exact schedule will depend upon the children's activities and school, however it will be roughly equal. If the parties are unable to reach an agreement on the details of the schedule, a motion can be made to the Court to settle that issue.

[82] As I have already discussed I am satisfied that Mr. T. does not pose a risk of harm to the children and that he should be spending unsupervised parenting time with them. This would include overnight visits.

[83] With the disruption that has already occurred in the lives of the T. children and the length of time which they have had no contact with their father, a period of transition is obviously required. For this reason the children's return to Nova Scotia would not take place until the end of December 2015. This will permit time for counsellors in Nova Scotia to be retained and transition material provided by the children's counsellors in British Columbia. It will also allow Mr. T. to become reacquainted with his children through electronic access which should take place by way of two one hour sessions each week. The times should take into account the children's schedules. If the parties are unable to agree on these access arrangements I would be prepared to settle the issue based upon written submissions.

[84] Mr. T. is entitled to exercise access in British Columbia for the two week period immediately preceding the children's return to Nova Scotia. This would involve daily visits of at least one hour.

[85] It is unfortunate that the parties have been unable to agree on anything in relation to their children, particularly what is in their best interests. I am satisfied, based upon the evidence I have heard, that both parties have some responsibility for this and the result has not been ideal for the children. I am convinced that a return to Nova Scotia is in the best interests of this family and in particular the

children. The instability which they have experienced over the last two years needs to stop. There will undoubtedly be some upset and disruption in returning to Nova Scotia, but I believe that will be temporary and a small price to pay for achieving a healthy relationship with both parents.

[86] I would ask Ms. Van Dyk to prepare a form of order reflecting this decision and provide it to Mr. Berliner for his consent as to form. If the parties are able to agree on details with respect to access and transition they should feel free to include those provisions in the order.

Wood, J.