

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Children's Aid Society of Inverness/Richmond v. S.S. ,  
2009 NSSC 288

**Date:** 200909015

**Docket:** SPFACFSA-058926

**Registry:** Halifax

**Between:**

Children's Aid Society of Inverness/Richmond

Applicant

v.

S.S. and D.S.

Respondent

<b>Editorial Notice</b>
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Identifying information has been removed from this electronic version of the judgment.
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**Restriction on publication:** Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

“No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child.”

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** September 15, 2009, in Port Hawkesbury, Nova Scotia

**Written Decision:** September 29,2009

**Counsel:** Lindsay McDonald, for the applicant  
Hugh MacIsaac, for the respondent S.S.  
Coline Morrow, for the respondent D.S.

**By the Court:**

[1] Now, I'm going to give a decision from the bench. As I usually do when giving decision's from the bench, I reserve the right to edit the decision for grammar, clarity and flow. I clearly did not have time to organize this as one would if one was writing a written decision.

[2] This is a review application that arises out of a First Disposition Supervision Order rendered on May 8<sup>th</sup>, issued on May 8, 2009, and reviewed by Order of June 1, 2009.

[3] This is an application made by the Children's Aid Society of Inverness/Richmond to review the Supervision Order seeking to place the children, A.S. (dob: September \*, 2000) and V.S. (dob: July \*, 2002) in the care and custody of the Respondent father under Agency supervision with supervised access to the Respondent mother on terms and conditions in the Agency's discretion.

[4] I am giving a decision from the bench to ensure that the issues are dealt with quickly and that the issues relating to the children's schooling are dealt with quickly; this being the beginning of the year, and to address the circumstances that have arisen between the making of the Disposition Order and the current date.

[5] The authority to vary the Order arises out of Section 43 (3) of the *Children and Family Services Act*. The legislation sets out that non-compliance with a term of an order may allow an Agency to take the children into care or to look for a variation. The matter must be brought back to the Court for review. The Court may review and vary the Order pursuant to Section 46.

[6] Section 46 outlines what must take place when an order is reviewed. It reads:

A party may, at any time apply for review of a Supervision Order or an Order for Temporary Care and Custody but in any event the agency shall apply to the Court for review prior to the expiry of the Order... etc.

[7] Subsection 3 indicates:

That where an application is made pursuant to this section to review an Order, the child, shall prior to the hearing, remain in the custody of the person or agency having care and custody of the child unless the Court is satisfied upon application that the child's best interests requires a change in a child's care and custody.

[8] Subsection 4 indicates:

Before making an Order pursuant to Subsection 5, the Court shall consider the following circumstances:

- a. whether the circumstances have changed since the previous disposition Order was made;
- b. whether the plan for the child's care that the Court applied in its Decision is being carried out
- c. what is the least intrusive alternative that is in the child's best interest; and
- d. whether the requirements of Subsection 6 have been met.

[9] Out of subsection 5 arises the authority for the Court to vary or amend a Supervision or Disposition Order and allows for a Court to make a further Order, subject to the time limits that are set out in Section 43 and 45. As the parties know and counsel are aware, this will bring us up to the year date from the May 8<sup>th</sup> Order to May 8, 2010, at which time a Final Disposition must be made with respect to these children.

[10] The outside time limits are contained in Section 46 (6). I cite this because it is an important element in this circumstance. I will refer to it in later in my oral decision.

[11] Where the Court reviews an order for Temporary Care and Custody, the Court may make a further Order for Temporary Care and Custody unless the Court is satisfied that the circumstances justifying the earlier Order for Temporary Care and Custody are unlikely to change within a reasonably foreseeable time not exceeding the time limits set out in Section 45, and I have just referred you to Section 45.

[12] I'm going to indicate, before I get into a statement of facts, that I am satisfied that the plan for the children's care is not being carried out in a timely and efficient manner that will facilitate final resolution in accordance with the time limits set out in Section 45 of the Act.

[13] I am further satisfied that credible evidence exists now, that was not known at the time of the First Disposition Order that the continued placement of the children in the community with the care of both parents may not be possible and that their continued residence will have the effect of sabotaging the Plan of Care as contained in the First Disposition Order.

[14] I have further considered, in making my Decision, the least intrusive option reflecting the children's best interest. It is, therefore, my intent to vary the Order.

**The Facts:**

[15] Following the Decision of May 8, 2009, and following the advice of Ms. Rule and Dr. Hartley, a quick transition to returning the children to unsupervised contact with their father was effected.

[16] The schedule adopted by the parties was a schedule arranged in a shared parenting arrangement dating back to July 24, 2007, at an Interim Hearing before another Justice. This was the schedule that I reinstated in the First Disposition Hearing, the difference being that there was (in May 2009) no requirement to supervise the father.

[17] The original schedule and this schedule attempts to address the father's employment schedule with his current employer.

[18] While I have commented earlier that it is not a usual schedule adopted by a Court, it more closely resembled what the children experienced and understood about their parent's employment situation.

[19] I have asked for and have obtained information from counsel for the father. He will not be scheduled for further work prior to May 2010. At that point, he will reconsider that status of his work depending on the status of this case.

[20] I found that the two week on, two week off schedule problematic even before child protection involvement but again, this schedule reflected their agreement with variations in the July 24, 2007, Order of the Court.

[21] That Order and my Order recognized what existed with this couple prior to child protection involvement. The Decision reflects the fact that during the marriage both of these parents were, at times, the primary parent to their children based on their individual employment requirements.

[22] At, and after my Decision, after obtaining advice regarding transition, the children were reinstated for the first two week period, plus or minus, in the father's home between May 22 and June 1, 2009; June 15 and June 29, 2009; and July 13 to the present date.

[23] Despite the ongoing reporting and concerns as expressed in the case notes by N.S.S., on July 21, 2009, and J.D., on July 20, 2009, and V.S.C. a relative, on July 22, 2009, all evidence confirms that the children have thoroughly enjoyed their trip out of province with their father and their visit with his parents and family.

[24] Once free of the environment of conflict, they behaved well and reconnected freely. This evidence is corroborated with the extensive evidence in the First Disposition Hearing regarding the underlying level of affection between the children and their father.

[25] This evidence is accepted in contrast to the continuing objections to the Court's direction (order) previous to the trip out of Province and the advice of those noted above; that the children would likely come to harm should the children return to the care of the father.

[26] Once free of the environment where the children are expected to complain about their father, they were able to function and normalize their relationship with their father and his family.

[27] The evidence clearly and definitively supports the fact that the father continues to cooperate with demands from the Agency and comply with directions to attend therapy to address individual, personal and psycho educational counseling and to address appropriately issues regarding the children with the children's therapist, Dr. Gerrior.

[28] On July 15, 2009, the Agency held a risk management meeting. It was at this meeting they decided to move the children to the father's care with supervised access to the mother, pending some evidence of material change in her attitude and her compliance with the requirements of appropriate counseling.

[29] Thus, the change in the children's schedule of contact with the mother actually started on July 27<sup>th</sup>, when the children, under the Disposition Order, were scheduled to have been returned to her care. From the 27<sup>th</sup> of July to today's date, September 15<sup>th</sup>, the mother has had supervised access to the children pending the hearing, although she has had more extensive contact with the children, despite the Agency's imposition of supervision when the children commenced school, due to the fact that \*.

[30] It should also be noted that the mother was away for part of the summer, having committed to work related meetings in \* and a trip out of the country in late August (sic : this should be late July).

[31] While she had refused to advise the Agency of her whereabouts and contact numbers, she had planned the trip around one of the father's extended parenting times.

[32] The effect of the mother's absence in the summer months delayed effective communication between the Agency and the mother and delayed her attendance at counseling.

**Why did the Agency propose a Change?:**

[33] By May 2009, or shortly thereafter, the father had begun participating in psycho educational individual counseling to address the difficulties of co-parenting situation and to explore co-parenting strategies. This was set up by the Agency to assist the father in understanding the impact the separation has had on the children and to assist him in minimizing this impact.

[34] By mid-June, the father had accepted the invitation of Dr. Hartley to review her report and recommendations. She is the consultant responsible for advising the Agency and the parties regarding the children's health. The mother did not become available until July 29, 2009.

[35] Given the difficulties encountered in the past in obtaining a counseling service for the children acceptable to the mother, the Court in the First Disposition Order, gave the Agency the authority to make the decision to delegate a counseling service and commence therapy as recommended immediately, without having to obtain the mother's consent.

[36] The Agency engaged Dr. Gerior and she has been attending to the long term goals as advised by the experts, assisting the father in addressing the children's individual needs and parenting strategies.

[37] The Agency offered this service to the mother, although until this hearing, she has not pursued this opportunity. The mother has recently advised that she will accept this service in the future.

[38] The Agency has offered psycho educational counseling to the maternal grandparents. It is intended to be short term, to assist the grandparents to address their role in the conflict, to educate them and to develop a strategy to involve themselves in the children's lives as grandparents subject to the rights of the parents.

### **Respecting the Counseling;**

[39] Between May 9, 2009, and August 20, 2009, the mother had not engaged in a counseling relationship with anyone on a consistent basis, **sufficient** to comply with the Court's direction.

[40] Timing in this case is critical. There is essentially five (5) months left to determine whether the children can function in the community without Agency and police involvement between the parents and the grandparents.

[41] There is no evidence establishing that the therapy engaged by the mother at this stage is likely to effect the necessary changes. That is her choice. If change does not happen within that time frame, there are consequences.

[42] The Agency consulted with Ms. Rule and Dr. Hann and offered to pay for the services of Dr. Hann. The services are costly and intensive and could have been done in the latter week of August when the mother was scheduled to be away.

[43] The mother demanded more information and was given a response to her inquiries and, ultimately, did not agree to the model of intensive counseling and the schedule.

[44] The hope was that this short term intensive counseling might increase the likelihood that the mother would gain insight and emotional movement to a desired resolution of peaceful, shared parenting.

[45] The mother then asked to continue with her sometimes counselor, through her employer. Once it was clear that this counselor was unable to provide the service in **this** case, the mother suggested that she wanted to meet another counselor, who again declined to provide her with the necessary service. These consultations caused further delay.

[46] The mother did not advise the Agency, in a timely fashion, of her search results. As a consequence, they continued to pursue Dr. Hann, as she continued to pursue her own counselor.

[47] It is reasonable to conclude that this delay effectively stalled rolling out the entire strategy as recommended.

[48] There is unanimity among the social workers, psychologists and psychiatrists that the mother's engagement is critical to establishing the groundwork to a potentially successful shared parenting arrangement. There is also unanimity that any real progress has the potential of being sabotaged if the mother is not on side.

[49] It is also understandable that the Agency concluded that the mother's attitude had not changed since the difficulties they had in gaining the mother's consent to acceptable counseling for the children was a repeat of the previous proceeding.

[50] It is fair to say that the mother's reluctance to accept the recommended counseling, her delay, her resistance, could be interpreted as needing to manipulate and control the process. I specifically refer to paragraphs 339 to 350 of the First Disposition Decision as evidence which would support the reasonableness of the Agency's conclusion.



[51] By July, therefore, between the Agency and the mother, the difficult relations and conflict escalated. The Agency was unable to set in motion counseling for the mother. Conversation between the mother and the worker broke down. Effective communication became impossible. Scheduling parental contact became problematic. Telephone calls (between the Agency and mother) broke down and were terminated. The mother continues to record some of the conversations. Little was accomplished in a timely fashion.

[52] The escalation of conflict between the mother and the agent is not uncommon in child protection proceedings. However, in this proceeding the mother has not been able to communicate without difficulty with other agency workers.

[53] Paragraph 429 of the First Disposition Decision addresses this issue as it was raised in the First Disposition proceeding not too long ago. I concluded there was no evidence to support the mother's view that she was treated disrespectfully or laughed at. Quite the contrary.

The tape provided by the mother corroborates the father's testimony and that of two of the workers in charge of the file at different times throughout. They testified that it was difficult to talk with the mother or negotiate on any issues because she preached at them, spoke over them and failed to listen to anyone else's opinions. The conversations degenerated and very little could be accomplished. Her in court testimony was delivered in similar style.

[54] It is not the Court's function to direct the Agency, an independent body, who gets assigned to which case. I am, however, not convinced that any worker will be able to satisfy the mother's demands.

[55] I am also satisfied that the Agency **was** attempting to deal appropriately with the mother. They found themselves in this situation; no counseling had been established, no improvement in attitude and cooperation and there was no obvious signs of progress. Time was running out.

[56] The Agency cited other concerns.

**Wording of the Order:**

[57] I am not satisfied that is particularly relevant. This refers to a failure (her failure) to understand and requires education.

**Making Plans without Consensus - End of the Year Activities:**

[58] This is reflective of a need for counseling and mediation. The reason the Court order required the parents to attempt to reach agreement on attendance at functions and other ordinary decisions that they would be called upon to decide once shared parenting evolved, was to determine whether they could reach consensus on these day to day issues. The reason they were referred to the Agency, to resolve issues upon which they could not agree, was in order to facilitate a process of negotiation.

[59] This May 8<sup>th</sup> Order was a new change in a long history of unresolved conflict between the parents and a long history of lack of communication between the parties. I, therefore, ordered the parties to consult with the Agency for the resolution of any disagreements.

**My Concern:**

[60] If the relationship is such that even the Agency can not effectively intervene, how then are the parents going to resolve their disputes at the time of Final Disposition when the Agency can no longer be involved?

[61] Are they going to revert to calling police and involving social workers on an informal basis to continually intervene in the conflict that existed during the course of their separation? Instead of using the Agency as a resource, the mother has come to regard them as her enemy.

[62] Why is it important to develop an ability to resolve conflict? There is a consensus among all therapeutic professionals; the level of anxiety experienced by these children is harmful and must be reduced, if not eliminated. The conflict between the parents and between the maternal grandparents and the father had escalated and spilled over into the community. That was prior to child protection involvement. There have been repeated calls to the police to intervene. The nature of that conflict, the allegations that flow from the grandparents and the mother,

have all been dealt with in the First Disposition order. The effects on the children have been thoroughly discussed.

[63] Time has not reduced this conflict, it must be managed in such a way that the children are removed from the environment in order to protect their physical and mental health.

[64] Other concerns were pointed out by the Agency.

**Concerns that can be Dealt with through Counseling and Mediation:**

[65] Difficulty was experienced in effecting a transition at school that would allow the children to move from the school to their father, out of the presence of the mother. It is well known that in high conflict situations, if the parties can't reduce the conflict, the Court should create a manor of transition that protects the children from being in the presence of the parents until the parents can effectively manage their conflict because the children experience the implicit and explicit difficulties between the parents.

[66] There was a suggestion that the children be bussed. That is a parent focused solution and not a child focused solution.

[67] There were other issues.

[68] Engaging school authorities to support the mother's position that she could not guarantee, even for a short period of time, that she would refrain from being around the children and the father when they were transition-ed. This is reflective of an inability to compromise, it is not child focused, it is adult focused. While it is within the right of the school to ask not to be part of this process, it also causes me to conclude that compromise and cooperation in the current school environment may not be achievable.

[69] There were other issues that were raised by both parents. The sending of grandparents picture on the first transition to father's house; mother being present when the father was picking up the children; ironing out phone calls and privacy matters between households; sending a list of child abuse numbers with names of teachers with the children to the father's home to provide them with names and instructions on the note so that they would have the names of teachers or school

authorities to call should they decide to call child abuse; and the expectation of the mother that she receive immediate attention and responses and that the Agency work with her in writing.

[70] Most of these can be resolved by education and by appropriate mediation and counseling if the parties are willing to participate.

[71] Compounding the difficulty in communication between the Agency, and I would presume the parties, although I don't have evidence of this, is the fact that there was a period of time during the summer when the Court was informed that counsel for the mother was no longer involved on a file. The mother began to act on her own behalf. That ceased immediately when this application was brought to the Court by the Agency.

[72] There are some indicators that the mother may be prepared to move forward from her current, very litigious mode, to a therapeutic model. She abided by the social workers directions in effecting the transfer of the children to the father. Her counsel, on her behalf in pre-trial discussions, clearly articulated her intent to accept the Decision, to change her focus and to begin to cooperate.

[73] There is also evidence in the supervisor's notes regarding supervised visits and phone calls, that she has been able to re-direct and deflect the children's conversations when the questions involve articulating conflict between the couple.

[74] Her testimony in Court suggested that during her counseling sessions, which have commenced since August 20, 2009, her counselor is challenging her assumptions and asking her to look at other options and methods of resolution. Those are positive signs.

[75] I refer to Dr. Hartley's consultation report dated September 3<sup>rd</sup> at page 2, after the meeting with the parents, (albeit late with the mother). Dr. Hartley did indicate that she had the opportunity to meet with the Respondent mother and the Respondent father to review her report and recommendation and to respond to any questions that may have arisen from her report. She indicated both the father and the mother presented as cooperative and engaged in their interactions with Dr. Hartley and demonstrated an understanding and acceptance of the recommendations she made in the report of April 7, 2009.

[76] Both parents need help navigating these troubled waters. The mistake made by the mother, the lack of insight in developing strategies for attending children's events to avoid parental conflict and the need to arrive at a peaceful consensus before these events are matters that require educational counseling and mediation.

[77] The father is justifiably afraid that the alienation and false accusations that have arisen since 2005, continue unabated. He has grounds to be concerned about the children's environment and he is fearful that the progress made over the last number of years can easily be destroyed by malicious gossip.

[78] Both parents need to try to work out a strategy that will eventually allow them to be present at school functions without conflict, that respects each other's role, that will allow the children to be free to experience the best of both parents without continual exposure to conflict.

[79] The mother has not yet understood the effect of implicit and explicit parental conflict on children and has not grasped that she will be required to arrive at a peaceful consensus with the father on parenting issues.

[80] I am satisfied that the Agency had the authority to do what they did, pursuant to paragraph 4 (30 ) of the Order. However, I am satisfied that the move to supervised contact for the mother may have been premature and the timing of the move was problematic.

[81] The father was on the way out of province with the children, the mother out of the country. The Agency asked the father to interrupt phone calls from the mother and convey the news of the decision. They did not know then where the mother was.

[82] The mother has advised throughout that she wanted the Court to rule on the totality of the evidence regarding the sexual abuse allegations. However, when that was done she did not accept the Decision. That is not unusual. Counseling to assist her would have been helpful and it was necessary immediately but she delayed this. As late as August of 2009, she has advised one psychologist that she still believes the allegations. There is some difficulty with this position.

[83] However, it was unrealistic to assume that she would immediately absorb and agree with the Decision.

[84] The change to limiting access to affect compliance was problematic for the father and the children as well.

[85] It is, at this stage, premature to decide whether or not the mother can gain insight. I am, however, satisfied that a less intrusive solution at the time that the decision was made to supervise her contact could have been effected.

[86] I am further satisfied that there exists evidence now that was not available earlier at the time of the First Disposition hearing or not available at the time the risk management conference existed, that supports the Agency and the father's concern about the efficacy of the plan.

[87] That evidence arose from the July 27<sup>th</sup> Facebook message put out by L.G.L.

[88] As background, during the course of the previous proceeding, the mother has relied on colleagues, in particular L.S., to provide character references and to support her position. L.S. had little useful knowledge of the father.

[89] The principal provided a letter advising of their difficulty in assisting a transition that they could not guarantee that the children will not be in the middle of both mother and father.

[90] After the Agency decided to move the children from the mother to the father, the mother's close confidant and friend, J.M., and supporters, including co-workers, colleagues and some parents, were urged to attend Court to show their support for the mother.

[91] This is an open Court. While the Agency sought to exclude the public to protect the privacy of the parties and the children, the mother expressed no desire to have her colleagues exclude. That is her right.

[92] J.M., a friend, who has occasionally presented herself in Court after the First Disposition, has not attended all of the Court proceedings, is a confidant and sometimes babysitter of the children. She contacted L.G.L., who later (this year) became one of the children's teachers, and asked her to get the message out to all her colleagues and friends to show support for the Respondent mother. Clearly, other members of the community and church were present as well.

[93] The message on Facebook is dated July 27 at 11:10 a.m.:

**Just a little note to let you know that S.S. (identifies school) has lost custody of her children. D.S. (A. and V.) has them in ( identifies out of province location). There is a court date on Thursday morning in PH at 10AM to fight to get these girls back. She was never allowed to tell the whole story about what happened, and now she is forced to share the truth so that people will help her get her girls home where they belong. The girls have told repeated stories of the sexual abuse they have suffered with their DAD. They SHOULD NOT be with him!!!!!!!!!!!!!!!!!!!!!! PLease do not spread this horrible news around in order to protect the girls but we felt we needed to tell you in order for you to understand the severity of this matter!! Please come to the courthouse on Thursday morning at 9:30 to help S.S. and show support for her and A. and V.. The need us now more then ever!!! Invite a friend who knows S.S. to come along...she needs us!**

[94] Later that day, or the next day, I can't tell, at 5:14 L.G.L. must have realized her error:

Hello people, this is the last time I will be on line to send an email. I have nothing to report from today (didn't get the full details) however, I did get the message loud and clear that I probably shouldn't have sent these emails even though my intention was not to break the law in any way, it could be seen as an illegal act! I was asked to contact you all and I did not think of possible consequences!! I would ask that you PLEASE DELETE THE EMAILS I SENT YOU AND NOT MENTION THEM TO ANYONE. I do not want to get myself in legal trouble....that was not my intention. I only intended to get support for S.S., I would not want to harm the children in this process. Thank you! I will let S.S. know that you are all praying for her and the girls.

[95] In testifying, it became apparent that L.G.L., in recognizing her error, deleted some of the names on her address list, and thus, only 18 of the possibly 30 or 40 people to whom she sent this email could be named. Those names she was able to retrieve included T.B., C.A.B., M.B., E.S., D.M., C.S., P.M., N.B.M.R., N.S.S., J.B.F., C.D., C.B., E.S.B., J.G.B., L.A.S., M.C.S., F.C. and G.T. Two are teachers currently at the children's school, a teacher's aid, two retired teachers who volunteer, a former resource teacher, N.S.S. who we've heard from previous to the trip to \*.

[96] L.G.L. likely contravened the law and the requirement that there be no publication of any children's names, any parent's names or foster parent's names in this child protection proceeding.

[97] In addition, the invitation to expand it exponentially means that there is no measurement of the numbers of people to whom it has been communicated that the father has abused the children.

[98] When asked what efforts she (L.G.L.) made to verify her information and knowledge of the hearing, she testified that she accepted the gossip at face value. When asked whether she read the Decision or had any knowledge whatsoever of the Court process, she admitted that she did not. She acknowledged her error and acknowledged that it was an emotional and inappropriate response. She simply accepted the allegations against the father at face value. Her message has been disseminated and there is no way to find out or to correct the damage that it has caused.

[99] The message is that the girls have suffered sexual abuse at the hands of their father and they should not be with him and that message is a lie.

[100] There is no way we can determine what immeasurable effect this will have on the father's ability to parent in the community; to parent his children without a cloud of suspicion following him. He planned a birthday recently for his children and for whatever reason, no children were allowed to go.

[101] The message in the note is a lie.

[102] In 2005, there may have been some confusion on the mother's part, she expressed doubt, she did not initially believe the allegations as communicated to her. In 2009, there is no excuse for the perpetuation of this malicious gossip.

[103] The First Disposition Decision extensively reviewed all of the allegations. 102 exhibits and 29 days in Court dealt with the allegations and the evidence of third party objective professionals. The hearing took place between November 10, 2008, and April 9, 2009. There were 24 witnesses. What would ordinarily have taken three to five days to hear, took 29 days, over months; delaying First Disposition some four months later than normal and using up valuable time that could have been used for therapeutic endeavors.



[104] The mother, through her counsel, had the opportunity to cross examine seven agency workers, six police officers, all access supervisors, the child psychologists, the assessor, the pediatrician and the expert to try to challenge their findings. There was no credible evidence that the father abused the children. On the contrary.

[105] There was significant evidence that disputed the allegations and confirmed that the father's behaviour was appropriate. He was found not to be a risk to the children. The mother, and I suspect the maternal grandparents, can not accept these conclusions.

[106] The mother's perspective continues to believe and allege that all of the professionals have been tainted and unduly influenced. This is simply not a credible position to maintain. There are many other more plausible explanations for the children's advanced sexual language, including exposure to someone other than the father. The Decision, which is public, deals with all of it.

[107] What the Court needs to know is that the grandparents, and more specifically, the mother, are not so invested in continuing to perpetuate this falsehood that the father is responsible, when he is not, that their focus is not on protecting the children's environment from further exposure to conflict.

[108] The mother claims that she is not responsible for the action of her friends and colleagues. The school, however, has been poisoned and the community environment poisoned with this gossip and by these malicious accusations. The mother denies involvement but continued to submit to her social worker or her counselor that she believes that the father abused the children, as of August 4, 2009.

[109] In reflecting on the damage that has been done, I know of no timely and effective way to right the wrong that has occurred without taking the focus off the children and their need to live without conflict. The damage has clearly been done and the extent of the dissemination of these accusations is not calculable.

[110] This is a direct threat to the long term plan of shared parenting in this community. The mother is responsible for who, in her household, has access to her children, to speak to them, to give them notes, to question them, to encourage

them in their fear of their father. She is also responsible for what 'truth' she speaks to her friends and her colleagues.

[111] How did they conclude, as is noted in this exhibit 18, that the mother is the true victim here? How did they conclude that the father is the perpetrator of the abuse? How did they conclude that the mother was never allowed to tell her story? That information had to come from somewhere.

[112] In the entirety of the Decision, the only witnesses who maintain the father is an abuser, are the maternal grandparents and the mother.

[113] It is my conclusion in this instance that the involvement of the community in this way; including J.D., the maternal grandmother's sister; the school; the teachers; those individuals I have named earlier that have contacted the Agency asking them not to send the children out of province; in supporting the mother, have perpetrated this lie. And this has the very real potential of undermining the success of the therapeutic strategy. It exacerbates the conflict and creates an environment of suspicion.

[114] The best interest of the children requires that the Court continue to pursue the peaceful reintegration of the children with both parents significantly involved in their life, *if that is possible*.

[115] The father has, by word and conduct, indicated an intent to follow the plan and access the services. The mother has more lately indicated, in word, her intent to comply. As of yet, there has not been significant conduct that would justify a conclusion that she is prepared to cooperate and participate in addressing this conflict.

[116] The Agency, at this stage, has offered the necessary services and they have been refused.

[117] From this point on, the mother will be responsible to access services and address her issues. She will be responsible for her current counseling, other than the monetary support being offered by the Agency, and in the event this counseling does not bring her to a necessary point within the confines of the time lines within the *Children and Family Services Act* and she needs additional services, she will be

required to advise the Agency in writing of these services and of where she can obtain them.

[118] She will be responsible for engaging directly with Dr. Gerrior to arrange any necessary sessions involving herself with the children's therapy.

[119] The Agency will retain responsibility for resolving the conflict between the parents and for facilitating the evolution of the strategy as recommended by Dr. Hartley. If the Agency advises the parents or their counsel with respect to a certain service or course of conduct and the parents refuse, the matter may immediately be brought back to the Court.

[120] I understand the advice of Ms. Rule. She has been involved as a consultant. The children are being seen now by Dr. Gerrior and have been assessed by Dr. Hartley and I am recommending and directing the strategy in Dr. Hartley's letter be the course and strategy adopted by the Agency and the parties.

[121] Ms. Rule held the belief when she first met the parties, that the parents could cooperate. They were both good parents, they both were able to parent and there was potential here. She changed that opinion over the course of time and expressed doubt, given the ongoing escalation of conflict between 2005 and 2009.

[122] At this review proceeding, Ms. Rule made, what I consider an educated, unpopular, professional, guestimate - that the mother will not be able to achieve success in addressing the issues. That, given her belief system, her inability to separate herself from the opinion of her parents and her inability to accept the findings of professionals that the father did not abuse the children, the mother will not achieve her role in effectively co-parenting. Ms. Rule may or may not be right.

[123] It is premature for the Court to draw the conclusion or to apply the test arising out of Section 46 (6). That test, however, will be applied in March 2010 and the parties should be aware of that, when we come to the point of addressing Final Disposition. It is critical that the parties understand this. Section 46 (6) states:

Where the Court reviews an order, the court may make a further order unless the court is satisfied that the circumstances justifying the earlier order are unlikely to change in a reasonable, foreseeable time, not exceeding the remainder of the

applicable maximum time period pursuant to Subsection 1 of Section 45, so that the child can be returned or placed with a parent or guardian.

[124] The mother's choice of counseling may be slower, the delays may mean that this takes you beyond the time of March, when we have the Final Disposition. That's a choice that you've made because in March, during the hearing, if there's not consent, the Court is going to have to determine whether there is any reasonable, foreseeable, likelihood of change by May 8, 2010.

[125] I want to reiterate to be clear; the emotional abuse and the damage that has occurred to the children arises out of an environment of high conflict. The high conflict existed previous to the child protection involvement. It continues.

[126] It is very simple, address the conflict and you will eliminate the potential for further emotional abuse. At the end of the day, the Agency I presume, based on the progress of the parties and the reports of the counselors, will make a recommendation as to how they believe these children can live on a go forward basis without their involvement. Their involvement will cease at the end of the Final Disposition hearing, save for very few exceptional circumstances.

[127] The Court will be left to look at both parents and to look at their plans and determine which plan best addresses the best interest of these children and is the most workable and appropriate plan.

[128] I am concerned about the lack of progress, about the continued resistance to cooperate and about the deteriorating relationship between the mother and the Agency. I am concerned about the lack of forthright communication by the mother to the Agency and even to her own counsel.

[129] I do not believe Mr. MacIsaac intentionally mislead the Court about information on Dr. M.'s file. When it became clear in December of 2008 that the mother went to Dr. M.'s office for ordinary childhood issues and once again, in front of the children, spoke about sexual interference by the father; that concerns me.

[130] Even after your failed attempt to obtain IWK intervention and the consequences of interfering with the proper investigation of sexual abuse allegations in their own locality lead to the involvement of child protection; even

after the children were subject to extensive testing through St. Martha's Hospital, for alleged heart problems caused by alleged physical abuse in January 2008 (five months predating these allegations) you once again decided to move forward to obtain a referral to yet another professional. Now, admittedly, that predates the May 2009 Court's Decision and it predates the findings of the Court.

[131] What concerns me is this - the transcript of the representations made by your lawyer regarding the need to subpoena Dr. M. to clarify his December 23<sup>rd</sup> notes, which state that on the ordinary visit to get a needle, that there is sexual abuse and interference going on. Mr. MacIsaac said to the Court:

My Lady, can I make one comment? It was just a matter of the medical report that was referred to by Ms. Morrow. I just want to say that I do have an answer here if you care to hear it. Otherwise, I will not do with it now, I just want to make you aware that there is, there is a reasonable answer for the, this medical report she spoke about being in the doctor's file.

[132] He goes on:

It was referred to as a medical, in a medical record of December 23, 2008. My Lady, S.S. **tells me** that she did not make any comment to the doctor about abuse. However, this child went to see Dr. S. at the same office and that's where this information would be obtained from.

[133] Dr. MacNeil testified that he clearly remembers you raising these allegations to him on that date.

### **Conclusion:**

[134] Having regard to the totality of the evidence, I have taken a less intrusive approach (than the Agency) while recognizing the significant damage that has been done to the possibility that the plan that was accepted in December would be workable if the children continued in their current community.

[135] First, supervision of the mother's access to the children will be lifted.

[136] The contents of this Order will be drafted by the Court. The Order will not vary any other terms and conditions of the existing Order but it will address very specifically the course that will be followed now.

[137] The children will be withdrawn from their current school and enrolled as soon as possible in the school proposed by the Agency and father. The children shall not be bussed from one jurisdiction to another. My reason for that is the children should not have to bear the consequences of the adults inability to maintain a protective environment for them. I do not want these children being bussed for over an hour in winter weather.

[138] I do not see the likelihood that the children will be returned to their current school in the near future, if ever.

[139] The Respondent father has agreed to relocate to the area in proximity to the school and he shall do so as soon as possible and he shall be responsible for enrolling the children in the school in consultation with the Agency.

[140] A copy of this Order shall be served on the administration of the children's current school and the administration documentation that ordinarily flows when children are transferred from one school to another shall first be provided to the Child Protection Agency to allow the Agency to view the material prior to this material being sent to the children's new school to ensure that no information concerning the current conflict, child protection involvement and Court action is transferred by school administration from one school to another in a manner that conflicts with the spirit of the current order.

[141] The Agency, upon receipt of this information, shall make copies of this information for both counsel.

[142] The Respondent mother, in developing her strategy responding to the move will provide a workable Court approved response; relocation if necessary.

[143] The children will remain in the weekly care of the Respondent father.

[144] The Respondent mother shall have weekend access starting after school Friday until Sunday with a return time of 4:00 p.m. This shall happen three weekends out of four and on the fourth weekend, the children shall be returned to the Respondent father on Saturday at 4:00 p.m. to give him an opportunity to have some weekend time with the children.

[145] While in transition, the Respondent mother shall continue to have unsupervised weekend parenting time.

[146] I have been advised with respect to the Respondent father's schedule, which means that he will be involved in establishing the children in the community, in getting them enrolled in school and addressing the issues of transition during the week.

[147] The schedule that I'm giving is not intended to be long term, I'm conscious that I am giving the mother three weekends and a half out of four. Ideally, if the parents can work together to arrive at an appropriate schedule once the transition take place, the parents in an ordinary circumstance, would share weekends.

[148] Right now, the Respondent father will be responsible for all daytime activity and all evening school activity, leaving the weekend free and this is not a fair distribution but it is the best I can do given the schedule in the mean time.

[149] In considering whether to go back to the previous schedule, it places a terrible onus on the children to accept the responsibility for what has happened here. First, I don't want the children assuming that they are being transported from their community to the region of their new school on a regular basis for the future. The father is going to relocate and he's going to live there and they're going to be living in the new school's community.

[150] Secondly, I recognize the mother needs some time to review what her strategy is going to be. In the meantime, I don't think it's an appropriate or safe strategy to place the children in the mother's care for a week, for a number of reasons: 1. She hasn't significantly engaged yet, but hopefully will; and 2. It will mean that every morning, the children are being transported for an hour over winter roads to their school and back . That leaves the burden of the problem on the children and not the parents.

[151] So, I anticipate that either through mediation or counseling or further Court review, a schedule which will be better suited to address the issues of parents and children will roll out; perhaps even by agreement.

[152] It has been impossible to supervise the children in their current school \* and it is impossible to keep the children in that current environment without a

possibility of sabotaging the long term success of the goal. That goal remains to try to arrive at some joint parenting or shared parenting resolution.

[153] The strategy involved as set out in Dr. Hartley's letter shall be followed and I will briefly review this. In accordance with the recommendations of Dr. Hartley, the Respondent mother and Respondent father and Erin Warner shall meet with Dr. Hartley, as facilitator, if she agrees, immediately if possible, to identify the strategy of the therapeutic process for both parents of individual counseling together with child centered counseling, in the hopes that this can resolve the conflict between the parents, enhance their ability to work together with a view to bringing the parents and children to the March 2010 Final Disposition Hearing with the possibility of an agreement.

[154] Immediately, after that first meeting, if it takes place within a two week period, the Agency shall provide the services of Alfred Doucet to meet, as soon as possible, with the issues that shall be put before the mediator including:

- a common agreement on what information shall be provided to the new school;- parents to begin consultation and mediation on scheduling, communication and other issues in order to begin a consultation process between the parents to effect a joint parenting plan. This is with an aim at recognizing that, at Final Disposition, the parents are going to have to have a plan or strategy in place when the Agency bows out;- a respectful mutual strategy for parental presence and conduct at school meetings, community events, school functions, church events, etc;
- an effective method of peaceful communication between the parents to keep each other apprised of the need to arrange medical and dental appointments, attendance at these appointments, communication of results and follow up;
- an effective strategy of removing the children from all decision making regarding pick up attendances and drop off's, including scheduling of events ie: birthday parties, etc;
- ground rules for scheduling frequency of phone calls between homes, duration, privacy and timing. The parents responsibility in abiding by these rules;
- a strategy of obtaining and sharing third party service provider information, school, medical and church related;



- communication strategy for communication with children in one home by a parent in another when special events occur ie: birthdays, mother's day, father's day, etc;

- sharing of holiday and summer contact;

- planning and agreeing on the nature and number of extracurricular activities, who attends and when they attend;

- a strategy of communication between parents regarding church.

[155] Mr. Doucet has indicated he is available immediately. He is a person not known to both parties. He is clearly skilled and experienced in this area.

[156] I have provided to counsel answers to Ms MacDonald's questions ?

[157] **MS. MCDONALD:** Yes, you did My Lady.

[158] **THE COURT:** Yes, I have, that's right. He outlined his approach, his billing fees, he has no information about the issues. I would expect him to have the Decisions as well as the therapists reports. This Decision will be typed.

[159] The Agency is a party to the mediation and they are there to ensure that whatever agreements are reached at mediation reflect the children's best interests and address any risk issues that have been identified in this proceeding.

[160] With respect to the meeting between Dr. Hartley, and also Mr. Doucet, all counsel have an opportunity to consult with their clients; their clients to consult with their counsel before the meetings and after the meetings. No lawyers will attend therapeutic strategy sessions with Dr. Hartley nor the mediation sessions.

[161] That the Respondent mother shall provide the Court with an appropriate plan for relocation or transportation that will avoid the children bussing in winter months. The children shall continue to remain with the Respondent father.

[162] The parties shall adopt the strategy recommended in the September 3<sup>rd</sup> letter of Dr. Hartley.

[163] The Applicant Agency shall continue to designate and provide the appropriate therapy regarding the children. This therapy currently underway with the Respondent father and the children shall be made available to the Respondent mother with the same therapist and the children as directed by the therapist.

[164] The Respondent mother shall be responsible for contacting Dr. Gerrior and making an appointment in accordance with the availability of the therapist. The Order shall be brought to the attention of the therapist.

[165] The goal of the children's therapy shall be dictated by the Applicant Agency in consultation with Dr. Hartley as they determine appropriate to address the children's needs.

[166] In the event that the counselling sessions or meetings become focussed on the parents as opposed to the children, it is certainly within the rights of the therapists and mediator to terminate the sessions or to make recommendations to restructure the sessions in order to achieve a peaceable outcome.

[167] That the Respondent father shall continue with his current strategy of individual therapy.

[168] The Respondent mother shall continue to address with her individual counsellor strategies for gaining insight into her role in the conflict, her role in attempting to alienate the father from the children, strategies and skills necessary to jointly parent, learning to listen and compromise, joint problem solving, etc., all with regard to the goals as set out on page three of Dr. Susan Hartley's letter dated September 3<sup>rd</sup>.

[169] The mediator shall be free to refer a particular issue to the individual therapist to have the therapist assist the parents to address this issue should an impasse occur.

[170] The parties may agree to a second meeting with Dr. Hartley to address timing process and progress and the need to amend the course of therapy should it become evident that progress is impaired or stalled or simply to provide a review of the current status.

[171] This mediation is not confidential. It is to be shared between the parties to accommodate preparation for the final hearing.

[172] The mediator shall provide an interim logistic report, simply summarizing the progress and detailing an expected completion date.

[173] The final report from the mediator shall be provided to the Court and the Respondents' counsel and Agency's counsel as well.

[174] Should mediation be finished and/or terminated, the report shall set out the reasons for such termination or determination.

[175] That in the event that mediation is successful, the mediator may in point form, outline the Respondents' agreement and issues remaining to decide.

[176] That the maternal grandparents shall continue only with supervised access as arranged only through the Applicant Agency and the maternal grandparents, pending a final report on their therapeutic involvement.

[177] The maternal grandparents shall be entitled to no access while the children are with the mother during her parenting time. Any breach of this directive may result in the immediate removal of the children from the Respondent mother's care.

[178] That the Respondent mother shall provide to the Court and counsel, monthly progress reports from her counselling sessions, as to the progress of counselling and the issues addressed.

[179] The Agency shall obtain, in the ordinary course, and provide all service reports from service providers to the Court in a...the usual and ordinary fashion. I'm suggesting mid October and mid February because my eye is on the Final Disposition hearing but I am flexible on that.

[180] That the Respondent mother shall forthwith provide a summary letter from Fran Reddy Chisholm outlining the dates, times and duration of all counselling sessions, whether by phone or in person, between herself and the Respondent mother from the inception of her service to the current date

[181] That the Applicant Agency may facilitate a meeting between counsellors, Dr. Hartley and the mediator, if appropriate and necessary to determine the parents progress and the need to address other issues.

[182] The Respondent mother and father may meet with Dr. Gerrior or Dr. Hartley to determine a unified and respectful approach with the children regarding the change in school, the change in parenting schedule and other issues that may arise with the change in school and the Respondent father's residence.

[183] I am just indicating what the Agency has already done in past, and that is make available to the parents sufficient professional involvement to assist them ensuring that the children understand the reason in an appropriate and age and stage developmental level. The Respondents may consult with their counsel, as I said before, after the facilitation session and mediation, counsel may not be present at the therapeutic and mediation sessions.

[184] That the extra curricular activities, in which the children are engaged, shall arise out of their new location. As much as possible, winter transportation should be avoided.

[185] That the focus of the next five (5) months will be on settling the children in their new school and residence, and assisting the parents and the children in addressing the issues that have been identified, to bring each of the parents and children to the most attainable conflict free (for the children) joint parenting environment, if possible, with both parents participating in their care. The goal is to minimize their losses if at all possible.

[186] That the Respondent mother shall not delegate her parenting time to any person. In the event she is in need of a baby sitter, she shall give the Respondent father first option. It is the intention of the Court that as little outside influence as possible occur with these children until the parents have successfully transition-ed into a joint parenting arrangement that does not require Agency involvement.

[187] That the Respondent mother will be responsible to protect her children from any further interaction with individuals who are perpetuating the false belief that the Respondent father has abused the children.

[188] That the Respondent mother and father shall begin to discuss the resolution of their property issues, including the disposition of the matrimonial home and the division of assets.

[189] To that end, both Respondents shall provide each other, within three weeks of today's date, a full and complete Statement of Income and Expenses, child maintenance information in accordance with the Child Support Guidelines and a full and complete Statement of Property.

[190] The resolution fo the Divorce and property issues must move forward to ensure that all possible conflict that my interrupt a peaceful, joint parenting arrangement move to resolution as soon as possible.

[191] Non compliance with the terms and conditions of this order may result in the matter being immediately brought back to the Court in order to make appropriate adjustments to the plan.

[192] The schedule, I would note, is a work in progress, I expect it to change. I expect that the mother will immediately intensely pursue counselling. The meeting will take place with Dr. Hartley. Mediation will begin to place the parents at a table with Ms. Warner so that the issues can begin to be addressed, to cut through the layers in order to arrive at a peaceable solution.

[193] I have not stated but I have incorporated and referred to the findings made in the Decision coming out of the May 8<sup>th</sup> hearing to verify the significant emotional anxiety which has been diagnosed by the pediatricians and therapists and their plea to the parents and to the Agency and to the Court to intervene as quickly as possible to effect change to this environment of conflict in order to save the children's emotional..., the address the children's emotional welfare. So I have not specifically identified the risk that has already been identified in the Decision.

[194] The Court will have the Order issued as quickly as possible. The intent of this is to recognize that we have but five months left. The mother has committed, before the Court, to significant change of heart and her desire to pursue therapy and mediation to resolve the issues. She has been given the opportunity to do that.

[195] I'm not speaking to the Respondent father because he is already in progress of doing that. Therefore, the results will be evident at the end of the day.

[196] If, as a result of lifting supervision, the therapists begin to note a deterioration in the children's behaviour, it is my expectation that will be brought to my attention immediately and we will resolve that by effective intervention.

[197] And so, essentially, you've said that you can do this, you said you can be in control of your own environment, that you can protect the children from the forces that are around you that want to perpetuate something that didn't happen..., let me say this, that want to perpetuate a conclusion that the Respondent father did something because my Decision clearly identifies the possibility that there was exposure to some other inappropriate material, not from the Respondent father, and possible exposure to other people and so the conclusion is that the risk does not come from the Respondent father.

[198] And so, you are..., you have little time, there has been much delay, and you have resisted the intervention of the Agency and so my expectation is that there will be immediate and noticeable results and forward movement on the resolution of this conflict because at the end of the day I will have no..., my options are clearly stated, there has to be a permanent and long term resolution by no later than on or about May 8, 2010. The hearing has been set prior to that date to ensure there is sufficient time to assess the progress and determine what options are going to be available.

[199] Do we have a review date? I think I am going to bring this back if we don't, six weeks just to see how things are going. Obviously, if there's emergencies, we have to bring it back earlier.

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Moira C. Legere Sers, J