

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Zinck v. Fraser, 2005 NSSC 152

Date: 20050609
Docket: SFHMCA 017647
Registry: Halifax

Between:

Crystal Zinck

Applicant/Respondent

v.

Steven Fraser

Respondent/Applicant

Judge: The Honourable Justice Moira C. Legere-Sers

Heard: May 10 & 11, 2005, in Halifax, Nova Scotia

Counsel: Fergus Ford, for the Applicant/Respondent
Amy Sakalauskas, for the Respondent/Applicant

By the Court:

[1] Mr. S. Fraser and Ms. C. Zinck have a child Austin Gladue-Fraser, born February 4, 2001. The father commenced this application on the 2nd day of November, 2004 after he received notice from Ms. Zinck that she wished to remove their child from HRM to relocate to Calgary.

[2] The father seeks to keep his child in Nova Scotia. He seeks a variation of the current parenting arrangement to place their child, in his day-to-day care.

[3] One week prior to the hearing date on May 10, 2005, Ms. Zinck removed the issue of relocation to Calgary from consideration. This leaves the application for day-to-day care the sole issue to be decided.

[4] There is a considerable legal history to this proceeding.

History:

[5] Crystal Zinck made an earlier attempt to remove their child from Nova Scotia to Alberta. On September 30, 2002, the Supreme Court Family Division issued an Order resulting from an application by Mr. Fraser to prevent the removal of his child from Nova Scotia. She had applied for custody, supervised access and child support.

[6] Mr. Fraser counter applied for custody and access. Both parties were represented by counsel.

[7] In resolving the interim issues, the Learned Trial Judge noted that no finding was made that supervision of access was necessary. However, he allowed Ms. Zinck to take the child to Calgary, Alberta *for a vacation*. Ms. Zinck was prohibited from leaving the child with any other person, leaving with her the responsibility for the care of the child at all times. She was required to return to Nova Scotia on October 7, 2002.

[8] The Court retained jurisdiction over the child and all matters relating to custody, access and support. The learned trial judge ordered supervised access without prejudice to either party respecting the need for supervision.

[9] By Order dated November 21, 2002, paternity of the child was admitted, access by the father to the child was to be in his parents' home from Saturday at 10:00 a.m. until Saturday at 6:00 p.m. and on Sunday from 10:00 a.m. until Sunday at 6:00 p.m. until further court order or agreement of the parties.

[10] On February 5, 2003, the hearing was adjourned to allow for an assessment. This Consent Assessment Order and Interim Access Order acknowledged the existence of an undertaking prohibiting direct or indirect contact between the Applicant and the Respondent.

[11] The Order required home studies and psychological assessments of both parties to be conducted as well as psychological testing of the Applicant, Respondent and child to address the serious allegations contained in the affidavits on file.

[12] There is a Consent Order dated July 15, 2003. Again, both parties were represented by counsel.

[13] The parties agreed to lift the “no contact undertaking” to enable the variation of the current access arrangements. They agreed to unsupervised access according to the following plan:

- (a) Every second weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m., commencing Friday, June 13, 2003 and continuing thereafter. During these periods of time the child was to be in the care and control of Mr. Fraser. In the event a long weekend occurred on the access weekend, Mr. Fraser would return the child on the holiday Monday at 6:00 p.m.;
- (b) The pickup and drop-off time was Ms. Zinck's address at Gaston Road, Dartmouth, Nova Scotia;
- (c) The father was also entitled to access between 5:00 p.m. and 8:00 p.m. every Tuesday and Thursday of each week, commencing Tuesday, June 17, 2004;

[14] The parties appeared before Associate Chief Justice Robert F. Ferguson for a settlement conference. Although no settlement was reached on all issues, the parties agreed that they should share joint custody of their child.

[15] They agreed to parenting arrangements including every second weekend from Friday at 6:00 p.m. until Sunday, commencing June 13, 2003 and continuing each and every second weekend thereafter, with similar conditions for long weekends, Tuesdays and Thursdays.

[16] Telephone access and summer access was set out. Both parents were to have two weeks of block summer access, one in July and one in August.

[17] Arrangements were made for alternating Christmas access. March break and Easter was to be shared. Mother's Day, Father's Day and birthday access was arranged.

[18] The Consent Order dated January 29, 2004 extensively sets out the conditions concerning the care and control of the child.

[19] Joint custody was maintained, encouraging cooperation, and specifying the sharing of information required to sustain the agreement. Ms. Zinck would provide the primary residence for Austin and, Mr. Fraser, the secondary residence. Both were responsible for the day-to-day care of Austin when he lived with each of them.

[20] Mr. Fraser's access was set out to include similar access set out in previous orders including any additional access time as agreed.

[21] A mobility clause was agreed to as follows:

“18. Crystal Zinck and Steven Fraser shall provide 90 days written notice to the other parent (of) his/her intention to move outside the Halifax Regional Municipality. Crystal Zinck and Steven Fraser shall not remove Austin from the Halifax Regional Municipality with the intention of relocating with Austin, without the express written consent of the other parent or an order of a court of competent jurisdiction in Nova Scotia.”

[22] Child maintenance was also specified.

[23] Both parties were represented at the consent finding. *On January 29, 2004*, the parties left the court with a Consent Order that outlined the requirements, should one party seek to leave the jurisdiction. The father had reason to believe the mother had abandoned her attempt to relocate to Calgary.

[24] On *February 18, 2004*, Ms. Zinck filed an application to vary the Consent Order to enforce child support and to vary clause 18 and 9 through 14 of the Consent Order to allow her to move to Calgary. This was amended by application August 18, 2004 simply to require a variation of clauses 9 through 14 and clauses 18 and 20 of the court order. Essentially this would, if successful, vary the previously agreed upon access.

[25] Ms. Zinck again wished to relocate to Calgary with her son to better their lives. She advised she was offered an opportunity as a sales associate with a starting salary of \$1,650 per month with opportunities to advance quickly within the company. *The evidence suggested that she received the offer before the Consent Order which supposedly settled the matter of mobility.*

[26] Shortly after the Consent Order, Ms. Zinck notified Mr. Fraser that she intended to relocate. The matter was then set down for an interim hearing on the issue of mobility and custody.

[27] In June, 2004 Ms. Zinck relocated to Head of Jeddore. On November 2, 2004 Mr. Fraser made application to have his access times varied, as a result of the move.

[28] The parties entered into an interim consent variation November 29, 2004, altering Mr. Fraser's access time. Both parties were represented by counsel. Mr. Fraser was to have access **every weekend** from Friday at 6:00 p.m. until Sunday at 6:00 p.m., commencing Friday, November 19, 2004 and continuing every weekend thereafter, with access on holiday weekends to extend to Monday at 6:00 p.m..

[29] The parties agreed to an update of the psychological assessment and home study prepared by Ms. Whitman, dated May 28, 2003.

[30] The purpose of the update was raised as an issue at trial. I have reviewed the running file and the court record with respect to the request for an assessment. Both counsel consented to an update of the current assessment. Mr. Ford noted that the original assessment was a custody assessment. This update would essentially be an update to an access assessment. Both parties were responsible to bring forward their collateral witnesses and information to the assessor.

[31] Both parties knew the time between the request , April 12th and the trial of May 11th, was a significantly short period of time. Ms. Whitman agreed to interview the parties and the child. Mr. Ford hoped for a more positive view of his client. Ms. Sakalauskas hoped for a more up-to-date view of the parties and their circumstances.

[32] The assessor noted that she approached the update in much the same manner for either custody or access. Counsel knew the update was requested on short notice, both consented to the preparation recognizing the limitations and subject to their right to cross-examine. The update, therefore, has limitations.

[33] *Notably*, as of *April 12, 2005*, the mother confirmed her wish to proceed with her mobility application.

[34] Very shortly before the custody hearing scheduled for *May 10th*, she withdrew her mobility application. She chose simply to respond to Mr. Fraser's application for day-to-day care.

Original Assessment:

[35] There is a lengthy history of the litigation. Most issues identified as present at the commencement of the proceedings relating to transportation difficulties, the details of access, the communication between the parties, has been and continues to be conflictual. The involvement of police is too frequent.

[36] Following the original assessment report, the parties resolved the issue of mobility and conflict by Consent Order dated May 28, 2003.

[37] The purpose of the assessment was to recommend appropriate access between the father and the child. Psychological testing of the Applicant and the Respondent and home studies of both parents and grandparents were to be undertaken. This expanded the normal access report and was a specific amendment agreed to by the parties and endorsed by the court, given the nature of the allegations raised in affidavits on file.

[38] The assessor noted she was unable to arrange a meeting with the mother's parents, with Austin or Ms. Zinck present. In addition, there was no home visit at

Danny Turple's home where the mother and child were living at the time of the assessment.

[39] Mr. Fraser wanted Mr. Turple part of the assessment because he believed there was a relationship and interaction with his son. About the time of the assessment the mother had removed herself from Mr. Turple's presence.

[40] On May 15, 2003, Ms. Zinck delivered a baby boy. The assessor did not know she was pregnant. The assessor attempted to determine who was the father of this child. Ms. Zinck admitted to a brief relationship she had in the summer. The assessor raised the question whether Danny Turple was the father of this child, wondering whether they had ceased living together because his living with her was an issue in the assessment. Ms. Zinck denied that Mr. Turple was the father of the child.

[41] Eventually, Mr. Turple made phone contact with the assessor on two occasions.

[42] In the course of the affidavits filed in earlier proceedings, certain concerns regarding access were identified. The assessor noted these specifically as she commenced her assessment. These included:

1. The allegations concerning Mr. Fraser's potential for violence;
2. The allegation that Mr. Fraser was unable to adequately care for the child;
3. The nature of Ms. Zinck's personal relationships and whether they exposed the child to harm;
4. The safety of the maternal grandparents' home;
5. The quality of care the mother was able to provide; and
6. The influence of the grandparents in the lives of their children and the impact on the child, Austin.

History of relationship between the parties:

[43] Initially, Ms. Zinck was required to leave her aunt and uncle's home. She and Mr. Fraser moved in together. Early in their relationship, Ms. Zinck talked of moving to Alberta. Ms. Zinck then became pregnant in May, 2000.

[44] Ms. Zinck alleged that Mr. Fraser was violent, damaging property, punching holes in walls and threatening to smash things. She alleged physical violence to herself. She alleged he was physically rough with their child.

[45] Mr. Fraser has an entirely different perspective. He testified he took time off work to assist Ms Zinck , went to all her medical appointments with her, lost two jobs as a result of her calling him to be home with her. He maintains he did most of the cleaning and cooking when he was home.

[46] The child was born February, 2001. They moved to their new apartment in March, 2001. Ms. Zinck returned to work in February, 2002 and Mr. Fraser was the primary caregiver from February to May, 2002 except for a short period in February. Mr Fraser had taken a course in cooking and meat cutting at community college and spent two years in the infantry. He believes that he cooked and cleaned and taught Ms. Zinck how to do so. He denied the allegations of violence. He alleged that Ms. Zinck didn't do any housework, cooking or laundry.

[47] They both agreed that one of the reasons Ms. Zinck had been asked to leave her aunt and uncle's place was her lack of participation in any of the housework.

[48] The assessor noted the allegations concerning Mr. Fraser's abuse of cats during their relationship. She noted, "These allegations were reported to be so far-fetched and absurd by family and friends who have known Steven all his life that they do not seem to warrant any further consideration." The only individuals who contradicted this was Ms. Fraser and her aunt. The assessor concluded after her investigation that the reports of Mr. Fraser's abuse and mistreatment of cats was highly unlikely.

[49] The original social worker involved in the case, unnamed in the assessment report, stated that she sensed Steven's anger when she interviewed him. She concluded that he was very angry. The assessor's interpretation of Mr. Fraser's response is considerably different. She notes that Mr. Fraser has been subject to allegations, charges, et cetera, which limit his ability to care for the child on a daily basis.

[50] No evidence was called at this hearing about Mr. Fraser's alleged abuse except as it related to the allegations of assault. I have no information from which I could draw any conclusion about the allegations or the accuracy or validity of the assessor's conclusions. I do have the Consent Order resulting in an expansion of the rights and responsibilities of Mr. Fraser as a father to his son including unsupervised and more substantial access.

[51] Before the first assessment and hearing, Steven Fraser complained about the environment that his son lived in with his mother. He noted that there was excessive use of alcohol and smoking. He worried about a gun standing in the corner by the door in the child's residence; loaded and ready to fire. He was concerned about his son's safety.

[52] In response to these concerns, the maternal grandparents told the assessor during the original assessment that they had decided to be alcohol-free. They would address the smoking by way of acupuncture and the gun would be kept in a shelf in the closet where the door was closed.

[53] Ms. Zinck's frequent moves was also raised as an issue with the assessor. After separation there were approximately 7-8 residential moves. As a result of one particular move, Mr. Fraser was required to drive up to one and a half hours to Jeddore during inclement weather to pick up the child, when Ms. Zinck and the child in fact lived in Dartmouth, a far shorter trip. The mother refused to change the pick up location to reflect her move to Dartmouth.

[54] The assessor noted that the child spent four hours a weekend being transported by the Frasers, in addition to the travel time, to get to Jeddore in the first place and then return back to Dartmouth to his mother's each Saturday and Sunday.

[55] Ms. Zinck responded that the Frasers acted badly on the Easter weekend and, if they were going to strictly follow the court order, then she was going to ensure that they have to abide by the court order as well. This meant that Ms. Zinck arbitrarily placed the child in this access transportation problem when it could easily have been settled by picking up the child at the child's ordinary residence. It put the child on the roads in winter weather.

[56] Access continued to be difficult throughout. Mr. Gladue, Ms. Zinck's stepfather, threatened Mr. Fraser and told him not to come to pick up the child.

[57] Mr. Fraser has acted according to legal advice to ensure that whenever he has access to the child he continually has a witness present, due to the ongoing allegations.

[58] There has been conflict when the paternal grandparents have arrived to pick up the child. There have been complaints to police about the paternal grandparents and a direction not to park in the driveway. As a result, the child is dropped off on the shoulder of a busy highway.

[59] The mother has on occasion refused to let Austin go with the paternal grandparents who offered to transport the child, in spite of their significant connection with the child. The grandparents were required to contact the father to effect a pickup. There was no reasonable excuse for this obstructive behaviour.

[60] The testimony concerning the circumstances surrounding the alleged assault certainly raised a doubt as to exactly what transpired. Mr. Fraser arrived on an access exchange and attempted to give an envelope containing money to Ms. Zinck. She refused it.

[61] There are different versions as to what transpired. There was a question as to the reliability of the mother's witness to the alleged assault. The witness did not testify before me. A charge of assault resulted over the transfer of the child. Mr. Fraser and his father, who witnessed the exchange, testified before me. The mother's witness did not testify. I had no reason to doubt the perspective of Mr. Fraser and his father and no compelling contrary evidence.

[62] The father was required to retain counsel to address the criminal charges. This cost him \$5,000. They negotiated a peace bond and the charges were dropped.

[63] The father was legitimately concerned about the cost of the proceedings and the interruption to his access and to his employment. He has continued to live with his parents until he can regain his financial stability which he says was lost while living with the mother. I did not hear or decide the issue of financial responsibility

during the cohabitation. There is no evidence other than that he has maintained his child support payments.

[64] Mr. Fraser describes his family of origin as a loving family. He describes very little disruption or arguments. The paternal grandparents have provided substantial support for the parties as a young couple and continue to provide extensive support of their son and his child.

[65] Ms. Zinck complained about the difficult life that she lived, the extent of yelling and fighting and, in particular, the allegations that her biological father was emotionally abusive.

[66] The police have been involved in enforcing access several times. In particular, on February 24, 2003, the paternal grandparents drove from Harrietsfield to Jeddore to pick up the child. At the time, the grandparents were the persons responsible for transporting the child. Ms. Zinck indicated that she did not intend to let the child go on access because of the storm. Police intervened and attempted to get Ms. Zinck to allow the child to go. The constable noted that her parents were attempting to encourage her not to let the child go. The constable asked Ms. Zinck why the paternal grandparents had to drive to Jeddore when she herself and the child lived in Dartmouth. She indicated that the court order had to be followed. Although he could not convince Ms. Zinck to let the child go, he attempted to reach an arrangement between the parties. She agreed to an alternate date for access. Subsequently, she retracted her agreement.

[67] When the alternate arrangement brokered between the police officer, Ms. Zinck and the grandparents was not followed by Ms. Zinck, she was informed by the constable she could be charged for denying access. She indicated to him, "Then charge me."

[68] At the enforcement proceedings, the Crown Prosecutor advised that the matter should go back to Family Court and no charges were laid. Mr. Fraser tendered this recollection of his difficulty of enforcing access to support his allegations of ongoing and escalating access difficulties.

[69] The police were called to attend at the Gladue home on Easter Sunday to check on Austin, given that he had reportedly been in the IWK Friday evening vomiting. When the constable arrived at 8:15 a.m., he described the child being in

his pyjamas, opening chocolate, eating a huge chocolate Volkswagen. The constable indicated that he stayed an hour to explain things to Ms. Zinck and encouraged her to comply with the access. He was unsuccessful in encouraging access.

[70] On Easter Monday, the child was taken to the hospital because he was dehydrated and he was put on intravenous. Ms. Zinck indicated the child was hungry on the way home so she fed him some Tim Horton's muffin and french fries. The following weekend Ms. Zinck sent a note to the Frasers to give him Pedialyte mixed with juice and popsicle or toast (something light) or crackers, and not to take him to the hospital or legal action would result. If he was ill, they were to report immediately to her before taking any action.

[71] The assessor described her concern about Ms. Zinck's general lack of insight into the child's regular illnesses, the effect of her conduct and her failure to maintain consistent contact with the family doctor.

[72] The assessor noted continuing animosity between the grandparents and families.

[73] Most of the people interviewed by the assessor supported Mr. Fraser's ability to care for his child. She observed the child and saw no fear or resistance and noted that the child seemed very happy and comfortable at the Fraser's home. In the original report she also noted that the child did not like anyone taking his mother's attention and that the mother's response was appropriate.

[74] The assessor concluded that the hostility between the families and the conflict between the mother and father was ongoing and worsening. Mediation was not recommended.

[75] The assessor noted her concern that Austin was placed in emotionally confusing and potentially dangerous situations, due to the resentful and inconsiderate behaviours of adults, unable to put his needs first. She noted that it was not Mr. Fraser's anger that caused these ongoing problems.

[76] On May 26th, by phone, the assessor addressed the issue of the constant travel for Austin, given that Ms. Zinck was living in an apartment in Dartmouth with him. She suggested the pickup could be arranged there instead of Jeddore.

Ms. Zinck replied that she couldn't carry Austin up these steps because she had a new baby. This information was new to the assessor.

[77] During that conversation the assessor became concerned about the mother's level of stress. She noted that the mother was speaking very angrily to Austin. She noted Ms. Zinck sounded distressed, tired and out of patience. The assessor was concerned whether Ms. Zinck was alone or whether she had support. Ms. Zinck confirmed that the hospital was worried about her as well.

[78] Ms. Zinck's aunt spoke to the assessor around the time of the completion of the assessment and the birth of the new baby to confirm that Ms. Zinck was relying on her mother and her aunt in attempting to deal with Austin and the new baby.

[79] As a result of her assessment and the then current circumstances, the assessor concluded that Ms. Zinck ought not to have sole custody. She recommended joint custody so that the two parents could ensure, essentially, that with both parents involved in his life, globally, the child's needs would be met. She recommended unsupervised access every second weekend, as noted in the continuing orders. She recommended an exchange at the parents' home; she recommended that if either party changed address or moved that the parties specifically consider the number of hours that Austin has to spend travelling and to keep those hours to a minimum.

[80] In preparing her update and testifying in this proceeding, the assessor explained that at the time of the original assessment she had considered making a recommendation to place the child with Mr. Fraser. She was concerned about what that recommendation would do to Ms. Zinck, having just given birth to her second child. She addressed these concerns by recommending an order that would equalize the authority between parents supporting Mr. Fraser's position by a joint custody order rather than changing the custodial picture.

[81] In her current report, she recommends a *change of the day-to-day custody* to place the child with Mr. Fraser due to the ongoing conflict, the unreasonable access arrangements, the concerns about the mother's ability to parent and her lack of insight into her behaviour, her extended family's view that Mr. Fraser ought not to be in his child's life, the frequency of moves and the stability offered in the father's household.

Update:

[82] The current report is an update of the original “Psychological Assessment and Home Study Regarding the Custody and Access”. Known in advance was the limited ability to attend and prepare this report. The assessment update was consented to by both counsel. Specifically, this was an update to the two year old assessment.

[83] At the time the assessor undertook the update, Ms. Zinck's mobility was still an issue. Mr. Fraser's request for primary residence was clearly an issue. Both parents indicated to the assessor their preference for shared custody of the child.

[84] On May 3, 2005 the assessor was notified that Ms. Zinck had withdrawn her mobility application.

[85] The assessor met with each parent, got them to complete a Parenting Stress Index form, completed a play session with the child, reviewed the affidavits and court documents and the letter Mr. Ford addressed to the Court dated May 4th. She also reviewed her May, 2003 report. She notes the limitations of her own report.

[86] Counsel for the mother raised his concerns about drawing conclusions based on play therapy. The play therapy in this proceeding was used as a therapeutic tool to provide clues for the purposes of assessing the child's state of mind. The child was described in positive terms. It was not used by the court to draw any factual conclusions regarding what course of events happened or did not happen. The evidence regarding the use of play therapy did not play a large part in the assessment and was not relied on in this decision.

[87] The assessor recommends that Austin's primary residence be moved to Mr. Fraser; that he be granted sole custody; that he continue to remain considerate of Austin's right to have his mother in his life.

[88] Significantly, she reduced Ms. Zinck's access not to exceed two consecutive days *until* the mother completed a positive parenting program that included and addressed an awareness of the developmental needs and appropriate difficult behaviours of children at different ages and stages.

[89] The assessor concluded that Ms. Zinck seemed to lack the skills necessary to interpret and manage Austin's behaviours appropriately. She noted that the mother's doctor recommended that Austin be placed in daycare. The assessor did not believe that placing Austin in childcare would resolve the parenting issues nor improve the mother's parenting skills.

[90] She noted that Ms. Zinck should have access every second weekend from Friday to Sunday, daytime visits twice a week not to exceed three hours and that the mother take responsibility for half the transportation. If there is a lack of consistency and reliability, she recommended that the visits be discontinued.

[91] She recommended that Austin receive play therapy to address ongoing emotional issues he may have or adjust to changes in the living arrangement.

[92] Significantly, she recommended the cessation of the conflict in legal proceedings. She noted that besides the harm it does to the mother, the father and the family, the legal expenses escalate Mr. Fraser's indebtedness and reduced his ability to live independently.

[93] Essentially, the assessor called for a final determination of the conflict between the parents, recognizing the inevitable harm long-term conflict causes for children. Both parties were surprised at her recommendation for sole custody.

Testimony from witnesses:

Linda Doyle-Gladue:

[94] I listened to the evidence and reviewed the affidavit of Ms. Linda Doyle-Gladue, the mother of the Respondent, Crystal Zinck. The focus of her affidavit is the anxiety, the difficult behaviour and animosity that she sees in her grandchild, Austin, when he returns from his visits with his father.

[95] The maternal grandmother submitted an affidavit in the first proceeding settled by Consent Order. She described her daughter and the Respondent's earlier relationship at the time of the birth of the baby. She described Mr. Fraser as having a temper and impatient. She did not describe him as being patient with his young son or exceptionally attentive to him.

[96] The maternal grandmother lives at 15 Split Rock Drive in Salmon River Bridge, Halifax County, with her husband, Larry Gladue and father, Gerald Doyle. Crystal Zinck lives approximately 15 minutes from her mother's home. The maternal grandmother sees her daughter approximately every other day and speaks to her daily. Ms. Zinck does not have access to a car or grocery store other than through her mother and access to Dartmouth other than through her mother's assistance or the local transportation, in which case she requires some transportation to get to the local bus depot. She has essentially removed her son from easy access to services and his father.

[97] It appears, by description, that Ms. Zinck and Austin live in an area where they have become isolated, partly because of lack of access to transportation, although the mother has not accessed public transportation into the city and does not appear to wish to do so.

[98] In reviewing the maternal grandmother's affidavit, I cannot conclude, after reviewing the evidence in its totality, that the behaviour that she sees in Austin is as a result of the access between the child and his father. In fact, there is no explanation for the behaviour she describes. The possibilities include the conflict between the families, the conflict in the transition, as a result of his environment in Ms. Zinck's home or as a result of the conflict he experiences going between the homes **or** it is simply an exaggerated status of the child's actual behaviour.

Crystal Zinck:

[99] Ms. Zinck was the only other witness in her case. She advises that after she and Mr. Fraser broke up in May, 2002, she went to live with her parents in Oyster Pond. She then moved into her own place on Gaston Road in June, 2002. Although working prior to the birth of the baby, she has continued to be in receipt of social assistance since the birth. She briefly returned to work at CT Group doing telephone sales and Buck Or Two.

[100] Ms. Zinck was the primary caretaker for Austin after the birth and she admits that the child, Austin, during the early years, saw Mr. Fraser's parents and they babysat the child if requested or required.

[101] She describes the father's behaviour in the early years that, if correct, was inappropriate, grabbing the child by the arm, jerking him forward. At the time she describes this behaviour, Mr. Fraser was the primary parent.

[102] Ms. Zinck indicates she would yell at Mr. Fraser. She worried about bruises on the child's rib cage in 2002, and makes allegations about animal cruelty which have not been raised in this proceeding. She describes shoving and punching during part of their relationship. At that time, because of her allegations, she was insisting on supervised access.

[103] In her third affidavit that was prepared for the original hearing, she began to speak of Mr. Fraser's impatience, punching a hole in the wall of the apartment and the bathroom door and the bedroom door. She alleged that he was irresponsible in that he drove his car with their baby while having no registration and no insurance on his car in May, 2002.

[104] In her affidavit in September, 2002, she advises that she wanted to take Austin to Calgary to meet her family *as they had not met him*. She advised in that affidavit she had no intentions of remaining in Alberta.

[105] What is clear from her final affidavit is that both grandparents were very generous to their grandchild and to their respective children. Both parties and Austin have received strong support from their extended family.

[106] The mother has a grade 12 education. She testified she has been trying for two years to enroll in an accounting program at community college. There has been no progress on this. It appears to be more an idea than a plan.

[107] In her affidavit filed for the current hearing sworn to on April 12, 2005, she still wanted to relocate to Calgary. Relocating to Calgary has been an ongoing theme before the court. On each occasion they have run into difficulties with this proposal.

[108] When questioned on the particulars of the job, its location, what would happen with the child, who would be the babysitter, these details had not been put firmly in place with any clarity or reliability. There appeared to be no benefit to the child and a serious loss of connection with his father and extended family.

[109] The evidence surrounding the move was uncertain enough to justify the withdrawal of the request for a move. It would not have met any test weighing the benefits of the move with the resulting separation of the child from Mr. Fraser.

[110] There does not appear to be a significant connection with Ms. Zinck's biological father and his wife who live in Calgary nor with any relatives who live in Calgary sufficient to support the move in that regard.

[111] Given the difficulties in the access between the parties that has been evidence in Nova Scotia, it would be a safe assumption to conclude that the connection between Austin and his father would be seriously impaired, in the event that he was removed from Nova Scotia. Any promises made are likely unenforceable and, certainly, the expression by the mother that she would facilitate access are not credible and do not match her conduct in Nova Scotia.

[112] I have enough evidence to conclude that this move looks like an attempt to frustrate access between the father and child. It also appears by the frequency of moves that whenever the mother reaches an impasse with the father or in her living circumstances she moves. This move is not the first move back to close proximity with her mother and family.

[113] The suggestion that Ms. Zinck understands that Austin should have a strong and enduring relationship with his father is completely countered by the dynamics between the parties and by the difficulties in access that has required constant court interaction and constant police intervention. The intervention has been costly for Mr. Fraser; not so for Ms. Zinck.

[114] The foundation for a successful joint custody arrangement is the willingness and ability to enter into an agreement, to consult, to respect the position the other parent plays in the child's life and to live by the terms of an agreement. Historically, Ms. Zinck has entered into agreements and, on at least two previous occasions, she has refused to abide by the terms of the agreement.

[115] After the first Consent Order, Crystal was living in Dartmouth. In June, 2004 she moved into her parent's home in Jeddore, suggesting it was only a temporary residence until she found something closer to the city. She remains there; does not drive; denies she has the ability for any transportation for Austin to come into the city with his father; and never calls to facilitate access when she

comes to town. This results in an hour and a half trip one way from Harrietsfield to Jeddore, depending on the traffic. It is generally not a good winter drive.

[116] The Consent Order allowed people other than Mr. Fraser to pick up and drop Austin off. When there was a work conflict, however, this had proven to be very difficult, as Ms. Zinck wishes to restrict those who pick up the child, including restricting the paternal grandmother.

[117] The paternal grandparents were reduced to parking on the shoulder of the highway near Ms. Zinck's new residence, because parking on her property resulted in police intervention.

[118] Mr. Fraser's interim application dated November 2, 2004, made in response to the request for mobility by Ms. Zinck and amended by application dated April 27, 2005, requested joint custody with primary residence with him and fairly liberal contact with the mother.

[119] Mr. Fraser has been dedicated to establishing a connection with his child on a consistent and predictable basis, despite the *many* obstacles placed in his way, as a result of the conflict between he and Ms. Zinck and the families.

[120] He attempts to phone his son every night, maintain his access on a consistent basis, regardless of the travel difficulties, regardless of the relocation to Jeddore, and regardless of the undertakings that arise as a result of the allegations of assault made by Ms. Zinck against him. Even his phone contact has proven to be difficult.

[121] This is the second major attempt by Ms. Zinck to remove herself and the child to Calgary. Each time Mr. Fraser has retained counsel. After the first attempt to move and the resulting Consent Order, he was left with the reasonable impression that there would be no further attempts to remove the child from the jurisdiction. Very shortly thereafter, Ms. Zinck gave notice of her intent to move. As a result, Mr. Fraser has asked for more extensive parenting time; primary residence. He wishes to maintain specific and liberal block parenting times and he was prepared to facilitate access with Ms. Zinck in the event she went to Calgary and the child stayed here.

Brent Fraser:

[122] At the original proceedings, Mr. Fraser's father submitted an affidavit and testified in these proceedings. He supports unsupervised access. He does not believe his son was violent. He believes that the essence of the family difficulty was that Mr. Fraser got into financial trouble because of his generosity to Ms. Zinck. He believes Mr. Fraser wants to give his son a good life.

[123] He testified that he was present with his son when they picked up Austin on December 22, 2002, the date of the alleged assault. He was able to see the exchange between the parties. At no time did he believe his son raised his voice, caused a disturbance, threatened or assaulted Ms. Zinck in any way. He gave evidence as to his son's ability to look after the child and he supported his son fully in his quest for primary care.

[124] The paternal grandfather and grandmother opened their home to Ms Zinck. She moved in when she was asked to leave her cousin's home early in the relationship between Mr. Fraser and Ms. Zinck. He gives evidence of Crystal yelling at her son in much the same way Ms. Zinck gave evidence that Mr. Fraser yelled at their son. He watched as his son took care of the day-to-day maintenance of the child, changed bottles, changed diapers, heated bottles, et cetera. He testified to the fact that his son did much of the housework.

[125] Both Mr. Fraser's parents support him absolutely. They have assisted him in obtaining access on a regular basis when he has been prohibited from direct contact.

[126] Mr. Fraser testified about a disturbing incident that occurred when Steven and the grandmother, Mr. Fraser's wife, went to pick up Austin from Ms. Zinck. All parties were aware that the paternal grandmother was terrified of snakes. For some reason, the child left his mother's care with her knowing he had a snake in his backpack. When he entered the car they were able to discover this before the snake was freed from the child's backpack.

[127] I have listened to the parties testify. This incident has an air of a deliberate attempt or certainly an extremely careless oversight by Ms. Zinck to allow her son to have a snake in his backpack when he entered the car with his paternal grandmother. Ms. Zinck's explanation was not credible.

[128] The paternal grandfather witnessed the hostility and somewhat threatening behaviour expressed towards his son, Mr. Fraser, when he attended the child's residence to pick up his son. He has seen the maternal grandmother yelling at his son when the child is being dropped off and they have heard threatening behaviour towards Steven as he attempted to exercise access.

[129] Unfortunately, the parties' attempts during the course of access to resolve other issues only escalates the difficulty. Ms. Zinck has made it difficult for them to come up into the driveway, requiring them to leave the child on the main road and to walk with the child forward.

Craig O'Hearn:

[130] Craig O'Hearn was a witness who lived as a tenant in an apartment above Ms. Zinck's and the child's basement apartment. He has known Ms. Zinck for approximately four to five years. He expressed concerns about what he described as her inability to parent.

[131] He described Ms. Zinck taking the children out in thundershowers and terrible snowstorms in order to go walking to the store, he says, for a pack of cigarettes; she says for milk. He described her apartment as unclean. He permitted her to use their washer and dryer to do laundry in the last couple of months in which they stayed in the apartment.

[132] He indicates that the children were left in soiled and dirty diapers. He describes her cursing at the children, calling them names, listening to Alex cry. He questioned her about the manner in which she spoke to the children. He heard her threaten Austin when she was in the course of potty training him. He heard slapping. This, the mother has denied.

[133] This witness spoke positively of his friend, Steven Fraser's, parenting skills. He also confirmed that Ms. Zinck asked him to refuse permission to the paternal grandmother to come onto the property. He refused to comply.

[134] He witnessed the occasion when Mr. Fraser's aunt, who was known to the child and to Ms. Zinck, came to pick up the child for access; he tried to intervene to convince Ms. Zinck to let the child go. The aunt then contacted Mr. Fraser and he drove out.

[135] This witness spoke to his partner about his concerns. They discussed whether to call child protection. They decided against it believing that they could assist Ms. Zinck and the children and they worried about the involvement of child protection. He indicated they regretted not coming forward earlier about their concerns.

[136] Perhaps the most telling evidence that he gave is that he did not want his own child left with Ms. Zinck even if they were in a jam, because they did not believe she could adequately take care of her own child. She testified that she did on occasion look after his child for short periods.

[137] He indicated Ms. Zinck would brag to him every time a lawyer sent Mr. Fraser a letter or fax knowing that he would have to pay for it and that she did not have to pay for a lawyer.

[138] In contrast, he described his friend, Steven Fraser, as well prepared for a visit with snacks and supplies and saw them interact. He spoke positively of this interaction.

Dorilda Fraser:

[139] I also heard from Dorilda Fraser, Steven Fraser's mother. Much has been said about her interference in the lives of Ms. Zinck and Mr. Fraser. Both grandparent families have been a strong, consistent support for their children, although their views differ radically. Both have been involved in the protracted conflict. Dorilda Fraser and her husband have housed the couple and provided extensively for the child.

[140] The assessor recommended Ms. Dorilda Fraser step back and let the couple parent the child. There is no doubt that her influence has been extensive and perhaps excessive.

[141] On the other hand, these two parents have not been able to sustain themselves financially. They have both required the extensive assistance of extended family. Without the grandparents' influence, the child would not have the financial underpinnings that he has. The fact that Mr. Fraser is staying with his parents is in part due to the costs arising out of their life together, the costs of

litigating the access and mobility issues over the course of his child's life and legal fees arising out of the assault allegations.

[142] Mr. Fraser has had to hire counsel in order to ensure he remains significantly connected to his child. This has interfered with his ability to move out of his parents' home and sustain himself financially. The positive aspect is that this has provided his son and he a very positive, supportive and loving environment in which to raise his child and it has given him access to more experienced parental influence.

[143] Ms. Dorilda Fraser has filed numerous affidavits in the last proceeding and supplementary affidavits in this proceeding to outline the support and their involvement in Austin's life.

[144] She gave evidence that, after the initial hearing dealing with the first intended move, the anticipated hearing resulted in a consent finding in advance of the hearing. She advises that Ms. Zinck's lawyer spoke about the fact that Ms. Zinck was not intending to move outside the province and that eased the grandparents' concerns, until shortly after when a new application was made by Ms. Zinck.

[145] In spite of the animosity between her and the child's mother, Ms. Dorilda Fraser has provided extensively for Austin.

[146] Ms. Fraser and her husband as well have provided extensive assistance to Steven Fraser as he has had to drive from their home in Harrietsfield to Jeddore to pick up Austin and drive back to Harrietsfield, notwithstanding that the child's mother and Austin lived in Dartmouth for a period of time.

[147] The exposure of Mr. Fraser and Austin to his paternal grandparents is overall a significant, stable and positive exposure. Austin is substantially connected to his father and his paternal grandparents.

[148] Mrs. Fraser advised that she was contacted on October 25, 2004 by Constable Coolidge as a result of a referral from Ms. Zinck. She was told she was on Ms. Zinck's property without permission. She was advised that in future she should not come on the property for delivery of the child. She would stay on the side of the road, on the shoulder of the number 7 highway.

[149] Mrs. Fraser was present when the first Consent Order was entered into. After the consent was entered into, Ms. Zinck withdrew her consent; the matter had to go back to lawyers, before the justice, to issue a ruling on the agreement that had been reached in the first place.

[150] Not less than two weeks later the letter which indicated Ms. Fraser's intent to move was served on Mr. Fraser.

Steven Fraser:

[151] Mr. Fraser's affidavits, both in this proceeding and the previous proceeding, set out his significant contact with his child, despite the extensive obstacles put in his way by Ms. Zinck and her family.

[152] Currently, his son is with him every weekend. In spite of that, he pays guideline support and he is responsible for fairly expensive, unnecessary travel.

[153] The move to Jeddore has not produced results other than to further isolate Ms. Zinck and put her in a situation where she is now parenting two young children, has limited access to transportation, and must rely on her mother who herself has extensive responsibilities in her own household. This has taken Austin further away from his father and paternal extended family who have provided for him extensively throughout his little life.

[154] There is no doubt that Mr. Fraser entered into the first Consent Order fully believing that the move to Calgary then planned had been put to rest. The Consent Order entered into would allow them to move into what he considered to be a co-parenting situation. He believed there would be no further attempts to move to Calgary and that his son would be staying in Nova Scotia. The evidence satisfies me that it was reasonable for him to hold that belief.

[155] The evidence further satisfies me that the Consent Order was, at least with respect to Ms. Zinck, entered into to address Mr. Fraser's fear that she would

remove the child from Nova Scotia. In hindsight it appears it was not entered into in good faith. The mother never intended to put this issue to rest.

[156] The testimony establishes that her planning for the Calgary trip lacks certainty and does not provide a solid base for Austin. Further, it would take her from her own family and his family, without allowing for extensive supports, which she has required in the past and requires in the future if she moved.

[157] It was not well thought out and it appears to be an attempt to move Austin away from his father and family and to sabotage Mr. Fraser's contact with his child.

[158] The proposals that she made for access were not only inappropriate for the child but were not founded in good faith.

[159] It is clear that Ms. Zinck is not reasonable or flexible with respect to access arrangements in Nova Scotia. That historic conduct shows no signs of changing even with the mother's assertion that she would be flexible in Calgary.

[160] While the mobility issue has been withdrawn at the last minute it was a last minute decision recognizing the frailty of the request to move.

[161] Having reviewed the evidence of Mr. Fraser and his family, I am satisfied that they make every effort as is possible to keep Austin out of the conflict that has developed between the families and do not, in the same manner, make derogatory remarks about his mother to him.

[162] Further, I am satisfied that of the two parents Mr. Fraser will make the greatest effort to ensure that Austin remains significantly connected to his mother. The historical evidence and conduct of Ms. Zinck supports the fact that she will sabotage the child's access to the father and his extended family. In this case, the extended families have been a sustaining influence in this child's life as these young parents learn to parent and be self sufficient. There is evidence that Mr. Fraser has returned Austin early in order to attend a party with a friend and to attempt to accommodate Ms. Zinck's schedule. This goodwill has not been reciprocated.

[163] The evidence further satisfies me that Mr. Fraser's telephone access has been sabotaged and made difficult, more recently around the court hearing. The explanation provided by Ms. Zinck is not satisfactory.

[164] The travelling time has been an imposition that has been unnecessary and has placed the child at risk. It was not only unnecessary to drive to Jeddore to pick up the child when Ms. Zinck lived in Dartmouth, it was unreasonable. It made no sense.

[165] There were concerns early on about Mr. Fraser's ability to parent, given that this was his first child. I do not dismiss these concerns. His youth and the difficult relationship, his reaction to it was of concern.

[166] He has shown an ability to sustain a commitment, to accept help and to learn. On March 15, 2004 he began to attend a program for Dad's with Family SOS in Halifax. He also has had the positive influence of his parents in assisting him as he attempts to regain his financial security. He intends to continue this program for Dad's and it is an appropriate indication that he is prepared to cover his deficits by drawing on community resources.

[167] I have no doubt from the early relationship that both of these parents made mistakes in parenting, based on lack of insight and information. Mr. Fraser has displayed an intent to take on the role of parent and father, he has exhibited financial responsibility, a desire to achieve self sufficiency and financial security and he has the insight and exhibited an intent, despite the many obstacles, to make sure his child has a significant connection with himself and with his mother.

[168] In contrast, the evidence before me causes me to conclude that, were it up to Ms. Zinck, she would impair access between the child and his father. This access is not only beneficial for his development, it is necessary. This involvement ensures him a viable living arrangement, stability of family connection, and a financial base that is more stable than that which is offered by his mother.

[169] There are two ill-planned moves. There is a historical pattern of placing obstacles in the father's and extended families' way to exercise access. There is also a multiplicity of local moves while in the mother's care.

[170] There is the corresponding expansion of parenting times for the father, particularly with a new child in the mother's home.

[171] Mr. Fraser has addressed this and his historical conduct satisfies me that he will facilitate contact between Austin and his new stepbrother.

[172] Access has been a consistent difficulty for Mr. Fraser. From the separation in May until September, 2004, he was denied access to Austin, despite his significant connection with his son. He was allowed one day in July. He required a court order from September 9th forward to confirm his access and that court order had to be varied because of changes and difficulties during the access periods.

[173] A Consent Order was entered into on October 9, 2002 and it was agreed, after considerable consultation and between counsel and the judge, that what was agreed upon in court on the record was Saturday and Sunday from 10:00 a.m. to 6:00 p.m.. In spite of that, access was denied and Ms. Zinck had difficulty allowing access for both days during the weekend.

[174] On one access visit there was an allegation that Mr. Fraser committed an assault and caused a disturbance. This arose out of a discussion when he was attempting to give money to Ms. Zinck for support. He was then ultimately arrested on December 22nd and placed on an undertaking to have no contact.

[175] It has not been seriously denied throughout the evidence that Mr. Fraser is the one who participated in cleaning the home and doing the laundry on many occasions.

[176] Mr. Fraser's proposal for access is more generous than recommended.

[177] The assessor, who by admission of both parties, has had extensive involvement with these two individuals, does not recommend such liberal access until such time as the mother engages in parenting courses.

[178] Due to the hostility and conflict between the parties and because of the constant allegations facing the father, she has suggested a sole custody order in favour of the father.

[179] It appears that the family doctor recommends Austin attend daycare. Whether this is coincidental with his age and need to socialize with other children or with the birth of the new baby or with the concerns expressed in the assessment with respect to the mother's parenting skills, he is scheduled to attend daycare for the bulk of the week and be with Mr. Fraser every weekend. This would, in effect, remove him significantly from his mother's home in any event.

[180] The current joint custody agreement is unworkable. It is not serving Austin's best interests. The mother and her circumstances have created many obstacles to prohibit or impede the child's contact with Mr. Fraser and extended family. Austin's connection with his father is a significant necessary and positive connection.

[181] The weight of the evidence supports Mr. Fraser's ability to parent Austin and to provide a nurturing environment for him. Any deficits that Mr. Fraser has can be addressed through courses and through the consistent support and instruction from his family.

[182] The current orders, amended and varied as they have been, have been unsuccessful in reducing the conflict which has simply escalated with the efforts of Ms. Zinck to remove the child from the province. The litigation is emotionally and financially costly, particularly for Mr. Zinck and certainly cannot be a settling influence for the child.

[183] Of the two parents, Mr. Fraser is more likely to maintain appropriate and healthy contact between the child and his mother. His plan best addresses the child's needs. He risks constant police intervention and allegations in attempting to facilitate access while the child resides with the mother.

[184] The least conflictual environment between the two parents, on the evidence, appears to be Mr. Fraser's household with the extended family.

[185] The circumstances of Ms. Zinck currently are unsettled. She requires parenting instruction and access to services and she does not appear to be in a situation where she can access these services readily.

[186] There is a problem with separating siblings, but the birth of the newest child to Ms. Zinck is a recent event and Mr. Fraser has agreed to facilitate contact

between the two siblings. The best plan put forward with the highest probability of success is Mr. Fraser's.

[187] I am concerned about the assessor's admission that in the first proceeding she was concerned about placing the child with the father, because she was concerned about the mother's emotional health rather than the weight of the evidence and the best interests of the child.

Legal argument

[188] The most serious compelling legal argument raised by Mr. Ford on behalf of the mother relates to the question whether there has been a sufficient change in circumstances to meet the threshold test outlined in *Gordon v. Goertz* [1996], 2 S.C.R. 27 SCC to move the Court to the second stage; a broad consideration of the best interests of the child.

[189] This proceeding was initiated because the mother wanted to move. The Consent Order was the explicit settlement of that issue. She revived this contentious issue by the notice she served on the father, almost immediately after the Consent Order. It was her intent to move right up to April 12, 2005, shortly before the proceeding was heard.

[190] The response from Mr. Fraser was to prohibit the move and to address what he considered a resolution of the chronic conflict between the parties by applying for a change in the primary residence. Ms. Zinck withdrew her request to move. Her factual case on mobility was weak.

[191] This left the father's response application a live application. The mother now advances the "apparent lack of a material change in circumstances" as a defence to the custody application.

[192] The material change required by *Gordon* relates to a change in the condition, means, needs or circumstances of the child or in the ability of the parents to meet the needs of the child which materially affects the child. The change must have been unforeseen or not reasonably contemplated by the judge who made the initial order.

[193] The Consent Order was not made after a hearing of evidence. Instead, the order was made after the lawyers and parties reviewed the recommendations of the initial assessment. The Consent Order reached was a change in the original sole custody order in favour of the mother to a joint custody order which anticipated and fundamentally required the ongoing cooperation and communication between the parties to fulfill the spirit of a joint custody order.

[194] At the time of the assessment, the assessor noted the ongoing conflict and hostility. The mother continued to maintain that **she** and the father could work out the access arrangement. The assessor also noted how inexperienced the couple was. She noted how much the mother relied on the advice and assistance from her family. She noted that the mother did not appear to be able to put the child's interests ahead of her own. Her own parents are not as available due to their own commitments and the paternal grandmother not as available to the mother as she was when the parents were a couple.

[195] The assessor concluded that sole custody with the mother did not reflect the child's best interest; did not provide the best support network for the child as was available. Joint custody would increase the likelihood that the child's needs would be met.

[196] The historical conflict continues. Unless resolved, Ms. Zinck will likely continue to attempt to remove the child from close proximity with the father and his supportive family. More immediately important, this move will remove her from her own supportive family. Their support has been required in the past. This situation is not reflective of the child's best interests.

[197] It can be reasonably assumed that the Consent Order was intended to secure the child in close proximity to a supportive environment and access to both his parents to raise the probability that more of his needs could be met. It was not contemplated that shortly after the settlement another mobility application would be initiated.

[198] Mr. Fraser is attempting to be financially responsible for his child. He has been faithful to his obligations. There is no certainty to the plan put forward by the mother or to her ability to communicate reasonably with the father. Continuing the current arrangement even in Nova Scotia will result in less time with either parent

if the doctor's recommendation for the child is followed and the child is enrolled in daycare.

[199] This, therefore, meets the threshold test allowing the Court to make a fresh enquiry as to the best interests of the child on the totality of the evidence.

[200] The mother's counsel argues that the Court ought not to consider historical data. One of the critical considerations in predicting future conduct is past conduct. Absent change in behaviour, the historical pattern becomes a relevant consideration. It allows the Court to have an overview of the child's life and determine whether a plan maintains the status quo and meet the child's needs, improves or is better when weighed with the alternate plan or deteriorates, which can only be detrimental to the child's best interests.

[201] Both parents bear the burden of demonstrating what is in the best interests of the child. The plan put forward by the father meets that test better than the status quo presented by the mother.

[202] Mr. Fraser has given assurances that he will continue to make every reasonable effort to sustain the mother's involvement as is possible, given her level of cooperation and participation. He will be held to account for that in future hearings.

[203] I am also concerned that a sole custody order, as recommended by the assessor, is a major step from her last recommendation. I retain the joint custody in order to retain the mother's involvement in a significant way, but to change the primary residence of the child to Mr. Fraser as his plan which more fully addresses the best interests of the child.

[204] The father will continue with his parenting courses to continue to educate himself as to the changing needs of his child with the changing ages and stages of development.

[205] In future should this return to court he will be required to provide assurance of the ongoing efforts he makes to continue his education in this regard.

[206] The mother must also access parenting skills training. She too will be required to provide information to the court regarding her efforts at parenting education.

[207] There will be no corporal punishment used on this child by either parent in light of the allegations that this has been used in the past.

[208] The father shall be responsible for the day-to-day decisions respecting the child and shall consult with the mother regarding all major decisions. He shall have the final decision making responsibility after seeking her input.

[209] The father shall provide to third party service providers, including medical, educational, spiritual and professional organizations involved with the child, consent to release to the mother any and all information regarding the health of their child.

[210] Currently, the mother shall have access every second weekend from Friday at 6:00 p.m. to Sunday at 6:00 p.m.. The mother shall be responsible for the pick up of the child and the father for picking up the child for return to his residence. Each parent shall keep the other informed of any change in residence and telephone number to ensure the peaceful flow of access. Transportation for weekday access will be the mother's responsibility.

[211] The child shall have telephone access to each parent while in the residence of the other, which contact shall be reasonable access at reasonable hours.

[212] If there is any difficulty, or threatening behaviour during the access pick up or drop off at the mother's residence, whether because of extended family members or others, the access pick up and drop off shall immediately be moved to the father's residence pending a hearing on the merits of the access difficulties.

[213] The father and mother may designate responsible adults other than themselves to pick up the child for access.

[214] The assessor has recommended therapy for the child during the transition to resolve any transitional issues. The father shall ensure the emotional stability of the child is addressed.

[215] The father is expected to use his best efforts to ensure consistent ongoing contact by way of phone access to the mother is not obstructed. The father is to retain the responsibility for decision making regarding the access difficulties and is not to delegate decision making to his parents or any other adult.

[216] Counsel for the Applicant, Mr. Fraser, shall draft the order. Counsel shall arrange a peaceful transition with the assistance of a social worker or police if that becomes necessary. Counsel may seek direction from the court.

J.