

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Trzcinski v. Robitaille-Trzcinski, 2010 NSSC 415

Date: 20101124

Docket: 1201-064069

Registry: Halifax

Between:

Mark "Kurt" Trzcinski

Petitioner

v.

Marie-Cecile "Stéphanie" Robitaille-Trzcinski

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

September 14, 2010 in Halifax, Nova Scotia

Counsel:

Chris Robinson for the petitioner Kurt Trzcinski
Stéphanie Robitaille-Trzcinski, Self-Represented

By the Court:

[1] Mark "Kurtis" Trzcinski, filed a Petition for Divorce on November 13, 2009.

[2] The petitioner father, Mark "Kurtis" Trzcinski (hereinafter "the father"), has been represented throughout.

[3] The respondent mother, Marie-Cecile "Stéphanie" Robitaille-Trzcinski (hereinafter "the mother"), is not represented and did not see the need to obtain representation.

[4] The father was born December 27, 1969 in Maryland, USA. The mother was born December 1, 1968. They are 41 and 42 years old respectively.

[5] The parties met in 1988 and were married on December 29, 1990 in Iowa, USA.

[6] They ceased to cohabit on April 5, 2009. There was no separation agreement. The parties are governed by an Interim Court Order of December 2009.

[7] Both parties currently reside in the Halifax Regional Municipality, Nova Scotia.

[8] The parties have three children: J.M-M.T., born March 14, 1992; M.G.D.T., born October 29, 1993; and J.A.O.T., born July 26, 1995.

Relief sought

[9] The father is seeking a divorce on the grounds of one year separation. He seeks joint custody of the three children and wishes to have the children live with him in the home they currently occupy with the mother. He seeks a division of matrimonial property. Initially he sought no relief regarding spousal support.

[10] The mother filed an Answer with the court January 4, 2010 claiming only relief toward costs and a division of pension.

[11] The mother refused to seek legal advice and did not seek spousal support, although she clearly is entitled and in need of spousal support.

[12] Since the separation the mother, a traditional homemaker, has turned to her family for significant financial support to put groceries in the household and for assistance with various mandatory expenses, including car insurance. The total amount she received from her sister to assist her for very basic expenditures is \$6,707.00.

[13] The mother argued in her affidavit (without proper pleadings) a retroactive award of support. She did not receive child support from February 20, 2010 when the children returned to her household until July 8, 2010. She is seeking \$4,500.00.

[14] The mother is also seeking a refund for the purchase of the father's fly-fishing rod, purchased using what she terms as her child tax credit and baby bonus after the youngest child was born, for a total of \$1,000.00. I deny that request for relief.

[15] The mother is in need of prescription glasses.

Spousal Support

[16] At the commencement of the hearing counsel for the father raised the issue of spousal support suggesting that it was potentially problematic that spousal support was not plead. This issue was addressed in their presentation.

[17] After all evidence was in and the matter adjourned for decision, the parties were called back by the Court to address the issue of spousal support. This discussion is on the record.

[18] In assessing resolution of all issues in dispute, the Court would be unable to address spousal support if not plead by either party.

[19] That would limit the options available to the court in these circumstances, impairing the court's ability to effectively deal with the other issues (custody and exclusive possession of the home).

[20] Counsel for the father sought to take instructions from his client in private. After a brief adjournment, he advised the Court that the father consented to have the matter of spousal support determined by the Court even if it had not been relief plead by the mother. He acknowledged he had dealt with it in his submissions.

[21] I will, therefore, specifically deal with spousal support. It was paid by the father early on in the separation. The issue of duration will have to be a matter for a future variation hearing.

[22] This will enhance the options available to the court to accord with the evidence and the needs of the children. It will avoid a separate application for spousal support. It will also increase the possibility of keeping both of these parents in their children's lives until they reach independence or no longer have need of a family home. Finally, it will address an issue of fairness and justice.

History

[23] The father obtained a Master's Degree in Biology in 1995 and a PhD in 2003. He is employed and earned \$76,088.94 in 2009. He will earn \$73,002 (pay stub) and \$72,468.12 (Statement of Income, unverified). He earned \$77,633 in 2008. During some years he has had additional professional income. His 2010 Statement of Income is a reduction from the previous two years.

[24] The mother is currently a substitute teacher. She has in the past earned supplementary income only. Her primary task was as a mother and homemaker. Her earnings assisted in paying off the father's student loan in the amount of \$14,000.00. She advises she paid off a significant amount of the line of credit.

[25] In 2007 the mother earned \$16,113.16; in 2008 she earned \$19,537.73 and in 2009 she shows income \$16,320.00. As of July 20, 2010 she receives a monthly entitlement on Canada Child Tax Benefit of \$552.66.

[26] This is the first marriage for both of the parties.

Divorce

[27] All jurisdictional elements in the Petition for Divorce have been proven and I grant the divorce based on section 8(2)(a) of the *Divorce Act*.

Custody

[28] The father moved out of the matrimonial home in April 2009, leaving the mother and all three of the children in the matrimonial home.

[29] The oldest child is now in university and living in residence. The two younger children (17 and 15 years of age) live with the mother in the matrimonial home.

[30] Unsuccessful efforts were made by the father to negotiate the issues remaining between the two parties without court intervention.

[31] On December 21, 2009 as a result of an *ex parte* application filed by the father on December 9, 2009, the Court issued an Interim Order granting interim sole custody of the children to the father with no access to the mother.

[32] Following the *ex parte* order on January 12, 2010 an assessment was ordered respecting custody and access, including a psychological and wishes of the children component.

[33] While the father established himself outside of the home, the disruption to the children proved untenable. The children became less comfortable living in the new location with the father. They would frequently visit the mother in the matrimonial home and attend school during the day.

[34] In February 2010, the children attended Nova Scotia Legal Aid to obtain independent legal counsel. On Sunday, February 21, 2010 all three children returned to the matrimonial home to live with the mother.

[35] On May 31, 2010, the assessment report was completed with Dr. Lowell Blood, psychologist; Dr. Isabel Fearon, psychologist; and Dr. Khalil Ahmad, psychiatrist.

Assessment

[36] The assessors noted limitations to the assessment. They were not given permission to speak to the mother's family physician, her former priest and were unable to contact or speak with her sister.

[37] The mother refused to allow the assessors to contact her family physician to confirm her medical concerns.

[38] The assessment recommended the following:

1. The father continue to have primary custody and decision making regarding the children;
2. The children be allowed to remain in the matrimonial home in the physical care of the mother.
3. A third party be involved developing access arrangements with the input of the children.
4. The father must have regular, ongoing access. Block access that will allow for extended contact with the father's extended family should be instituted.
5. The two younger children should be referred to individual counseling.
6. The mother attend mental health treatment with an individual experienced in her diagnosis.
7. The father attend therapy to improve his relationship with his children.

[39] The assessors recommended that if the children remained with the mother, safeguards would have to be put in place. One of those safeguards included a condition that the father would have the decision-making role in order to make sure that he and extended family could maintain a relationship with the children. It is clear that the mother would not promote this involvement.

[40] The assessors addressed in their report the substance of certain written correspondence sent by the mother to the father as well as a professor of hers and the father's lawyer. The letters were sent after separation.

[41] The following trial exhibits are examples of the mother's communication regarding various subjects: Exhibit 4 (affidavit of father sworn December 9, 2009), attached exhibits "B", "C" and "D"; Exhibit 5 (affidavit of father sworn January 8, 2010) attached exhibit "A"; Exhibit 6 (affidavit of father sworn July 26, 2010), attached exhibit "D" and Exhibit 25 (e-mail to Dr. Blood).

[42] This correspondence is clearly disturbing.

[43] I will not extract excerpts for the purposes of this decision. They are bizarre, accusatory, inflammatory and clearly indicate the workings of a very troubled perspective and a troubled mind at the time of writing.

[44] The mother expresses no remorse. She feels justified and appeared incredulous that her allegations of excessive drug use among other things would be believed by anyone. She advises that the writings are to be interpreted figuratively and acknowledges that the exaggerated allegations are not to be believed or taken literally. Nonetheless, they express bigotry and religious, as well as linguistic, intolerance.

[45] Dr. Bartlett, a registered clinical psychologist, was contracted to assist the father through individual psychotherapy. She reviewed the letters and emails written by the mother. Dr. Bartlett wrote to the father's lawyer that these letters appear to be "indicative of some significant thought disorder and a break from reality." She advised (they) "cause me to be seriously concerned regarding the mental health of (the mother)."

[46] Dr. Bartlett further stated, "Given the threatening nature of the letters, I am particularly concerned for her safety and the safety of others including (the children)." She recommended a psychiatric assessment. This has been completed.

[47] The mother was in counselling with a psychologist, Ms. Dixon, who was contacted by the assessors and who confirmed that she did not view the mother as potentially harmful to herself or others.

[48] In reviewing the affidavits filed by the mother, it is clear she understands she has acted immaturely when speaking with the father's lawyer and recognizes the difficulty that her emotional issues have caused her.

[49] The assessors noted and I agree that, in person, the mother presents as strong-willed, self-reliant, intelligent, capable, articulate, well-oriented and coherent, showing no behaviours of unusual impulsivity, disinhibition or flight of ideas.

[50] However, it was clear to the assessors that in person and in writing, the mother "revealed maladaptive personal and interpersonal tendencies which are likely to influence her parenting behaviour and decision making . . . she exhibits a tendency to view the world around her as menacing and to attribute hostile intentions to others."

[51] The assessors described traits which may interfere with the mother's ability to share decision-making with others and interferes with her ability to foster or accept

independent thinking in her children. They suggest this may become increasingly problematic as the children move into adolescence.

[52] It was clear to the assessors and to the Court that the mother would act, in their words "whether consciously or unconsciously in ways which would denigrate any positive attitudes her children hold toward her father."

[53] The assessment noted that it was difficult to get the mother to articulate a clear and consistent plan.

[54] The Court struggled with the same difficulty. At the end of the day, the mother did not put forward any other plan other than to stay in the home with the children.

[55] If the Court were to order her to remove herself from the home, she said would leave the area. This would not have been in the best interests of the children.

[56] In the final analysis, the mother decided that if she had sufficient money to sustain herself, she would stay in the area for the period of time it took her youngest child to complete high school. This appeared to accord as well with the father's plan.

Medical Condition

[57] The mother advises that due to her medical condition, she is unable to attend work full time. She advises that there is no physician in Nova Scotia qualified to treat her for the particular condition.

[58] The documentation the mother filed respecting tests that were undertaken is not conclusive regarding this medical condition. However, she advises she was refused insurance due to the condition. More evidence would be needed on this issue to draw credible conclusions.

Current Parenting

[59] With respect to current parenting, the assessors concluded that the father appeared to be capable of meeting the children's social and emotional needs, in spite of the fact that he was not the primary parent throughout the children's youth.

[60] There was some concern that the father would place the older children in a position of having to be parents rather than adolescents, although he did recognize that the children's needs take priority.

[61] The assessors also found that the mother appeared to have the ability to provide for the basic needs of the children, provided her income was not limited to her current employment. She is capable of managing a household and ensuring that the children's needs with respect to food, clothing and shelter are met.

[62] However, the assessors noted:

There are serious concerns regarding (the mother's) ability to separate her children's needs from those of her own . . . (the mother) also appears to be driven by her own needs with respect to her attitude toward the children's contact with (the father) and his family. She made it very clear she has very low opinions of them. She suggested that there would be no value in contact between the children and their paternal grandparents. She is described as actively discouraging the children from having contact with their father. As well, she has made a number of unfounded allegations with respect to (the father), without apparent thought to the impact of these allegations on the children.

[63] In discussing the diagnosis the assessors made of paranoid personality disorder, the assessment notes as follows:

A number of provocative and bizarre emails and letters have lead to concerns regarding (the mother's) current mental health functioning. Interviews, testing and the psychiatric evaluation conducted as part of the present assessment suggests that (the mother) does not have an acute clinical disorder. Rather, she meets criteria for the diagnosis of Paranoid Personality Disorder. The hallmarks of this disorder are long-term, widespread and unwarranted suspicions with respect to the actions and motivations of others. These beliefs tend to be strongly maintained in the absence of any supporting evidence. There is often a belief that one's rights are being violated and a tendency toward exaggerated self-reference. These characteristics were quite evident in (the mother's) history and in interviews with her . . . they also exhibit unrealistic and grandiose fantasies and develop negative stereotypes of others, particularly those who come from different background or cultures. They have difficulty seeing their role in problems or conflicts, believing they are always right. Again, (the mother) fits these descriptions.

In times of stress, individuals with Paranoid Personality Disorder may experience decompensation, including very brief psychotic episodes. In (the mother's) case, the

disorder, while pervasive, appears to have been relatively stable until recently. The delusional and grandiose aspects of her presentation are fairly well encapsulated. That is, they tend to be limited to specific aspects of her life surrounding (the father) and his family and others whom she views as having betrayed her. It appears that, for the most part, (the mother) is able to function and complete her day-to-day responsibilities without serious difficulty.

...the children appear to be well aware of her eccentricities and have largely normalized them. They have learned how to interact with their mother in a manner that is least likely to cause her upset. Although it is possible that individuals with this disorder can become violent, there is nothing in (the mother's) background to suggest a propensity for this kind of behaviour.

[64] The assessors concluded the mother was giving preference to her own needs over those of her children.

[65] There is no doubt that the father has the ability to promote appropriate contact between the mother and the children and there is further no doubt that the mother has extreme difficulty in facilitating the children's contact with the father.

[66] The mother acknowledged to the assessors and in court that she made many allegations which were not true.

[67] The mother also advised that some of these allegations were drawn up with her sister and herself on a visit with her subsequent to the separation.

[68] One of the more serious accusations the mother pursued was to write to both the father and his father and make protracted and fairly significant accusations regarding the father's parentage. She professed to have special knowledge; it created a significant emotional impact on the father and his parents.

[69] This became so disturbing to the father and son that in order to assure the father that there was no truth to the allegations, both undertook DNA testing to confirm parentage.

[70] The mother advises that she does not share her views with the children. It is difficult to determine how the children could have been protected from the nature and extent of her rigid views regarding the father and his family.

[71] The mother is not supportive of the children having contact with the father and is against them having contact with paternal relatives.

[72] The assessors acknowledged that there was a concern about the exposure of the children to her various beliefs since the separation. They acknowledged that the mother has not demonstrated an ability to accept responsibility for her behaviour or for the difficulties she has encountered in her life.

[73] Respecting these letters, the assessors concluded that the upheaval in the mother's life caused some decompensation which would be reflective of a deterioration in her mental health. However, she continued to function with respect to day-to-day activities, including care of the children. They did not have evidence to suggest that she was a danger to them.

[74] If the children were young children, the recommendation of the assessors would be to have them remain in the legal and physical custody of the father. However, because all of the children (14, 16 and 18 year old), clearly stated they wanted to remain in the family home with the mother (and followed through with this in breach of the court order), that caused some difficulties for the assessors.

[75] The mother has been the primary caretaker and the children have an intense bond with her. The children have a different relationship with the father. The task of primary parent has not been his traditional role. The assessment also noted that the father appeared to be somewhat self-absorbed.

[76] Remaining in the matrimonial home is the least disruptive for the children. Due to the ownership of the home, this is possible if the father moves back into the home.

[77] There were obvious concerns regarding the mother's state of mind and care of the children on a go-forward basis. The fact that the oldest child was going to university would mean that the two youngest would then be responsible for managing or absorbing the mother's behaviour.

Custody Result

[78] In the Court's view, the recommendation to leave the mother in the matrimonial home with the children would not be a satisfactory way in which to maintain the

relationship between the father and the children. It would require external support and intervention which could become problematic.

[79] If the father has sole custody and decision-making power but does not have the children with him, the mother's influence would continue to be significant. It gives to him decision-making authority without means to effect his decisions.

[80] Both parties seem to want to keep the children in the home at least as long as it takes for the youngest to reach university. Their financial base would be preserved better if they remained in a home made affordable by the paternal grandparents. Over the years the paternal grandparents have significantly assisted the couple by paying maintenance costs including more recently repairing the roof of their residence.

[81] Also, while the assessors recommended the mother remain in the home and the father have custody, they placed on him the responsibility to monitor the children's functioning and respond should there be difficulties. Thus, establishing routine access would be necessary. That has not been historically successful while the children remain with the mother.

[82] I appreciate the difficulty the assessors had structuring their recommendation. They had the knowledge regarding the mother's difficulties, together with the information that the children's stability was better preserved in the home.

[83] The assessors were aware that, despite the order granting the father custody, the children left his home and returned to their mother's residence.

[84] There were a number of problems with the father being outside the home and the mother being in the home given their different parental strategies. Just two of these follow.

University

[85] The oldest child was screened for several universities and was rejected on the basis that he had failed to provide essential materials to pursue the application, despite numerous requests by the universities. The mother knew this and while she encouraged her son to respond, she felt it was a maturation process for him and that he would need to take the initiative and do it. Failing to comply simply meant rejection which was, in her view, a lesson well-learned.

[86] The father wished to take a more assertive role but was unable to do so because he was outside the home and was not aware of the lack of follow-up in the application process.

Motor Bike

[87] The father alleges that the oldest child purchased a motorized vehicle, riding it when he was not licensed or insured. While the child was living with the mother he drove it anyway. The father alleges the mother refused to stop the child, despite the discussions between the parties, again allowing the child had to make these decision for himself.

[88] The mother has a contrary view of the facts. She provided proof of insurance and registration. She advises that the day after the child purchased the bike, he went to the insurance agent and obtained a policy with an effective date of April 1, 2010.

[89] The photocopy of the policy card is attached as Exhibit "K" to her affidavit filed August 20, 2010. The policy date is April 1, 2010 with a transaction date of April 1, 2010 and effective date for the vehicle permit of April 2010.

[90] Considering the totality of the evidence, it appears that the motorcycle was purchased in April. Very shortly thereafter, the child did have a permit and he did have insurance. I do not know when he obtained his licence to drive.

[91] This became an issue between the parties. The child became involved. The child purchased the bike with his own money and it was parked in the shed. The father saw it and became angry, contacted the paternal grandfather who, likely not knowing the full story, called the child and threatened to withdraw the funds for his education if he did not sell the bike. As a result of this phone call, the child acted defiantly and began to ride his motorcycle.

[92] The mother believes that had the father not gotten involved in the manner in which he did, impulsively, without knowing the full facts and not involving the paternal grandfather, the motorcycle would have remained in the shed where it was from the beginning.

Parental Roles

[93] The difficulty with this situation is that the mother has been and continues to be the primary caretaker for the children: the individual who is there during the days to assure the children that there is food in the fridge, that there is a schedule to be maintained and that their needs are addressed. This is not a role to which the father has been accustomed.

[94] The conclusion of the assessment is that the children understand quite clearly the strengths and limitations of the mother and have accepted and worked around those. Essentially their basic needs are met.

[95] When ordered by the Court to live with the father, the children were not satisfied with the way in which his household was maintained and not satisfied with his style of parenting. They were also concerned about their mother.

[96] The children decided on their own to consult a lawyer and remove themselves from the father's care and return to the mother's care. This reflects the lifetime roles that the parties have accepted. The children wish to move on with their lives with some stability within the reality of the parental skills and deficits.

[97] Essentially the mother has made her situation much more difficult by her approach and attitude, her suspicions about the justice system and about anyone associated with the father.

Assessing the Evidence

[98] I acknowledge and adopt the conclusion by the assessors that the contents of the letters are clearly significantly different from the mother's presentation in court.

[99] One has to sort carefully through the mother's affidavits to elicit the reliable evidence as to the conduct of the parties and the response of the children in order to obtain a broader view of the children's best interests.

[100] When one reads through the mother's response in writing, as opposed to her oral response in court, the response in writing is for the most part clear, coherent, supported and verified by exhibits. She was the parent who kept receipts and managed the household affairs.

[101] One can easily understand how it is that the assessment reached their conclusion to leave the mother in the home but vest authority in the father.

[102] Essentially these children have voted with their feet in defiance of a court order. They intend to reside in their own home. Although their preference is with the mother, they have indicated more recently through their former counsel that they wish to have the stability of the matrimonial home to continue with their development.

Children's Counsel

[103] The Court and the parties received a letter from Ms. Tippett-Leary, counsel for the children; she was not present at trial. The children did not want to be present but they did indicate that they wished to stay in the matrimonial home regardless of whether the father or the mother was ordered by the Court to be in the matrimonial home.

[104] The former counsel for the children confirmed in her letter as follows:

A recent conference with the children, however, indicated there was no need to seek party status. The children are satisfied that they have been properly heard both through my previous representations to the court and through the assessment.

The oldest (child) is in university and in residence, the younger two are happy to remain living in the home. They would prefer living with their mother and are concerned about what would happen if this is not the case; but would be remaining in the home regardless of who was in charge and who had primary care status.

[105] Normally one would not place the decision-making regarding sale or retention of the home on children. Nor would it be practice to prefer their wishes over the law relating to division of property.

[106] However, this object is attainable here and may be the best option.

[107] On the totality of the evidence, it appears that the children were concerned about the mother if she was removed from the home - how and where she would live and how she would support herself. They were concerned about the consequences of having her removed from the home.

[108] The children have indicated they would have to address the mother's needs in preference to their own if she was not treated fairly.

Postponing Sale

[109] Historically, postponement of the sale of the matrimonial home has not been the practice. It creates the potential for an unequal division of property.

[110] If it were not for the fact of the mother's personality issues as well as her hostility and aggression toward the father and his family, the history of this relationship would indicate that the mother should retain the day-to-day care of the children and remain in her household.

[111] While the mother has indicated in numerous pieces of correspondence and by her conduct that she will not facilitate contact between the children and the father and his family, her affidavit evidence shows some intention to facilitate contact between the children and the father.

[112] Aside from a consideration of which parent will best facilitate contact with the other parent, there are other important considerations, including the mother's distorted perspective that support the recommendations that the father ought to be in the position of decision maker.

Option for Settlement

[113] It appeared at the end of the proceeding that the mother was prepared to remove herself from the home providing she received spousal support and could establish herself close by and make herself available for the children.

[114] The father wants to live in the home and seeks to have the two remaining dependant children live there with him. Postponing this decision until the youngest child reaches university is not the best option.

[115] The children were genuinely concern for the mother's mental health. They appear to believe that other than the relationship with them, she has little else in her life.

[116] The children have also expressed a strong interest in living in the home. They will not respect an order from the court that demands they live with the father outside the home.

[117] They will not accept a decision that removes the mother from the home if she is left destitute.

[118] The children have indicated by their decision to move back that they have become accustomed to having their mother care for them, have accepted her frailties and have not accepted in the past the manner in which the father cared for them. Given he has had far less experience at this, he has a lot to learn.

[119] The assessment clearly indicates that the father should have the decision-making authority respecting the children and should be in a place where he can ensure there is no deterioration in the mother's behavior.

[120] Outside the home, the father will effectively be unable to achieve this level of supervision to exercise this authority as is evident in the conduct of the parties following the previous Interim Custody Order.

[121] Therefore, if I am to focus on the children's best interests, the father has to be in close proximity to oversee this new phase of their lives.

[122] The father will have to learn quickly what is expected of a homemaker and parent who is responsible for the day-to-day decisions respecting the children.

[123] And to maximize the children's options, they ought to have a place in the mother's residence as well. She continues to be able to meet their physical needs. If she is able to financially reestablish herself, she has indicated an intent to stay in proximity to the children.

Result

[124] The father shall have the day-to-day care of the children in their current home.

[125] The father shall be required to consult with and keep the mother informed of all major decisions in advance regarding the children's health, education and emotional welfare.

[126] The father shall allow the mother to take the lead with respect to the religious matters concerning the children, having regard to their culture and tradition.

[127] In areas of disagreement, the father shall have the final authority to make decisions respecting the children.

[128] The father will have to shop for groceries, maintain the household, prepare the meals, **ensure he is physically present to provide the parental presence, guidance and direction** the children need at this age and stage in their development. They continue to require a strong parental presence in the home. He shall inform himself of their needs by reference to professionals if necessary. He shall be reminded that his provision of a parental authority subsequent to the interim court order did not meet their needs.

[129] The father's extracurricular activities do not take priority. He will have to arrange with the mother before he absents himself from the home.

[130] With these considerations, the best option to allow the father this role is to have the mother reestablish herself outside the home in a residence close by where she too can be accessible to the children and provide for them independent of the father.

[131] In this manner, the children are more likely to have their interests looked after and accept the separation and divorce if they do not have to be concerned that their mother is unable to meet her daily needs, leaving them trying to shore up her situation by living with her.

[132] If both parent emerge able, with assistance, to address their basic needs, the children can move along in their development and retain connection with both parents. They will lose less by this approach.

[133] This is a cleaner break, necessary in this family.

[134] Effective January 30, 2011 the mother will vacate the home and provide all keys to the father.

[135] The children may then remain in the home and continue with their studies.

[136] The mother shall have reasonable telephone access with the children and the children shall have unlimited telephone access with the mother.

[137] The mother shall have the right to reasonable parenting time with the children at reasonable times upon reasonable notice, including every second weekend from Friday to Sunday and **at least** one evening supper during the week. Given the ages of these children, they are in need of a known schedule that allows for parental flexibility that considers their views with respect.

[138] Given the ages and stages of these children, it is not my intention to prescribe visitation except to say the parties shall consult and agree on parenting time and shall **always** keep the other informed of their plans and the intended schedule. Once the parents agree, they shall respect and support the parental plan with the children.

[139] The children are to be left out of the conflict between the parents.

[140] The parties shall share holidays including Christmas, Easter, March Breaks, study breaks and birthdays.

[141] Since the younger children are 17 and 15, the parties shall agree on the scheduling of the Christmas holiday, such that they agree to support the other parent's time. For example, if the children are at the mother's home this year in 2010 (their current home), next year they shall be with the father for Christmas and with the mother after Christmas and at New Year's.

[142] In 2011 and all subsequent years, the parties will agree to plan their Christmas to ensure the children are with the father at Christmas and the mother from December 26th to December 28th. The parties will govern the schedule, rather than the children, to ensure the children benefit from both parents.

[143] This year (2010) the children shall be with the mother from noon on December 24th to noon on December 26th and the father shall be entitled to have parenting time with them from December 26th to December 28th. Thereafter, the parties shall arrange to share the holiday equally.

Division of Property

[144] This is a long-term marriage. Partially due to the father's lengthy course of studies and the mobility of the parties during the pursuit of his PhD, they have accumulated very little.

[145] The mother gave evidence that she has documented in her own hand a contribution from her mother from June 1993 to August 1995 totalling \$25,350.00 over this period of time to assist the couple.

[146] It is also clear that there has been significant financial contribution from the paternal grandparents to other costs associated with maintenance and repairs and to the children, as well as providing affordable housing to the family.

[147] The mother is most disadvantaged by this divorce since the father's parents continue to offer him considerable support.

The Matrimonial Residence

[148] The home was purchased by the paternal grandparents in August 1997 when the father started his doctoral studies in Nova Scotia. The agreement was that the parties would pay \$400.00 toward the mortgage (a little over one-half), the grandparents would pay the balance and at the end of the father's studies, the home would be sold and the paternal grandparents would recoup their investment.

[149] When the father finished his studies in 2003, the parties were not in a good financial position so they continued to live in the home. In February 2009 the father advises he was prepared to negotiate with his parents regarding the purchase of the home.

[150] The marriage was at the same time deteriorating. Three months prior to separation the father's parents sold him the home, appraised at \$244,000.00, for \$140,000.00.

[151] At the time the marriage was in serious trouble and the mother advised she wanted nothing to do with the liability. The paternal grandparents sold the home to the father by deed dated January 22, 2009 as his home. He mortgaged it for \$140,000.00 and pays \$766.33 monthly toward principal and interest.

[152] The mother requested that her name be removed from the documents originally prepared and that she not be a part of the deed.

[153] Does the mother have an interest? The father had title to this property for the first time less than three months prior to their separation.

[154] The mother did not claim a portion of the home or an unequal division of property. Up to January 22, 2010, the parties had no interest in the home.

[155] The municipal assessment, although usually lower than fair market value, is the only assessment available to the Court.

[156] The outstanding mortgage is \$135,710.19 with disbursements, anticipated by my calculations, to be at least 14,864.50.

[157] I have no evidence that the significant gift to the father by his parents by the reduction in sale price is shareable or was intended to be shared with the mother.

[158] I am unable to divide the matrimonial premises between the parties given that the premises were owned by the paternal grandparents. The paternal grandparents have invested significant funds in their son. The mother has profited by that investment.

[159] I have no evidence to indicate that there was an intention to convey an interest in the home to the mother. While that may not appear to be an equitable resolution, there is no legal basis for me to evaluate or divide the matrimonial premises.

[160] To attempt an assessment of a lump sum under unjust enrichment is impossible without claim or evidence to support such a claim.

[161] To create a division or attempt to look retroactively at the parties' years together in a home they were renting and create a lump sum to address the mother's contribution to the children and the career of the father would be a fiction created to address the mother's unfortunate financial circumstances.

[162] Indeed, had the parties owned the home from the beginning, an equal or unequal division would be standard. However, they did not own the home and the father did not own the home until three months prior to separation.

[163] If anyone is entitled to an unequal division, given the status of ownership, it would be the father.

[164] Therefore, I set the home out of the equation for a division of assets.

Remaining Property: Household possessions and personal property

[165] I have little information on the proper valuation of household assets other than what is contained in the Statements. The father's Statement of Property has not been challenged. However, his valuation of \$35,100.00 for household furnishings and personal property appears greatly exaggerated. I do not accept this as reflective of fair market value.

[166] The mother asserts that the father has purchased a semiautomatic Remington and a double-barrelled shotgun in 1992 from Central Iowa Sports Store in the US. I have no current valuation.

[167] The children's necessary furniture will remain in the home for the children. The remainder of the property will be divided equally between the parties without regard to the valuation provided. To assist the parties, the formula for the larger items shall be that the parents each have alternately an option to choose one of the larger items (except the appliances necessary to keep the home functioning.)

[168] The parties shall have the right to keep personal items and divide the rest equally with a view to reducing the need to fully equip a second household.

[169] Each party will have their personal possessions and items that relate to their hobbies in the selection process. The mother, for example, shall have the right to retain her chef's tools.

[170] If the parties cannot agree, they shall hire a professional appraiser, share the cost and divide the property equally. Should they be unable to accomplish this they shall sell the possessions and divide the proceeds equally.

Vehicles

[171] Each of the parties has a car. The father's Saab he values at \$9,000.00, she at \$13,000.00; the mother's Honda at \$7,000.00. I have insufficient evidence to determine what, if anything, is outstanding against their cars. Each shall keep their own car currently in their possession.

Pensions

[172] The father has a government pension with GOC Superannuation. It is not substantial. That shall be divided equally at source for the entire period of cohabitation in accordance with the rules of the plan administrators.

[173] The mother has minimal pension earnings. That shall be divided equally at source as well.

Savings and Securities

[174] All bank accounts are to be divided equally (save for the trust monies, a TD GIC in trust for the oldest child) as at the date of separation and RRSPs with valuation as of the date of this decision. I understand this to include the following:

Accounts	\$2,824.23 (Valued as at March 26, 2010)
Securities	\$1,745.09 (Valued as at March 26, 2010)

[175] These accounts are to be divided in such a way to minimize the tax consequences unless otherwise agreed by the parties.

[176] The child's trust shall be kept for ultimate disbursement solely for the child's needs.

Debts

[177] I have little to no information on the debts as listed by the father or the mother. There is a line of credit of \$10,496.00 as of March 2010 and two Canada Trust Visas of \$1,633.54 and \$5,251.95. The father agrees he will assume the larger line of credit.

[178] The mother lists what appears to be the line of credit and a Visa. She advises she paid the Visa approximately \$1,700.00 through borrowed funds from her sister.

[179] The parties' total indebtedness, aside from the mortgage held by the father, is \$17,381.49 as of March 26, 2010.

Unequal division of debts

[180] This set of circumstances argues for an unequal division. The father has a home which was previously available for the family but as a result of the divorce is no longer available for the mother. They have not amassed much in equity or savings.

[181] The father's financial prospects look far more promising than the mother's. The mother was relied on as the primary parent for the children until recently and, in spite of the difficulties, the father relied upon her, thus enabling him to pursue his educational goals. It has left him much more able to support himself and the children than her.

[182] As a result of this decision and the circumstances described relating to both parties, the mother will have to move out of the matrimonial home and establish herself separately to allow for her children to visit. Her role will be significantly affected if the children continue to live in the home as stated in the instructions they gave to their lawyer.

[183] The father's submission accepts that he shall be responsible for the parties' joint line of credit and he shall ensure the mother is removed from any liability for this debt.

[184] The mother simply cannot pay the matrimonial debt. The father has and is receiving the benefit of a home financed in large part by his parents.

[185] The father will absorb the family debt except for the debt already paid by the mother.

Spousal Support

[186] The mother's income is considerably less than the father's. The long-term nature of the relationship and the disparity in the parties' incomes and ability to provide for themselves demands an award of spousal support.

[187] In transition, this award may be greater until the mother can settle outside the home and reestablish herself, look to retraining or increasing her ability to become self-sufficient (perhaps by adding more work hours).

[188] I have a Statement of Expenses from the mother and a handwritten Statement of Property.

[189] The mother obtained a Bachelor of Science degree in Zoology from Iowa State University.

[190] The mother has experienced significant abuse in her childhood.

[191] The mother attended high school and Iowa State University while the father was working in Iowa, completed her undergraduate degree there but did not pursue further graduate training.

[192] In 1997 the mother worked as a cashier at a train station and completed her training as a pastry chef at a cooking school in Ottawa, working several summers in that capacity. She subsequently became a substitute teacher at her children's school and currently works on an as needed basis.

[193] The most consistent and recent work history occurred over the last four years. The mother has been employed as a substitute teacher and has been accepted by a specific school board as a qualified teacher. She is restricted to teaching within a certain school board and must obtain an annual "permission to teach" letter. Thus, she is not qualified to teach in the Halifax Regional School Board.

[194] The mother advised the Court that she could only teach on a part-time basis, between 18 and 20 hours per week, because of her medical conditions and her fragile health. The mother indicates she has a rare genetic blood disease and she provides some information concerning that to confirm why she is unable to work full time. The information is not complete.

[195] The mother did not work outside of the home during the children's younger years. She was clearly the primary parent throughout.

[196] It is quite apparent that the father has never been in a primary parenting role.

[197] This was a traditional relationship in which the mother was a stay-at-home parent responsible for school meetings, doctors' appointments and all of the associated tasks relating to childbearing and housekeeping. The father spent a great deal of time during the course of his life studying to obtain his doctorate degree and has been significantly supported by his father.

[198] The father has been given significant assistance from his parents with the purchase of the home. The mother, although having been the primary parent for the life of the marriage, will not have the benefit of this generosity and thus, in spite of her contribution to the career of the father, payment of his \$14,000.00 student loan and other financial assistance she provided, her after-marriage prospects are indeed diminished.

[199] The mother believes her ability to obtain self-sufficiency, to work more hours, is restricted by her medical condition. I do not have enough reliable medical information to accept she is limited or has the illness she claims to have. Medical documentation would be necessary to establish this.

[200] I would be unable to conclude the mother is disabled due to the illness she claims to have without medical information from an objective third-party source. There may be other reasons she is unemployable. That is for a future court to decide on the issue of self-sufficiency and duration.

[201] Clearly, the separation and divorce will have more significant repercussions on the mother than the father, given their roles in the marriage, their education, work experience and their age. Whether the mother will be able to justify part-time work in the distant future after she reestablishes herself is for a future court to decide.

[202] If medical reasons are the mother's justification now for her part-time work, the onus will be on her to provide sufficient medical evidence to substantiate this claim. She refused the assessor access to her medical charts and thus, I am not in a position

to receive informed representations or conclusions regarding the state of her physical health.

[203] The extent to which her diagnosis as per the assessment has impaired her ability to work is unclear to me. Thus, I draw no conclusions on this as it relates to her ability to find full-time work.

[204] In the interim, this change in her lifestyle and removal from the home will require adjustment and spousal support. Again, her Statement of Income has not been helpful to determining what will be her needs once the order becomes effective. The goal is to have a smooth transition moving her to appropriate accommodations close to the home where she can reestablish herself and begin to change.

[205] I highlight below some issues respecting the evidence tendered on income and expenses.

[206] The mother's Statement of Income is based on her staying in the home and thus not of benefit to me. Her actual needs will vary depending on the costs associated with her new accommodation.

The Father's Income and Expenses

[207] According to the father's Notice of Assessment, the father shows an annual income in 2009 of \$76,088.00. However, his April 2010 statement suggests an annual income after union dues of \$72,468.12.

[208] The father's 2008 return indicates line 150 income of \$77,633.00. This included professional income.

[209] For 2007 the father's assessment shows line 150 income of \$58,343.00.

[210] From the date of the separation, the father deposited money to cover the mortgage and other related expenses into the mother's bank account.

[211] From November 2009 forward, the father deposited funds to the mother's bank account or directly paid the expenses for the support of her and the children, totalling approximately \$11,300.00.

[212] I do have an attachment to the addendum affidavit of the mother (Exhibit "O") regarding the child and spousal support negotiations between the parties directly.

[213] It is an email sent on January 29, 2010 from the father to the mother which states as follows:

Starting on 8th of July you will be receiving 1,379 per month for child support and 500 per month for spousal support. I will pay the mortgage which is 830.20 per month. So 1879 minus 830.20 for the mortgage = 1048.80 per month. Because I get a check bi-weekly, I will send you \$484 bi-weekly.

I trust this will meet the kids and your needs.

K. T., PhD

[214] This did not leave the mother with sufficient funds to address her and the children's needs.

[215] The mother has a right to compensatory support in addition to a needs analysis.

[216] The father's statement contains rental expenses and mortgage insurance expenses associated with two residences. I have used the actual monthly mortgage costs adding on his insurance costs as found in the mother's exhibits (mortgage). That reduces his line 1 rental costs considerably.

[217] I have adjusted other costs according to whether they are necessities of life and/or adjustable given the father's changing responsibilities. In addition, his tax liability will be considerably reduced. I note that his income tax liability as stated in his Statement of Expenses does not reflect the actual tax payable for the 2009 year.

[218] I have used the father's 2009 calculations regarding income tax obligation instead of his figures and used his 2009 income as the base from which to operate in the absence of a year to date figures for 2010. His Statement of Income suggests a reduction based on a March pay stub. There is no evidence as to why there is a reduction in 2010.

[219] I have also considered the tax effect of spousal support payments.

[220] I have considered that the father's parents are assisting the post secondary costs associated with the oldest child and have assisted the father considerably in his ordinary living costs.

[221] In rejecting the father's figures as submitted via DivorceMate, I note that counsel for the father used a lesser income for the father and the mother's 2008 income. Her 2009 income is reduced.

[222] I recognize the mother's need to work toward whatever self-sufficiency she is capable of achieving. I note that she has earned more in 2008 than 2009.

[223] The mother will, once reestablished, be expected to maximize her income as much as possible.

[224] I have considered the fact that the mother will, in future, have to increase her income to at least meet, if not exceed, her past four years' income or prove medical disability that would justify accepting her current level of income given her education and abilities.

[225] I also consider that the father has asked for child support payments which must be taken into account when I consider what the mother will have to operate on once she leaves the matrimonial home.

[226] Therefore, I order the father to pay to the mother \$1,600.00 in spousal support payments on a monthly basis commencing January 15, 2011 and continuing thereafter on the 15th of each month until further order of the court.

[227] The mother has been disadvantaged economically by this marriage and divorce. By virtue of the parties' mobility and the fact that the major appliances remain with the home, the mother will receive less than an equal share of household possessions. By virtue of her moving out of the home, she will bear additional costs of relocation. By virtue of the primary caretaker role she will need to have time to relocate and plan to move toward her achievable level of self-sufficiency.

[228] I am aware that the current spousal support monthly award will not address entirely the mother's monthly expenses and that she will have to look at maximizing her income. Therefore, I order a lump sum spousal support award of \$10,000.00 to assist in her relocation and setting up her new household; payable forthwith.

[229] The first two monthly payments of spousal support shall be paid directly to the mother and thereafter through the office of Maintenance Enforcement, unless otherwise agreed upon by the parties.

[230] The children are a priority before spousal support; otherwise, I would have ordered in excess of \$1,600.00 as the mother clearly has a current need that exceeds this award.

[231] History has shown that these children need to know their mother is able to establish herself outside the home.

[232] The best decision for the children is to reestablish the parents' independence. The father, due to his parental support, owns the home leaving the mother essentially without meaningful assets and support.

[233] The division of roles and support of the father's professional pursuits has contributed to the lack of assets to divide; the mother's role has created a pattern of children's dependence on her and her dependence on the father's income.

Child Support

[234] Section 11 of the *Divorce Act* (1985, c. 3 (2nd Supp.)), sets out as follows:

11. (1) In a divorce proceeding, it is the duty of the court

(b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;

[235] The court cannot, on its own motion without the consent of the parties and evidence that reasonable arrangements have been made for the children, waive the child support obligation.

[236] Child support for two children on the mother's last verified income for 2009 of \$16,320.00 for two children remaining at home is \$255.00 per month payable commencing February 1, 2011 through Maintenance Enforcement unless agreed otherwise by the parties.

[237] The parties will exchange full and complete income tax returns by May 15th each year.

[238] The children all appear to be candidates for university.

[239] Although I have no verification of this, both the father and the mother confirm the children's education is looked after through a trust established by the paternal grandfather. They are not irrevocable trusts and the certainty of coverage may vary. It is clear both parents anticipate and rely on this. Thus, the father and the mother are spared some considerable costs.

Medical Coverage

[240] The father shall keep the children covered by his medical and shall keep the mother insured, should his medical plan permit such coverage according to the terms of the plan.

Insurance Coverage

[241] The father shall keep in force his existing life insurance with the mother as the beneficiary until the children are no longer dependents and spousal support is no longer required. He shall provide to the mother annually details of this coverage.

[242] The parties shall keep each other advised of any changes in their income and employment status and provide full and complete details regarding this change to ensure that they address, within a month of the change, any adjustments to child support.

[243] The parties shall exchange their Income Tax Returns completed with all attachments and whether filed or not each year on or before May 15th, commencing May 15, 2011 together with their Notices of Assessment and Reassessment, if any, forthwith upon receipt.

[244] The parties shall have prepared and execute any documentation required to put into effect the terms of this order.

[245] Counsel for the father shall draft the Divorce and Corollary relief orders.

Legere Sers, J.

November 24, 2010
Halifax, Nova Scotia