

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

**Citation:** Children's Aid Society of Inverness/Richmond v. S.S.,  
2010 NSSC 308

**Date:** 20100731

**Docket:** SFPACFSA-058926

**Registry:** Port Hawkesbury

**Between:**

Children's Aid Society of Inverness/Richmond

Applicant

v.

S.S., D.S.

Respondents

**Restriction on publication:** Publishers of this case please take note that s.94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

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

<b>Editorial Notice</b>
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Identifying information has been removed from this electronic version of the judgment.
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**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** February 22 to 26, 2010; March 15 to 18, 2010; March 29 to 31, 2010; April 1, 2010; April 21 to 23, 2010; June 8 to 11, 2010; July 6, 7 and 9, 2010 in Port Hawkesbury, Nova Scotia

**Counsel:** Lindsay McDonald, for the Applicant  
Coline Morrow, for the Respondent D.S.  
S.S., on her own behalf

## **By the Court:**

### **Legal History**

[1] This is the Final Disposition in a protection application concerning two children, A. (d.o.b - Sept. \*, 2000) and V. (d.o.b - July \*, 2002).

[2] This decision ought to be read as the final in a series of decisions relating to this child protection matter. The legal history will not be repeated as it is contained in the First Disposition decision and a Review Hearing decision.

[3] The parents of these two children began living together in February 2000, married July 21, 2001, and separated June 2007.

[4] Before separation, both parents were significantly involved in the day to day care of the children. When home from work, the father had more day time contact with the children than the mother who worked outside the home.

[5] On June 27, 2007 the mother initiated an emergency application knowing the father was \*; asking for exclusive possession of the matrimonial home, sole custody, and supervised access; alleging sexual abuse of the children.

[6] An Interim Exparte Order was issued based on the mother's application alleging abuse and domestic violence; restricting access until the Interim Hearing could be completed.

[7] On July 24, 2007, the Interim Hearing was completed. The Court ordered a shared parenting arrangement on a two week on, two week off cycle with the father's parents supervising his two week cycle.

[8] At this hearing, while the father did not agree in principal to supervision, he reluctantly agreed to preserve his contact with his children while an assessment was underway. Initially his parents came from out of province to supervise.

[9] The mother and maternal grandparents then alleged the paternal grandfather was hurting the children and the children were afraid. The agency then provided extensive supervised contact with two agency personnel present; further limiting the father's contact, particularly overnight contact while the proceedings continued.

[10] The parents agreed to participate in a parental capacity assessment. The assessor, Ms. Rule, was contracted by the agency to provide this assessment service on a voluntary basis without the necessity of commencing an application. She had been consulted earlier in 2005 when the maternal grandmother voiced the first allegations of sexual abuse. She was fully apprised of the ongoing allegations.

[11] The assessment began with the consent of the parents while they were in a private custody dispute.

[12] A Divorce Hearing commenced on April 15, 2008, and continued on April 16 and 17, 2008.

[13] In the course of the hearing, the maternal grandmother and mother made further allegations against the father. The mother removed the children from the jurisdiction to obtain a second medical opinion from the Halifax children's hospital.

[14] On May 28, 2008, the child protection proceeding began because the mother refused to return the children to allow the local police and child protection agency to investigate in accordance with provincial protocol. The children were ordered back into the jurisdiction for investigation of the newest allegations.

[15] Ms. Rule concluded her risk assessment in October 2007 after the child protection application started. She recommended the child protection agency close its file at intake as there was no evidence of child protection concerns.

[16] Ms. Rule recommended the parents attend mediation in order to develop a method of healthy communication regarding their children in an effort to co-parent. She recommended they attend a parent information

program and obtain professional intervention for the children if their emotional or behavioural status continued to be concerning.

[17] Ms. Rule noted four specific concerns. Of particular note was her concern about the historical relationship difficulties between the parents because of family of origin differences (religious and cultural) and personality differences between the parents.

[18] She was concerned about the dynamic between the mother's parents and the father and how this contributed to the family problems and the children's response to the chronic acrimony.

[19] The mother refused to consent to an order lifting the supervision of the father-children contact after the recommendations were distributed.

[20] The mother accused the police and child protection of conducting a flawed investigation. She insisted on a contested hearing to give her counsel full opportunity to cross examine both child protection and police personal involved with the investigation and introduce her own evidence regarding the abuse allegations.

[21] The mother maintained her right to have the Court review all the evidence and make a decision regarding the allegations and risk to the children.

[22] In the context of the time lines dictated by the Children and Family Services Act, the First Disposition hearing commenced November 12, 2008, ended April 9, 2009, lasting 29 days with 102 exhibits and 24 witnesses.

[23] The mother's counsel required the production of most of the police officers, access supervisors and child protection personnel involved in the investigation.

[24] These witnesses were cross examined at length by the mother's counsel in order to conduct their own examination of the persons involved in the investigation.

[25] The length of this hearing delayed what would ordinarily be the First Disposition Order from November 2008 to May 2009, delaying the ultimate resolution of the child protection hearing by six months.

[26] This extended the supervision of the father's contact with the children from June 2007 to the date of the decision, that being May 08, 2009.

[27] Two agency workers were required to supervise his contact. It is clear on the evidence that this supervision essentially avoided further allegations from the mother and her parents and provided full opportunity to observe the father's contact. It ultimately protected and assisted to exonerate the father and the agency from the maternal family's ongoing allegations of abuse.

[28] The First Disposition Decision of May 8, 2009, lifted all supervision of the father's contact; restored a joint custody parenting arrangement and ordered the parents, maternal grandparents and the children into counselling in accordance with a strategy propose by Dr. Hartley. There was no appeal of this decision.

[29] The revised agency plan sought to transition the children from the mother's primary care back to the joint care of both parents. The Court found:

there was a continuing need of agency intervention to support the children and to address the conflict that had developed between the grandparents and the mother and father. Unchecked, this conflict... would continue to escalate and require chronic intervention of police and agency personnel. (paragraph 562)

Without agency intervention the mother and grandparents would continue to alienate the children from their father until he lost any meaningful contact with them. (paragraph 564)

Significant harm had already been affected on the relationship between the father and the children.

[30] The court ordered:

The agency had the right to request the parents attend counselling and mediation as they decide what best enables the parents to move forward.

Agency supervision and provision of services to reduce the level of anxiety experienced by the children in the environment of conflict.

An immediate transition to joint parenting, equal time sharing, re-establishing the father's role in the children's lives.

Intensive short term counselling be made available to the mother to assist her gain insight into her role in the conflict and to aid her, coach her to assist the children to return to a parenting relationship with their father aimed at the long term strategy of joint parenting including an ability to share responsibility and decision making.

The court ordered continuation of counselling services to the father. He showed an ability, insight and a willingness to step out of the conflict to provide a peaceful environment for the children to incorporate both parents in their lives. The Court found that he had exhibited growth and improvement in his ability to parent.

That the parents be assisted to develop a joint custody strategy regarding decisions relating to the educational and spiritual well being of the children. This shall include the planning of extra curricular activities.

The agency was to assist when the parents could not reach agreement on issues that could not be resolved in the interim.

The parents were ordered to attend parent information sessions.

The mother was ordered not to enroll the children in any activity occurring during the father's parenting time without his consent and vice versa.

The maternal grandparents access was reduced and supervision imposed to ensure the plan of care was not sabotaged. Should they wish to return to unsupervised access they were to access short term therapeutic services, as designated by the agency ( psycho educational sessions) to address their role in the conflict, educate them to involve themselves in the children's lives as grandparents, subject to the rights of both parents. Failing their participation in a positive progress report, the final order will consider a prohibition against unsupervised access.

The agency was given the right to designate appropriate therapeutic intervention for the children having regard to the availability of resources, the age and stage of development of the children.

[31] The parents and agency were advised that **time was of the essence**. Except in extraordinary circumstances, legislative directives require this matter be concluded by May 2010. This proceeding had endured six months beyond the ordinary just completing First Disposition.

[32] The Final Disposition Hearing was scheduled to start in February 22, 2010. It concluded July 9, 2010.

[33] The May 2009 order provided that in the event of further resistance or non compliance with the designation of therapist for the children and/or interference with the immediate and full resumption of the father's role in the children's lives, the agency had the authority to remove the children from the mother's home and place them in the father's primary care with access to the mother as determined by the agency pending variation of the court order.

[34] The Court found that it was reasonably certain if the level of cooperation and compliance did not immediately and considerably improve, the agency's Plan of Care to transition the children from the mother to the father was the best and most appropriate alternative rather than foster care.

## **REVIEW HEARING**

[35] The agency amended their Plan of Care on February 11, 2009, seeking to remove the children from the mother's care and place them with the father with conditions of compliance and service.

[36] A contested Review Hearing on September 9 and 10, 2009, concluded by an order removing the children from their then current community, placing them in another French community in the father's sole custody.

[37] The Court found the mother was unable and unwilling to cooperate with the Plan of Care to address the concerns outlined by the agency. (Decision, para. 561, p. 84,).

[38] The Court concluded there was significant evidence that the plan for the children's care was not being carried out in a timely and efficient manner that would facilitate final resolution in accordance with the time lines set out in Section 45 of the Act. (para. 12, p. 4).

[39] Access to the mother was specified. The interim supervision of the mother's contact imposed by the agency in July 2009 was lifted. A parenting strategy was directed.

[40] The Court found that new evidence existed causing the Court to conclude that the continued placement of the children in their community of origin in the care of both parents was not possible as it would sabotage the Plan of Care.

[41] In spite of the decision concluding the father was not a risk to the children, the mother's family and friends continued to file complaints with child protection regarding their concerns about the father's relationship with the children.

[42] Once out of the environment, the children and the father managed well and were able to function and normalize a relationship. While in the community, they were expected to complain about their father.

[43] The father continued to cooperate with the demands of the agency and comply with directions to attend individual therapy and attend with the child therapist to address any needs of the children. By May of 2009, the father began to address his obligations pursuant to the most recent court order.

[44] The mother failed to keep in touch with the agency and advise them of her summer plans including out of province trips within Canada and two out of the country trips, one to \* and the second to \*. The \* trip was cancelled.



[45] No prior notice was given to the father or the agency of her vacation in \* during the summer months. This delayed commencement of her counselling and ultimately delayed the mother's progress in moving forward on the Plan of Care in a timely fashion.

[46] As of the date of the hearing in September 2009, the mother had only one counselling session in August 2009. She rejected the intensive therapeutic services offered by the agency. After some delay, she informed them that she was seeking her own individual counselling service through Jennifer Van Kessel.

[47] The children's therapeutic service providers noted that the mother's engagement was **critical** to establishing the groundwork to a potentially successful shared parenting arrangement. The professionals unanimously agreed that any real progress had the potential of being sabotaged if the mother was not engaged.

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

[49] The dissemination of false allegations on Facebook on July 27, 2009, by the mother's friend, \*, to teachers, parents and community members was a direct threat to the long term plan of shared parenting in the community.

[50] The mother's delay in accessing appropriate counselling services, her escalating conflict with the agency, the continual involvement of the children in alienating behaviour with their father and the Facebook message continued to create obstacles for the father's involvement with the children in the community.

[51] In the Review Hearing Decision the Court found at paragraph 113:

It is my conclusion that in this instance that the involvement of the community in this way, including J.D. the maternal grandmother's sister, the school, the teachers, those individuals I have named earlier who have contacted the agency asking them not to send the children out of province,

in supporting the mother, have perpetuated this lie. And this has the very real potential of undermining the successes of the therapeutic strategies. It exacerbates the conflict and creates an environment of suspicion.

and further at paragraph 114:

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

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

The agency at this stage has offered the necessary services and they have been refused.

[52] The Court concluded at paragraph 126:

It is very simple, address the conflict and you will eliminate the potential for further emotional abuse.

[53] This decision was affirmed by the Nova Scotia Court of Appeal on February 10, 2010, by order dated the 19<sup>th</sup> of February, 2010.

[54] The children were relocated and commenced school in September 2009.

[55] Among other things the Court ordered:

that the child protection agency review the administrative documentation flowing from one school to the other to ensure that no information concerning the conflict, child protection involvement, and court action be transferred by school administration from one school to the other in a manner that conflicted with the spirit of the current order.

The children would remain in the weekly care of the father, the mother would have unsupervised weekend access from Friday until Sunday, three weekends out of four, leaving the father one Saturday and Sunday weekend time in addition to weekly parenting.

The father was responsible for all day time activity, all evening school activity, leaving the weekend free.

The mother was to provide a response to this in developing a strategy regarding the relocation as to what she would do.

The therapeutic strategy was in accordance with Dr. Hartley's plan. The parents were to meet with Dr. Hartley as facilitator to identify the strategy of the therapeutic process for both parents.

The father and mother were to continue with their current strategy of individual therapy. Each had access to individual counselling together with child centred counselling in the hopes that this can resolve the conflict between the parents, enhance their ability to work together with a view to bringing the parents and children to the final disposition hearing with the possibility of an agreement.

The agency was to provide immediately the services of a mediator. The court identified the issues to be mediated. (page 25)

The applicant was to continue to provide the children with appropriate child centred therapy.

The maternal grandparents were to continue with supervised access as arranged between the agency and themselves and complete the psycho educational counselling.

[56] Between the Review Hearing and the Final Disposition Hearing, considerable efforts and resources were put in place to create a neutral conflict free safe school and community environment for the children.

## **Final Disposition**

### **The Law**

[57] I weigh the evidence before me in the context of a child welfare proceeding and thus am governed by the Children and Family Services Act 1990,c.5.

[58] At this stage of the proceedings, I am guided (not exclusively) by sections 42 and 45 as to timing and disposition primarily having reference to the purpose and intent of the Act and it's guiding principles.

[59] I have also considered the case law on "best interests" when weighing the most appropriate parenting strategy that will address the risk of harm from continuing parental conflict documented in this and the preceding two decisions of the Court.

[60] The goal includes the reduction of future litigation in order to promote and stabilize the parental authority to allow the custodial parent to address the best interests of the children in future.

[61] I have reviewed **K.(K) v. L.(G.); K.K. v. G.L. and B.J.L.**, SCC 1985 Carswell NWT 58, and **Young v. Young**, SCC 1993 Carswell B.C. 264, wherein the Supreme Court of Canada charted the historical course of custody law in this country.

[62] The Supreme Court of Canada said in **K.(K.) V L.(K.)**:

The welfare of the child must be decided on a consideration **of all relevant factors**, including the general psychological, spiritual and emotional welfare of the child. The court must choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must be seriously considered but must be set aside where the welfare of the child requires it. [Headnote from the Supreme Court of Canada reproduced by permission of the Minister of Supply and Services Canada.

[63] In **Young v. Young**, McLachlin J. summarized the law relating to best interests as follows:

8 The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), provides that a court shall abide by the following matters in deciding questions of custody and access.

16 (8) In making an order under this section, the court shall take into consideration **only** the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

...

(10) In making an order under this section, the court shall give effect to the principle that a child of the marriage *should have as much contact with each spouse as is consistent with the best interests of the child* and, for that purpose, shall take into consideration **the willingness of the person for whom custody is sought to facilitate such contact. [Emphasis added.]**

### **The Wording of the Act**

Parliament has adopted the "best interests of the child" test as the basis upon which custody and access disputes are to be resolved. Three aspects of the way Parliament has done this merit comment.

**First, the "best interests of the child" test is the only test.** The express wording of s. 16(8) of the *Divorce Act* requires the court to look only at the best interests of the child in making orders of custody and access. **This means that parental preferences and "rights" play no role.**

Second, the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful. Rather, it has been left to the judge to decide what is in the "best interests of the child", by reference to the "**condition, means, needs and other circumstances**" of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the "best interests" test in legislation and by setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests, **it is to be applied according to the evidence in the case, viewed objectively.** There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.

Third, s. 16(10) provides that in making an order, the court shall give effect **"to the principle that a child of the marriage should have as much**

**contact with each spouse as is consistent with the best interests of the child."** This is significant. It stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider. **By mentioning this factor, Parliament has expressed its opinion that contact with each parent is valuable, and that the judge should ensure that this contact is maximized.** The modifying phrase "as is consistent with the best interests of the child" means that the goal of maximum contact of each parent with the child is not absolute. **To the extent that contact conflicts with the best interests of the child, it may be restricted.** But *only* to that extent. Parliament's decision to maintain maximum contact between the child and both parents is amply supported by the literature, which suggests that children benefit from continued access: Michael Rutter, *Maternal Deprivation Reassessed* (1981), Benians, "Preserving Parental Contact", in *Fostering Parental Contact* (1982).

Wood J.A., in the Court of Appeal, put the matter as follows at p. 93:

It seems to me that at the very least, by enacting this subsection [s. 16(10) of the *Divorce Act*], Parliament intended to facilitate a meaningful, as well as a continuing, post-divorce relationship between the children of the marriage and the access parent.

Without limiting the generality of the adjective "meaningful", such a relationship would surely include the opportunity on the part of the child to know that parent well and to enjoy the benefit of those attributes of parenthood which such person has to share. In most cases that would clearly be in the best interests of the child, and the best interests of the child, not parental rights, are the focus of the whole of s. 16 of the Act.

I would summarize the effect of the provisions of the *Divorce Act* on matters of access as follows. **The ultimate test in all cases is the best interest of the child.** This is a positive test, encompassing a wide variety of factors. One of the factors which the judge seeking to determine what is in the best interests of child must have regard to is the desirability of maximizing contact between the child and each parent. But in the final analysis, decisions on access must reflect what is in the best interests of the child.

It follows from this that the proposition, put to us in argument, that the custodial parent should have the right to forbid certain types of contact between the access parent and the child, must fail. The custodial parent's wishes are not the ultimate criterion for limitations on access: see *K. (K.) v. L. (G.)*, [1985] 1 S.C.R. 87, at p. 101 [[1985] 3 W.W.R. 1, [1985]

N.W.T.R. 101]. The only circumstance in which contact with either parent can be limited is where the contact is shown to conflict with the best interests of the child.

Risk of harm to the child is not a condition precedent for limitations on access. The ultimate determinant in every case must be the best interests of the child. Many decisions on access may involve no reference to harm. For example, a judge might conclude that it is not in the best interest of a child that he or she see her access parent every day on the ground that this would result in undue disruption to the child's schedule of activities. Again, a judge might conclude that it is in the best interests of the child that he or she move with the custodial parent to a distant location, notwithstanding that this will limit the access of the other parent. Optimum access may simply not be in the best interests of the child for a variety of circumstances.

On the other hand, **in some cases the risk of harm may be a factor to be considered in determining what is in the child's best interests.** For example, where the limits on access relate to the quality of access — **what the access parent may say or do with the child — the question of harm may become highly relevant.** Given the interest of the child in coming to know his or her access parent as fully as possible, judges may well be reluctant to impose limits on what the access parent may say or do with the child in the absence of some evidence suggesting that the activity may harm the child. The legal test is not harm; the *Divorce Act* makes this clear. However, in some circumstances, the risk of harm to the child or the absence thereof may become an important factor to be considered. To this extent I agree with the Court of Appeal that, in determining whether religious discussions and activities between parent and child should be curtailed, it may well behoove the judge to enquire whether the proposed conduct poses a risk of harming the child. In doing so, the judge should bear in mind that conflict between parents over the access issue does not necessarily indicate harm, nor does the objection of the child necessarily impose that conclusion. In some circumstances they may; in some they may not.

I conclude that ultimate criterion for determining limits on access to a child is the best interests of the child. The custodial parent has no "right" to limit access. The judge must consider all factors relevant to determining what is in the child's best interests; a factor which must be considered in all cases is Parliament's view that contact with each parent is to be maximized to the extent that this is compatible with the best interests of the child. The risk of harm to the child, while not the ultimate legal test, may also be a factor to be considered. This is particularly so where the

issue is the quality of access — what the access parent may say or do with the child. In such cases, it will generally be relevant to consider whether the conduct in question poses a risk of harm to the child which outweighs the benefits of a free and open relationship which permits the child to know the access parent as he or she is. It goes without saying that, as for any other legal test, the judge, in determining what is in the best interests of the child, must act not on his or her personal views, but on the evidence.”

[64] And per Sopinka J.:

The policy of promoting a meaningful relationship between parent and child is not disrupted unless the child is at substantial risk of "harm," i.e., a more than transitory effect upon his or her physical, psychological or moral well-being.

[65] The case law provides for situations where the best interests of the children will not be reflected in a joint or shared parenting arrangement.

[66] E.E. Gillese, J.A. wrote for the Ontario Court of Appeal in **Lawson v. Lawson**, 2006 Carswell Ont 4789:

Joint custody is not appropriate where parents are unable to co-operate or communicate effectively. See **Kaplanis v. Kaplanis**, [2005] O.J. No. 275 (Ont. C.A.).

[67] And in **Nairmn v. Lukonski**, Ontario Superior Court of Ontario 2002 Carswell Ont 1119, Blishen J. said as follows:

Although neither party is requesting an order of joint custody, it is within the discretion of the court to impose joint custody even when it is not on consent, **but only in circumstances where such an arrangement would ultimately be in best interests of the children. If a joint custody order will negatively impact on the children by continually exposing them to ongoing conflict and hostility, then it is not appropriate.** Recently, the Ontario Court of Appeal in *Wreggitt v. Belanger*, [2001] O.J. No. 4777 (Ont. C.A.) confirmed the trial judge's decision to vary a joint custody order and order sole custody to the mother in light of the worsening conflict between the parties. Madam Justice Simmons stated:



**Conflict and lack of cooperation, whatever the source, are an impediment to an effective joint parenting arrangement, as well as a source of stress for the children.**

As stated by Justice Aston in *M. (T.J.) v. M. (P.G.)* [2002 CarswellOnt 356 (Ont. S.C.J.)], (30 January 2002) Stratford R00-98, there are cases from across Canada where orders of joint custody are made, even in cases where parents are hostile and uncooperative when they are crafted as "parallel parenting" instead of "cooperative parenting". Justice Aston refers to the decision of Mr. Justice Kruzic in *Mol v. Mol*, [1997] O.J. No. 4060 (Ont. Gen. Div.), which provides a review of a substantial number of cases from across Canada which have made orders of "parallel parenting". In *McKone, supra*, Justice Aston concludes that "parallel parenting" orders have become a subcategory of joint custody which does not depend upon cooperative working relationships or even good communication between the parents. He states:

The concept (consistent with subsection 20(1) of the *Children's Law Reform Act*) is that the parents have equal status but exercise the rights and responsibilities associated with "custody" independently of one another. Section 20(7) of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 provides clear authority for the court to deal separately and specifically with "incidents of custody". The form of a "parallel parenting" order addresses specific incidents of custody beyond a mere residential schedule for where children will reside on a day-to-day basis. For example, in *South v. Tichelaar*, [2001] O.J. NO. 2823 (S.C.J.), the court granted "joint custody" but then went on to give the father sole decision-making authority over the children's sporting activities and the mother sole decision-making authority over the dental health of the children.

In this case, as noted above, there is no question as to the open hostility, anger, mistrust and lack of respect between the parties. **Although the children are resilient and appear to be doing well, the comments made to their counselors and their reactions to access exchanges demonstrate the negative effects of their parents' behaviour.** Although Dr. Weinberger initially recommended some joint decision making, he also stated, given the history and the prevailing atmosphere of mistrust and ill feelings, it was difficult to see any basis for a viable joint decision making process. **Even a "parallel parenting" arrangement would require some communication and information sharing. Even the most basic of information sharing has been extremely difficult in this case.** **Therefore, I find that a joint custody order, even if arranged as**

**"parallel parenting", would not be in the best interests of William and Nicholas.**

[68] The 17 points outlined by Goodfellow, J. in **Foley v. Foley**, S 350/18; 1993 CanLII 3400(NS S.C.), address the issue of cooperation between parents. The importance of this exchange of information and collaborative behavior cannot be understated. It is an essential element if the children's interests are to be optimized.

[69] In assessing the complexities of the day to day decision making in this case and the lengthy history of supervision and litigation, I am also mindful of the direction given in **Gordon v. Goertz**, [1996] 2 S.C.R. 27 which specifically recognizes the Court's limited capacity to manage the day-to-day child rearing decisions or indeed the efficacy of maintaining a watching brief on the family's day-to-day living.

*As Goldstein, Freud and Solnit stress, an important function of the law on divorce or separation is to reinforce the remainder of the family unit so that children may get on with their lives with as little disruption as possible. Courts are not in a position, nor do they presume to be able, to make the necessary day-to-day decisions which affect the best interests of the child. That task must rest with the custodial parent, as he or she is the person best placed to assess the needs of the child in all its dimensions.. Once a court has determined who is the appropriate custodial parent, it must indeed it can do no more than, presume that that parent will act in the best interests of the child. [Emphasis added]*

It follows that where, as here, a decision of the custodial parent is challenged by the non-custodial parent on the basis that it is not in the child's best interests, "[t]he emphasis should be . . . on deferring to the decision-making responsibilities of the custodial parent, unless there is substantial evidence that those decisions impair the child's, not the access parent's, long-term well-being." (*MacGyver v. Richards, supra*, at p.445 (*per* Abella J.A.); emphasis added) It must be remembered, as Twaddle J.A. points out in *Lapointe v. Lapointe, supra*, at p. 620:

In all but unusual cases, the custodial parent is in a better position than a judge to decide what is in the child's best interests. A judge can scrutinize the decision, ensure that it is reasonable and even say, when clearly shown, that the custodial parent's decision is in fact not in the child's best interests, but initially it is the person entrusted with the responsibility of bringing up the child who probably knows best."

[70] I will now deal briefly with some objections the mother made regarding court directions.

### **Time Allotment**

[71] The mother argued she did not have enough time to present her case; complete her cross examination of Dr. Hartley among other witnesses; call all her witnesses and had insufficient time for direct and cross examination.

[72] She was urged to obtain legal advice throughout the proceedings both for an overall strategy and on individual matters.

[73] The mother was advised by the Court to attend the offices of duty summary advice counsel in the Supreme Court - Family Division. She informed the court she followed this advice.

[74] She was referred to various authorities including the legislation governing this proceeding and case law from time to time.

[75] In addition to her own witnesses (the mother initially proposed 45 witnesses), she required seven (7) access supervisors for cross examination; and the two service providers, the mediator, Mr Doucet and Dr. Hartley. These were not part of the applicant or father's case. (Pre-trial transcript February 2010)

[76] The agency was directed to make them available for her.

[77] The original hearing dates were expanded from 10 days to 22 and 1/2 days to accommodate the mother's testimony and witnesses.

[78] The mother was allotted more time with each witness during direct examination and cross examination than were the other parties.

[79] The agency required 6 and 3/4 days for presentation of their case; the father three days and the mother was allotted approximately 12 days.

[80] Aside from the seven access supervisors made available to her and the two professionals brought in at agency expense, the mother actually presented 19 witnesses.

[81] As advised by the Court in a letter sent in advance of the completion of her case, any further allotment of time would delay the decision, disadvantage the children, continue the litigious atmosphere and arguably amount to an abuse of the court process.

[82] The mother advises the Court she could not afford counsel. The Court was advised of her income, that an order of child support had been made, that it was not adhered to such that in May of 2010 her wages were garnished and that she had ceased paying the mortgage on the matrimonial home. She advised of the bankruptcy and her financial obligations related to this bankruptcy.

[83] I did not have sufficient information to conclude she was unable to retain counsel for advice or consultation.

**Affidavits, transcript of previous proceedings “appeal book” materials**

[84] The mother’s previous affidavits are part of the record and considered in previous proceedings.

[85] The transcript of the previous proceeding was also filed. To the extent the evidence was referred to in this proceeding and marked as an exhibit, I have reviewed those pages. I have not relied on the portions of transcript not referred to in the evidence. I rely on my findings of fact in the decision following both previous proceedings.

[86] I have available the full transcript of all reviews conducted between the May 2009 decision and the commencement of the Final Disposition Hearing, including the appearance relating to the discovery of the mother’s transfer into the children’s school when it became known to all parties and, consequently, the Court.

[87] The reports from St Martha's Regional Health Authority, case notes, pictures, and supervised access notes are already part of the overall record and have been considered in one of the three decisions. To the extent necessary and relevant, they have been referred to in this proceedings.

[88] Exhibits and reports the mother attempted to tender just before closing her case without prior notice, that were not part of the evidence in the hearing, not subject to cross examination in this hearing, were not admitted. They were tendered without prior notice, no witness spoke to them and neither of the other parties had an opportunity to ask for the attendance or question the marker of the documents at this hearing.

**Services (S. 13(1) Children and Family Services Act)**

[89] The provision of services was aimed at resolving child welfare risk to promote cooperation between the respondent parents enabling a shared or co-parenting arrangement post separation.

[90] The maternal grandparents and mother have harshly criticized the agency for failure to provide necessary services in a timely fashion to address the risk issues. I have reviewed specifically some of the services provided to this family (exhibit 22, tab 5, p. 2-4).

1. After the initial allegations, aside from the investigative involvement and collaboration with police to ensure a continuation of contact, they provided **supervised access facilitators from May 2008 -May 2009** when the Court lifted the supervision requirement.
2. To ensure a continuation of contact pending resolution they provided **supervised access facilitators for (the mother) from the end of July to September 15, 2009**, when the Court lifted the supervision requirement.
3. To ensure contact, they provided **access supervisors to the maternal grandparents to facilitate access from May 2008 to date**.
4. **Psycho educational counselling for the father** through Mr. Neufeld.

5. They searched for and paid for services of a **psycho educational and therapeutic counselling ultimately selected by and for the mother commencing August 2009 to February 2010.**

6. **The children's therapist, Dr. Gerrior, has provided services from August 2009 to date.**

7. **The services of Dr. Hartley to assist in managing a collaborative process.**

8. **The services of Mr. Doucet, as mediator, starting October 2009 to February 2010.**

9. **The services of Mr. Bryson for the grandparents (made available but not utilized).**

10. **Transportation costs, provision of space for meetings, coordination of services and communication to and from service providers.**

[91] The agency provided multiple services over a protracted period of time to assist the parents and maternal grandparents achieve their goals. There has been considerable time and dollar cost associated with the provision of these services.

[92] The mother also argues for the further provision of services after the final disposition. The Act does not contemplate a conditional order continuing Agency involvement with conditions of service. The agency must terminate their involvement in this proceeding at this time. Bateman, J. A. for the Court of Appeal in N.S. v. L.L.P. (2002) at paragraph 25 said as follows:

The goal of services is not to address the parents deficiencies in isolation, but to serve the children's needs by equipping the parents to fulfill their role in order that the family unit remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable changes within the time limit permitted by the Act....Ultimately, parent s must assume responsibility for parenting their

children. The Act does not contemplate that the Agency shore up the family indefinitely

[93] I conclude the services were significant and sufficient, although not always successful.

### **Final Disposition Hearing**

[94] A Pretrial Settlement Conference was set up for the parties the week before the hearing commenced. No resolution was achieved.

[95] The Final Disposition Hearing commenced on February 22, 2010, and continued on February 23 to 26; March 15 to 19; and 29-31; April 1, 21 to 23; June 8 to 11 and July 7-9 inclusive. There were 41 witnesses and 139 exhibits.

### **Plans of Care**

#### **The Agency Plan of Care (exhibit 23, tab 5)**

[96] The agency Plan of Care seeks dismissal of the child protection proceedings. They believe the children are “safe and adequately cared for in the sole custody of (the father).”

[97] They recommend sole custody to the father to stabilize this parenting plan. They recommend specified access to the mother. They do not support unsupervised access with the maternal grandparents.

[98] They do not support a return to their original primary residential location or school. They consider the mother’s latest plan to \* in the children’s school a risk to the emotional stability of the children and progress that has been achieved. They did not support a move to Halifax.

[99] The agency contends that the mother and maternal grandparents continue to present a risk of emotional harm to the children. They support continuation of the children’s important relationship with their mother though access.

## **The Father's Plan of Care**

[100] The father's plan *as presented at the initiation of the proceedings* is to remain in his current community. He seeks sole custody with parenting time for the mother, supervised access to the maternal grandparents.

[101] Until May 2010, well after the father's in court testimony, he was unaware of the mother's intent to apply for a position in the children's school. The mother told the children about the home being sold, her move to their community and her new posting in their school (their secret) as well as her trip to \* on Sunday the 16<sup>th</sup> of May, 2010.

[102] She left for \* on May 20<sup>th</sup> and expected to return on May 29, 2010.

[103] She left messages about some of these decisions (no mention of the school transfer) on the therapist's phone and emailed the father, leaving no reference to her new posting. The father learned from the children and then informed the agency, who informed the therapist.

[104] She advised the father by email that communication with her while she was away by internet would be difficult. If he were to communicate with her, she likely would not be reading it in transit. Rather than give the father her contact numbers and hotel number, she left them with his lawyer.

[105] Essentially, she left the father and the therapist dealing with her disclosures to the children.

## **The Mother's proposed Plan of Care**

[106] Despite being ordered to disclose her parenting plan in the September 2009 decision and again at a review **on December 14, 2009**, the actual plans the mother proposed were not provided until her affidavit was filed on February 16, 2010, six days prior to the hearing. (exhibit 40, p.28, para 160)

[107] The February 16<sup>th</sup> plan was amended orally at the start of the proceedings when the mother withdrew her first option, a return to their



community of origin and school in her care. This option was rejected by the other parties.

[108] While it is not longer necessary to consider this option, the evidence provided from Facebook confirmed that the \* sent her message referred to in the Review Hearing to a considerably larger community audience than first thought.

[109] The plan was further amended without notice to the parties in May 2010, presenting the latest plan to transfer into her children's new school.

### **Directions to Disclose Plans of Care**

[110] In the Decision dated September 15, 2009, the Court directed (p.23, para.142):

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

and in the Supervision Order issued September 16, 2009, (exhibit 34, tab 7, p.3):

That the Respondent (mother) shall provide her working response to this relocation, proposing how she will adjust to the children's move and proposing a schedule of parental contact, such proposal must be approved by the court before adjustments are made to this schedule.

and again on October 26, 2009, the Court asked: (see transcript p. 66, line 22):

**The Court** :...your written response to what you're going to do in terms of the move, when do you expect that to be in?

**The Mother** : I don't see in the order that it talks about a written response....It talks about me giving a working answer. It doesn't talk about it being written. However I'm prepared to speak to it today.

**The Court**: No. I want it ...

**The Mother**:...these things ...

**The Court**: ...in writing ...You do that in writing .Okay?

And again at page 74, line 17:

**Ms Morrow**: My Lady, just...so could I have a date by which I'm to receive (the mother's) written statement?

**Ms Morrow**:.....

**The Mother**: Well I can tell you that there's still no clarity for me as to whether or not you all know that I work...

**Ms. Morrow**: I just need a date.

**The Mother**: ...at \*. I'm an \* with the same job I 've had for 14 year. That's my...

**The Court**: Okay

**The Mother**:...means of financial...

**The Court**: This is why this matters.

**The Court**: ...support. This is why this matters, If your going to be living there and the children are going to be living here, how the agreement is crafted will reflect the fact that your living there and the children are living here.

And continuing to conclusion at page 77, line 1:

**The Mother**: However, what I would like to indicate is that **there is no point for me to move** and have the financial hardship of needing to travel every day to \*, In the wintertime, it's dangerous, which is why you don't want the children travelling ,...

And again at the January 18, 2010, review and pretrial (page 176, line 14):

**Ms. Morrow:** Another problem with the current state of affairs, it's impacting on everything including the mediation, is part of the order was that (the mother) was to let the Agency know what her plan was.

.....

**The Mother:** (page 177, line 6) ....I can provide the Court with a letter, which is something you have requested. There has been no change . I have presented orally in court what my response was to the transition. **That has not changed.** My residence has not changed. There has been no indication ...

**The Court:** Do you have a copy for counsel?

**The Mother:** Unfortunately ,I don't. I could not get a copy made before ....

.....

**The Court ..** and you have not provided it to counsel.

**The Mother:** My understanding is that the letter was for you Your Honour.

.....

**The Court:** And that is your plan that flows from the order of the court previously. Is that correct?

**The Mother:** It's simply a written repetition of what I've already shared with the Agency and what I've .....

**Ms. Morrow:** Can we get a copy?

**The Mother:** ...already shared with the court. Your Honour there has been **no change** .....

....

**The Mother:** I would like to clarify what has been ordered of me was my response to the transition which is temporary at this time. We do not have a final disposition decision. Custody has not been decided. Therefore, the suggestion of relocation , given my current financial situation , employment in A., my current residence, the restrictions of the current

court order, the continued significant position of the Agency which does not adequately support co-parenting and other factors....

.....

**The Mother:.....my decision has been to remain in the matrimonial home, as I am the only person in this situation working.**

.....

**The Mother:** ....what I would like to indicate to you is that there is actually a plan, a long term plan that I have been discussing with the mediator over the past number of months which addresses a long term co-parenting strategy and that's something he has known since we began working together. ...this letter that I've written , is basically just an initial response to the Court's decision to move to ...to move the children to P.

**The Court:** ....So your long term plan, I take it , **will form part of the information you file in the final proceedings.**

**The Mother:** It will.

[111] In this letter (exhibit 53) the mother advised **she intends to remain in the same living and working location.** She strongly supported the first option remaining in the community (exhibit 69, para 293-308).

[112] Her plan (exhibit 40, p. 28, para 160) presented three options in order of preference.

1. Return the children to her community of origin. (withdrawn)
2. The second option was to have shared parenting plan with a move to Halifax for both parents and the children. This is the option she said she discussed with the mediator although he was not asked to speak to this.
3. Her third and least preferred option is to have shared 50/50 parenting with the father remaining in the children's current community.

[113] This option to transfer into the children's school was not disclosed or discussed in advance with any of the relevant parties. It materialized as a *fait accompli* on May 16, 2010. This was not disclosed to the agency or the father until May 20, 2010, through the children.

[114] No person, other than the mother and the school authorities, knew of the mother's plans to apply for a job in the children's school.

[115] This option was presented well after the agency and the father presented and concluded their case (April 1, 2010); well after the assessor, Ms. Rule testified on March 15, 2010, that it was not advisable that the mother change her teaching assignment and obtain a teaching position in the children's new school. The risk of returning to a similar toxic environment existed if she taught in the school while she lacked insight into her behaviour.

[116] The timing of this disclosure was perplexing. The mother understood how significant the loss of the family home was for the children. There is evidence in many of the materials filed by the mother, including her February 11, 2010 affidavit. (exhibit 40, para. 66 to 70 and para. 160)

[117] The option was disclosed by the mother to the children at a time when the therapist, the father and the mother's counsellor were actively working on a strategy of introducing the loss of the home with the children. This was one of the many opportunities presented to the parents to work constructively on co-parenting.

[118] The parties and the Court operated under the assumption that the mother's plan was to remain in her current school.

[119] It was reasonable to assume she was moving residence because the home was being repossessed. At most, one could reasonably assume she may have been considering a move closer to the children's residence, between her place of employment and the children's current residence.

[120] The central question now relates to evidence concerning the children eliminating the risk factors and the plan of care put forward by the three parties. Which plan best addresses the "best interests of the children"?

## Summary of Conclusions

[121] Due to the length of this decision and the complexity of the human dynamic as exhibited in the analysis of the evidence I have prepared a summary of my conclusions.

[122] The two child involved in this proceeding are A.S. and V.S.

[123] They were 3 and 5 years old when the parents separated. The oldest is now a month away from 10 years old and the youngest, 8.

[124] Two years prior to the separation the maternal grandparents were baby sitting the children when they began with false allegations of sexual abuse against the father.

[125] The parents continued to live together until separation in June 2007.

[126] Prior to June 2007, the father had significant parenting time with the children.

[127] Since June 2007, the mother has had exclusive possession of the home and until September 2009, the children lived with her.

[128] There have been multiple investigative interviews with police and the child protection agency followed by significant involvement from psychologists, psychiatrists and social workers. No basis has been found to suggest the father is a risk to the children.

[129] The mother, the maternal grandparents and the mother's extended family have continued to pursue the allegation of abuse. Significant services have been put in place to assist the maternal grandparents, the mother, the father and the children in recovering from the damage created with the high conflict in this family dynamic and the false allegations.

[130] The mother and maternal grandparents have resisted agency intervention and failed to address the issues that contributed to the requirement for sustained police and agency intervention.

[131] The father, his parents and his girlfriend have been cooperative throughout and provided the bulk of the stability for these children.

[132] The conflict escalated in the mother and maternal grandparents community such that the Court ordered the removal of the children from the community and school to another equivalent school in the same school board that could provide the children with a conflict free environment.

[133] The father left his job to make himself available for primary care of the children. His girlfriend (common law partner) left \* to come to his community to assist and his parents have contributed significant time and effort in assisting him in spite of the fact they reside in \*.

[134] The father resisted proposing a return to \* to try to preserve some contact with the mother in a community familiar to the children.

[135] Despite substantial therapeutic involvement, the mother continues to resist agency intervention, refuses to be forthright in her communication with the father and the agency, is unavailable to receive information and discuss the children's needs in a timely fashion and fails to collaborate regarding children's issues.

[136] She has demonstrated an intention to act without consultation, collaboration and contrary to the advice of the children's therapist, the assessor and the father.

[137] She had continued to attempt to destabilize the children's home with the father in order to have the children returned to her care.

[138] Her parents have refused the agency services set up to assist them to become informed and effect behavioural changes in their relationship with the father, in order to support the children's relationship with the father.

[139] The mother and the maternal grandparents articulate a desire to facilitate a peaceable shared parenting relationship yet have acted in a manner which illustrates contempt of the father and his rights and the children's rights to be in a relationship with him as a parent.

[140] The evidence illustrates how little information the mother is prepared to disclose, and confirms her intent to act arbitrarily without regard to the assessor's, the father's or the child therapist's counsel.

[141] Sufficient services have been put in place to rectify the situation. The legislative time frames have been exceeded.

[142] Each parent is capable of attending to the physical needs of the children.

[143] Each parent loves the children and they their parents. However, the children's emotional health has been compromised.

[144] Despite significant intervention, the mother continues to act arbitrarily creating an environment of conflict that creates emotional harm and confusion to the children.

[145] When the Court moved the children out of the community, resources were put in place to create a safe, conflict free environment for the children. Progress could be substantiated. Their presence in the new school was positive.

[146] The mother secretly applied and obtained a teaching position in the children's new school.

[147] The mother's presence in the school has the real potential of recreating an atmosphere similar to the atmosphere that existed in their previous school and community that required intensive involvement of police, agency and psychological intervention.

[148] The mother refuses to consider other options or waive what she considers her constitutional rights to work where she chooses in order to address in priority the rights and needs of her children as determined by others qualified to give their opinion.



[149] The children have been found to be significantly compromised while in the mother's care. The father has managed to introduce stability and foster improvement in their emotional stability.

[150] The assessor and child therapist strongly recommend against the children remaining in the same school with the mother.

[151] The child protection proceedings must come to an end. The agency believes the father is best able to protect the children from this emotional harm.

[152] The Court must consider dismissing the child protection proceeding and create a private custody order that will stabilize the children and address their best interests and keep them from the escalation of this harm and conflict that has previously affected them.

[153] After hearing all the evidence the best options include (1) either the mother remove herself from this school or (2) the father remove the children from the school.

[154] The preference is the former.

[155] The mother has indicated her resistance to this proposal. The father is the person who is best able to make decisions in the best interests of the children.

[156] He shall therefore have the responsibility of responding to the mother's decision regarding removing herself from the school.

[157] If the mother removes herself from the school, the children shall stay in the school.

[158] If, however, the mother refuses, in accordance with the order of the Court, to resign from her position and provide him verification of her resignation such that she is not working in or out of this school, he **shall** remove the children from the school.

[159] To avoid multiple further moves, he shall re-establish himself and the children to ensure the least possible disruption in the future to their personal and scholastic lives.

[160] He is faced with having to move the children again and his primary focus should be to establish stability to ensure and limit the possibility or necessity of future moves so that these children can begin to get on with their lives free of the parental conflict.

[161] He shall not be bound to establish himself in Nova Scotia nor be bound to seek permission of the Court to move the children out of province should the mother refuse to remove herself from the school. It makes perfect sense that if he has to move the children again, he consider re-establishing himself in his community of origin (\*) where his supports and extended family reside.

[162] From this place he can guarantee contact with the mother to ensure the children have stability and maintain contact with her.

[163] The mother is not only bilingual but a professional trained in the French language who has the capacity to re-establish herself in a community close to the children. The difference will be that the father has substantial support to assist him without agency intervention to maintain a solid, peaceful family environment where the children can thrive.

[164] The grandparents have failed to participate in the required counselling. Their access remains supervised in accordance with terms and conditions agreed upon by the custodial parent. There shall be no overnight access.

[165] Counsel for the agency shall prepare the dismissal order to be effective simultaneously with the private custody order prepared by the father's counsel pursuant to section 16 of the Divorce Act.

## **Analysis of the evidence**

**How the children are coping is the most important question.**

[166] Various individuals for all parties have had an opportunity to observe the children in their new surroundings in their new community, living in the sole care of their father. They were able to offer some first hand observations of how the children were doing since the transfer.

[167] R.M., a witness for the agency, the principal of the children's new school, testified. He is a distant relative of the mother although professes to know very little about her.

[168] To the hearing date he has been able to keep himself and the teachers from becoming involved in any of the conflict. The principal is sensitive of the need to respect the children's privacy. At that point the teachers seemed unaware of the children's child protection involvement.

[169] The agency worker made discrete e-mail enquiries directly to the principal to avoid going directly to the school and alerting the new environment of agency involvement. The worker gave the principal questions to put to the teachers.

[170] He consulted privately with both of their teachers who confirmed there are no problems out of the ordinary. He advised as follows:

The transition for A. has gone well. She is adjusting to class life as well as creating social connections. V. seems to be adjusting well. She appears to be somewhat timid or reserved. ...A. is having no visual challenges. V. appears to be adjusting well to her new school....A. academic challenge is in math but not to the point she is in danger of failing. V. is very strong in language arts and is progressing well in all subject areas...A. has lots of friends and is very social. V. appears to play alone on many occasions , however the teacher has been noticing that she is making more interactions with the other children...A. is socializing very well with teachers and students. She is especially polite with teachers. V. is starting to open up with other students, however she is reserved by nature.

[171] The principal described the strategy he and the father worked on together to familiarize the children with taking the bus in their new school in September 2010 . The father took the children and followed the bus, then put them on the bus making sure that he was at both locations to ensure they were comfortable. Eventually they learned to come and go on

their own. Now they are alternately driven by the father and, when necessary, they take the bus.

[172] The principal confirmed the father volunteers at the school in the \*. He confirmed the children were doing very well overall, both academically and socially.

[173] The principal confirmed that the mother contacted him early in the school year and asked to be kept apprised of any concerns that they may have with respect to the children. She has direct email access to him to keep her informed and to respond to her questions. He corresponds with her directly providing her with schedules and information.

[174] Since the May 2009 review there has been no impairment or obstacle in the mother's ability to obtain information and participate in the children's school activities.

[175] The only regression noted by the mother's witnesses relates to her oldest child's handwriting on a math quiz she found in the school bag. While the mark was 6 out of 6, the mother was distressed with her daughter's handwriting. She had the child's prior school teachers confirm her handwriting had regressed.

[176] The principal's evidence corroborates the father's evidence regarding the children's performance. The children have settled well in the school. They have become involved in extracurricular activities. The oldest was chosen to play a central, well cherished role in a school celebration. Their report cards are above average.

[177] These positive reports about the children are further corroborated by N.S.S, an administrator-teacher, another one of the mother's witnesses. This is the same professional who phoned the Children's Aid Society previously, shortly after the Review Hearing to advise of A.'s concerns about going home to her father.

[178] She saw the children in April 2010 in their new school the day before her testimony. She advises they seemed generally happy, saw V. laughing

at recess, A. playing with friends. She was in the class room and did not observe any sadness nor meekness.

[179] Their academic progress is similar to their former school. These are intelligent children. In this environment, the children have been free from the conflict in their parent's lives.

[180] The school has managed during the past year to be a place where the children are free to normalize their educational and social experiences. Other professionals around the children are not engaged in the ongoing parental conflict.

[181] The principal advised the Court that the maternal grandfather came to the new school in February 2010 to serve five of the children's teachers with subpoenas to appear in court. He restricted the grandfather's meetings with the teachers to his office.

[182] This new location and new school has developed into a safe place free of the conflict found in their previous location.

[183] L.S., a teacher with 30 years experience, taught the mother, worked with her as a teacher and now serves as president of the local teachers union with the mother as \*. She has seen the children with the mother on her parenting time subsequent to the transfer and in 2010 and notes the children appear happy.

### **The Paternal Grandparents**

[184] Both of the father's parents continue to be supportive and present when necessary. They have previous first hand experience regarding the behaviour of the children in their original home and in the father's home prior to and now after the move.

[185] They have been with the children as supervisors facilitating the father's contact with his children and since the decision to lift supervision.

[186] During the transition, when the mother was unavailable and the father at work, these paternal grandparents provided the day to day care.

[187] They were also present during much of the visit to \* in June, 2009. Their testimony is direct, clear, forthright and credible.

[188] They spoke to the change they observed in the children's behaviour . They advised the children were well adjusted in \*, excited, happy and polite as they reconnected with their relatives and attended various family functions.

[189] They advised that V. became a little lonesome at night for her mother. During the day, both children were occupied and happy, excited with the day's events.

[190] They were able to compare the children's behaviours before the move and during the father's supervised visits. They noticed the difficulty the children had in transition between parents.

[191] Now in their new surroundings they observed the children were happy, settled, calmer, more disciplined and freely engaging with them and their father and his girlfriend.

[192] The paternal grandmother noted that A's behaviour changes after evening phone calls from her mother, making sleep difficult. She becomes over excited and tense following these calls, more agitated and fragile.

[193] C. L. is living with the father and the children. She has known the father since they were 18 years old. They began dating two years ago. She relocated to live with the father in his new location. She is a \* and is taking courses at university. She is also working.

[194] She saw the children in their old community in Nova Scotia, towards the end of the period of supervision, in \* and in their new community.

[195] She observed the difficulties in A's behaviour before the move, the acting out, aggression, yelling, slamming doors, etcetera. This behaviour is well documented by Dr. Gerrior, in the maternal and paternal grandparents' testimony and the supervision case notes over a protracted period of time.

[196] C.L.'s testimony speaks to her observations of the change in the children, a calmer appearance, positive interchange with the father and grandparents. She verified that while the youngest child may have been lonesome during the night on their first trip to \*, at the end of the supervision period she also noted that the children had a wonderful time in \*. A. did not cry or misbehave. She notes that the children are well settled in their new premises.

[197] C.L. is respectful of both the father's and mother's role with the children and engages them in appropriate activities while she is home. This witness was straightforward and believable. She was not invested in any behaviour that would diminish the mother's role.

[198] All witnesses noted the anxiety exhibited by A. (tics, etcetera) was no longer present.

[199] A.R. testified for the father. This 42 year old mother of 2 school aged children sometimes babysits for the father after school. The children became known to her once they moved and began playing with her children. She observed the children are doing well in their new community. She observed them as well adjusted, happy engaged with her children in play. They appeared to be nothing out of the ordinary to her. Her contacts with the father are respectful and cordial. She spoke clearly and without exaggeration appearing to advocate for neither party. She spoke simply of what she observed.

[200] In response to the mother's question the witness confirmed she knew nothing of the history and why the children were not in the mother's care. The witness was respectful of both parents. Her value as a witness was a third party observation of the children's functioning in their new environment. It confirms the bulk of the evidence (except for the mother's) that the children appeared normal, and positive.

**“Crisis” management- September 2009 to May 2010**

[201] Dr. Gerrior, the children's therapist, testified that she spent a lot of her time in counselling reacting to "crisis" created by the mother; crises which need not have occurred if advance notice and disclosure were given.

[202] There were a number of child related incidents; some minor, some significant that speak to how each parent may manage conflict when no longer under the watchful eye of child protection or court scrutiny.

[203] I review these events in chronological order to review how these problematic events were addressed. All of these could have been avoided by a cooperative spirit, full disclosure, communication and collaboration. They include (but are not limited to) the following:

**Sale of matrimonial possessions**

**Removal of matrimonial possessions from the home**

**Out of province absences**

**Unilateral communication of information to the children regarding the loss of their home, her residential move and her transfer into their school**

**Children's accessing pornography on line**

[204] These "crises" arise out of conversations the children have with the mother or in the mother's home or actions taken by the mother and the maternal grandfather that do not support their stated intention to act collaboratively with the father in the resolution of their conflict.

[205] As background to these events it is important to note that the parents agreed in mediation to certain statements of principal. While the agreement was not signed by either and only tentatively endorsed by the mother as a temporary agreement, (exhibit 21, tab 4) it was relied on by the mother throughout her representations to the Court.

**General Parenting Approach:**



1. The parents will exchange directly with each other all necessary and relevant information related to the children and will discuss this information with each other as necessary.

2. The parents agree to ensure the children are not placed in the middle of their parent's communication and will ensure the children are not inappropriately exposed to adult matters.

3. The parents will not use the children to pass on information to or seek information from the other parents.

... ..

**Communication strategy:**

8. Relevant information about the children will be shared between the parents via e-mail as soon as is reasonably possible.

.....

**Exchange of health related information:**

20. Information related to the various aspects of the children's health will be shared between the parties.

[206] Considerable efforts were expended to come to this agreement.

[207] These events should also be reviewed within the therapeutic framework described by Dr. Gerrior:

a primary objective for (the children's) therapy has been to facilitate each child's development of a healthy relationship with both of their parents and sets the stage for co-parenting to occur" (Dr. Gerrior, exhibit 18, tab 3, p. 2)

**Sale of Matrimonial (including the father 's) Possessions**

[208] In the summer of 2009, the father discovered the maternal grandfather acting on his daughter's instructions, holding a street sale where the father's and the children's personal and matrimonial possessions were for sale.

[209] The father arrived at the sale with a police officer with him to attempt to stop the sale.

[210] The grandfather continued the sale advising the father if he did not like it he could 'call the agency and complain'. The father walked away.

### **The Sale of the Father's Personal and Matrimonial Possessions**

[211] The mother admits having her father sell the father's possessions and other matrimonial items at other times over the past three years while she was in exclusive possession of the home. This included the sale of his exercise equipment, the children's toys, furniture, etcetera, without consultation or permission, without informing him or sharing the proceeds with the father.

### **Emptying the Matrimonial Home (January 2010)**

[212] In May 2009, the Court directed the parents to resolve their divorce and matrimonial issues.

[213] The mother has retained exclusive possession of the home since June 2006 and solely occupied it with the children to September 2009 when the children were moved to the father's custody.

[214] Although she ceased paying the mortgage, she continues to live there with the permission of the trustee. She paid the utilities.

[215] In January 2010, the father was advised that the mother declared bankruptcy. He had no information about his possessions or the state of the home.

[216] The mother refused to allow him to enter the home for inspection and retrieve his personal belongings. He sought and received a court order to allow him a small window of opportunity to view the home and retrieve the remaining possessions. To avoid conflict, each parent was to have a witness present.

[217] The father brought a police officer and his father. His counsellor agreed, in light of past allegations, bringing a police officer was wise.

[218] The maternal grandfather, at the mother's request, arranged for the presence of neighbour, A.M., who knew very little of the family circumstances. He testified that the mother told him that all furniture had been removed so as to facilitate the father's inspection of the home (exhibit 103, para 12). A.M. was also there on January 6, 2010, when the furnishings had been returned. (para 14)

[219] On January 5, 2010, when the father attended the home, he saw that the house was stripped of most of the furnishings, all appliances including the fridge, stove, table, chairs, living room furniture, clothes, food, etcetera. Seven doors were missing as well as some cabinets and a counter which had been removed. Only three bedroom sets remained. The mother testified the three beds were left because they had no room in the moving truck for these.

[220] The father contacted CAS to inform them and enquire where the children were living when visiting with the mother on weekends. In light of the restrictions on the mother and maternal grandparents, the worker was reasonably concerned as to the children's living conditions with the mother.

[221] The police officer verified with the agency that the home was essentially empty. The worker contacted the mother. She refused to inform the agency or the father why the home looked as it did.

[222] The worker insisted on visiting the home the following day. Still uninformed as to the events, upon her arrival most of the possessions were returned except for the doors and cabinets.

[223] An explanation was not forthcoming to the agent or the father except for a suggestion in court that they removed all the household possessions for that three hour period to provide the father with a better view of the house for inspection absent the possessions.

[224] Subsequently in court, the mother testified she did not agree with the Court's order to let the father into the home for inspection. She asked her

father to remove all possessions knowing they were matrimonial assets to avoid the father removing any piece of furniture. They had previously agreed on a list of personal items he was entitled to take. All other possessions were removed and returned within a 24 hour period.

[225] Subsequent explanations by the maternal grandfather verified her wish to protect the matrimonial possessions. His testimony for removing the seven doors and cabinets and counter top was not supported by independent evidence and is unbelievable given the home was in the hands of the trustee.

### **School Transfer and Sale of Matrimonial Home( May 2010)**

[226] The father had consulted with the children's therapist. The loss of the matrimonial home (about which he had considerable difficulty getting information) was the subject matter for the May 17, 2010, therapeutic session. There was previous agreement that this subject had to be carefully introduced to the children. The bankruptcy made return to the matrimonial home impossible.

[227] The mother received confirmation from the Vice Principal (one of her witnesses) on May 13, 2010, at her former school that she was the successful candidate for the teaching position in the children's school. She confirmed her acceptance with the school board. She did not advise anyone. She was scheduled to leave for a student trip to \* on May 19, returning May 29.

[228] On Sunday **May 16, 2010**, as she was travelling with the children from her home to the father's, she told the children in the car about the loss of the family home, her school transfer, her intended move to live closer to them and her intended absence from the province.

[229] In her email to the father on that same Sunday night (exhibit 112, tab 74, p.150), she advised him she discussed with the children her move to their location and the loss of the home. She thought about what she should tell him and deliberately withheld information regarding her move to the school.

[230] She later advised the therapist and the Court she told the children about her transfer because her children heard of her transfer through other children in their school.

[231] She advised in court that she thought about her approach to advising the father about her transfer to the school. Despite the opportunity to inform him, knowing of his opposition, she decided not to.

[232] When the other parties asked for details from a verified school board source concerning this transfer she refused to agree to a voluntary release of information. (pre-trial hearing June 2, 2010, p. 22)

[233] She advised the Court at that pre-trial the following:

I don't know where it is in the Child Protection Act that it says that the Agency can dictate where I work. And I don't know where it says in what the Court follows that it can dictate where I work. Therefore this consensual information I'm not agreeing to it at this point. I don't see that it is a part of what the Children's Aid has jurisdiction over, nor what the Court has jurisdiction over. I know the Court can decide on the custody, the Court can decide where the children are. But as far as I know the Court can't decide where I work. Now I may be wrong about that, and you can correct me because I am self-represented, but I did verify with human resources and my union.

[234] The mother could have avoided the problems this created with the children, the father and the agency had she been forthright in her disclosure and consulted with the child therapist and the father before making this unilateral decision.

[235] In the May 17<sup>th</sup> session, Dr. Gerior later reported to the worker, "I had a gut feeling that something else would transpire after seeing the children on May 17<sup>th</sup>". V. had informed her she had a secret. The children actually later informed their father of this transfer.

## **Notice of Out of Province Absence**

[236] The Court, the father and the agency learned in the Pre Trial Conference on March 29, 2010, that the mother would be in \* with her class and unable to complete the hearing between May 20-29. The children learned of this the weekend before her trip (May 16<sup>th</sup>) along with the other major changes in their lives. It was not uncommon to have little information about the mother's trips:

**Ms. Morrow:** AND THERE HAS BEEN NO NOTICE TO THE FATHER.

**The Court:** What is the purpose of the trip?

**The Mother:** To \*. It is an educational trip of learning to \* and \*. And it's been planned for two years and I am the teacher responsible for this group.

**Ms. Morrow:** AND AGAIN, I WANT TO PUT ON THE RECORD THAT THERE'S BEEN NO NOTICE TO (the father). I DON'T KNOW IF THE CHILDREN KNOW ABOUT THIS.

**The Mother:** There has been no notice because we're months away from it and the Agency is still involved, we are still in a court proceeding. I have no idea what the access will be, how the parenting time well be divided. I have no idea what that is going to be right now.

[237] The mother requested last minute changes to the phone calls to the girls made necessary by her responsibilities to her students in transit to \*.

[238] This impacted the planning of access visits (see May 15<sup>th</sup> e-mail; exhibit 110, tab 142) and the scheduling of the completion of the disposition hearing.

[239] The mother was scheduled to miss the first (short) weekend including Friday May 21 to Saturday May 22, 2010, (one overnight). She returned May 28 in the evening and saw her children on the 29<sup>th</sup>. She advised this trip had been planned at least a year in advance.

### **Attending the Girls School to say Goodbye**

[240] She emailed the father to ask that she be able to drop by the children's school on her way to the airport to give the children a package of notes to help them cope when she was away. She wished to say her final goodbyes to them because she would not return until May 29<sup>th</sup>.

[241] She advised the father in this email she made arrangements for a babysitter for the children during her trip away if he was unable to babysit the children.

[242] On May 18, 9:42 a.m. he informed her by e-mail he would care for the children. He was not agreeable to a tearful goodbye at school. He recommended "if you wish for them to open a present from you on the weekend that you are away you can mail it to me and I'll give it to them on your behalf".

[243] The father has consistently approached the mother's trips away focussed on the best interests of the children (example her summer \* trip). (see also exhibit 112, tab 78, p. 155, para 2).

[244] She responded by email on May 20, 2010 at 12:50 p.m. as follows:

Since you are not agreeable to me giving the girls a hug for 5 minutes at their school when I drop off the package of letters and surprises(candies, lip balm, origami sheets) I prepared for them every day I am gone, I won't. I don't have time to prepare it for the mail, but I would like to suggest that we meet somewhere for me to give them the package and a hug? If you are agreeable to meet me in the next hour and a half as I pass though, call me on my cell phone, please.

[245] The mother ignored his position. She gave him little notice of her plans and went to the school without his permission. She asked the secretary to give this large package to the children. She by passed the father completely.

[246] The mother testified that when they are with her in church she has heard the children pray to return to her care. In the notes she provided to them for their daily consumption while in \*, she advised them she visited \*

and prayed at the statutes of saints after which they were named to answer all their prayers what ever they may be.

[247] She notes as follows: (exhibit 40, para. 68)

My children regularly express their desire to be with me, to live with me, to return to school at \* , to return to their community, to see their maternal grandparents and their father whenever they want. This is what I hear them pray for at night, wish for when the clock's numbers match up every hour (3:33, 4:44), ask for on Santa's knee at the mall, wish for when they see a shooting star and pray for at church....

[248] In the package was a letter /note for every day of her absence with presents. The content of the messages emphasized for the children the mothers absence on a daily basis rather than recognize, essentially, she was absent from access for only phone calls and three nights out of the ordinary.

[249] Dr. Gerrior testified that going to the school, pulling the children out of class, having an emotional goodbye, making it public rather than private, was not in the children's interest.

### **Other "crises" requiring Intervention (no particular order)**

#### **Transitions**

[250] Historically, during agency intervention, the transition between parents homes and the "goodbyes" with the mother were very problematic.

[251] The therapists educated the parents to assist in the transitions between households on numerous occasions to reduce the stress of the separations and transitions and minimize the tearful goodbyes.

[252] Initially, Dr. Gerrior was under the impression that the mother had made some progress by adopting advice regarding minimizing the transitions and goodbyes to reduce the children's stress.



[253] On November 26, 2009, in a voice mail, the mother advised Dr. Gerrior that there were '*concerns*' regarding the two children. She did not elaborate on the nature of the concerns or immediately tell the father.

[254] She did inform her own counsellor, who in turn advised the Court, she did not consider this urgent or a child protection concern and did not report it to the agency or the children's therapist.

[255] A few weeks later the mother advised of this "suicide risk" . She disclosed that V. said to her as she was being taken home from a visit with her mother that she wanted to die.

[256] The children had also spoken about their mother being sad and lonely. Consequently, they were sad leaving the mother to return to the father. The children have informed the father that the mother was singing sad songs because she missed them.

[257] Dr. Gerrior testified it was difficult to figure out who is really sad and whether it is sadness on the children's part or on their mother's part. The children expressed concern about how their mother would cope during the remainder of the week when they were not with her.

[258] The therapist spoke with the girls, did a risk assessment and concluded there was no risk of suicide. She concluded the problem arose out of the difficult transition between houses, exacerbated because the mother was not actually spending sufficient time in the children's community, allowing them time to reconnect with other children and their family during their visits. Rather she was spending a fair amount of time in \* either on \* business or otherwise.

[259] The therapist heard independently from the children, the worker and the father (case notes and testimony) their concern that the children were not visiting their mother in their own community. The case worker asked the mothers therapist to deal with this issue in session. Her therapist decided the mother would receive this information better if it came from the child's therapist. Dr. Gerrior addressed this with the mother to encourage her during her time, to spend time in the children's community, to allow them to have connection with their past.

[260] Dr. Gerrior implemented strategies to assist both parents with the transition between homes. She advised that both parents implemented the strategies appropriately.

### **DSI's**

[261] Dr. Gerrior was consulted about a Christmas gift (DSI) given to the children by the mother. The children had in their father's home a DS (a children's electronic game) without video capacity. The mother gave the children a second DS with video capacity (ultimately the toy on which they learned to download pornography).

[262] Historically, the mother has taped many conversations with child protection workers and therapists without their permission. The issue of video taping transitions had been put to rest in previous proceedings.

[263] Dr. Gerrior recommended that the video enabled DSI remain in the mother's home to avoid any possibility of taping within the father's home and avoid further conflict.

### **The Journal**

[264] In November 2009 the mother read V.'s journal at a parent teacher meeting. All reports to and from the principal illustrated the children's positive progress. The mother read V.'s expression in her school journal that she missed her mother. She determined the children were doing poorly.

[265] This information was not reviewed with the therapist to allow her to address this with V. in session, nor with the agency or with the father to address the child's feelings appropriately.

[266] The mother saved this information and presented it to the therapist for the first time as she testified on February 24 and 25, 2010. While an attempt was made to view the journal as a crisis, a reading of the child's journal confirms it as a daily child like commentary on what she loves to do, her likes and dislikes.

[267] The presentation of these concerns in this manner caused the therapist to reflect on her assumptions about the mother's ability to implement a cooperative approach. The therapist commented had this material been presented to her in a timely manner, around the time it was discovered by the mother, she could have dealt with it in one of her sessions.

[268] Dealing with it weeks after it was written, when there are no indications the child was suffering, was inappropriate. The therapist was also concerned about breaching the child's privacy. She found no obvious need to address any issue.

[269] The therapist concluded that the child felt free when with the father to express her emotions about the mother. The therapist expressed concern that the children might not feel as free to speak of their father while in the presence of the mother.

[270] Finally, Dr. Gerrior expressed her concern that by involving the teacher and bringing the journal into court, the plan set out in the court order that aimed at avoiding involving the children's school in these proceedings would be potentially sabotaged, eliminating the school as a safe place free of the parental conflict.

### **The Mother's Transfer into the Children's New School**

[271] In her oral testimony, the mother advised she deliberately did not discuss her plans with the father because she knew he would disagree. She was present when Ms. Rule advised against this possibility.

[272] In Ms Rule's testimony on March 15, 2010, Ms Morrow, counsel for the father asked her:

Ms. Morrow: ...that area (ref: new school) could be toxic and some of the examples she gives, there is people on the staff, that for example... from I.M., where she's from, that work at the school and so on and that she's involved with the teachers cause she's a teacher . If she were to move to A., uh..., would you be concerned if she took up employment at the school?

**Ms. Rule:** Yes, I would for the very reasons I think I gave evidence on this the last time I was in court, **for the very reason that there's an influence then and that it's not fair to the children. I would like to add to that the children appear to be doing well in school now and that's a bonus for them.**

[273] When the mother applied to transfer in May 2010 she contacted her union representative and human resources to enquire whether the Court could interfere with her applying and teaching in this school.

[274] She gave no advance warning or opportunity to consider the implications of this with the child therapist or her own therapist.

[275] The mother argued it was against her constitutional rights to impose any restrictions on her regarding employment. She advised that neither the Court, the agency or father could stop her or had any business knowing her intentions.

[276] At this point, the agency had already closed it's case and the father completed his on April 1, 2010.

[277] This was a considerable breach of the spirit and intent of any mediated agreement or co-parenting strategy.

[278] The agency directed her not to discuss the proposed relocation and transfer of school with the children prior to the pretrial on June 2, 2010.

[279] In her email of May 30, 2010, at 1:24 am, upon her return from \* she said:

I did not plan on discussing any sort of relocation or transfer with the girls during access tomorrow or by phone this week and will not do so ....

[280] On June 2<sup>nd</sup>, the Court directed the mother cease all attempts to discuss with the children the transfer until the therapist and father could deal with it in the context of the possibilities that might arise out of the ongoing court proceedings. The mother understood the direction.

[281] On June 27, 2010, the mother emailed the father to delay pick up time as she was taking the children to her school's graduation ceremony

where the mother was being honoured in light of her \* years with the school and her decision to leave the school to teach in her children's school.

[282] She asked the father to extend her visit with the children to bring them to this ceremony. The children had not attended the school since the court ordered transfer.

[283] His reply (June 27, 2010, 11:17, exhibit 127) indicated his opposition to this plan. He referred to the Court direction that this issue was to be addressed by the therapist . He impressed on her the serious consequences of this move. She responded indicating it was her intention to take them.

[284] She explained to the Court that she did not discuss the move, those at the ceremony did so. She explained therefore that **she** was not in breach of the Court direction.

## **Pornography**

[285] While the mother was in \* the father discovered the children has accessed pornography on their Nintendo DSI(exhibit 112 Tab 80,p.158). There is no contrary evidence regarding the source of this. The father discovered that while the children had earlier been visiting with the mother's close friend, they played with her friend's daughter who is older than the subject children. J.M.'s daughter assisted the girls A. and V. in accessing a web site containing pornography on their DSI's. This did not occur while the children were with the father.

[286] J.M. is the same friend who was previously responsible for encouraging \* L.L. at their previous school to get the message out regarding the mother's situation; sending out false information about the father inviting all to come to the court house to support the mother. The "Facebook message" arose out of that circumstance.

[287] The children returned to the father's home armed with this instruction and accessed the web site on the internet. He found the site when one of the children left it open, confiscated the DSI's (their mother's gift), called

the police and CAS and immediately informed the mother by email (exhibit 130, p.5 of 5) on May 29, 2010, at 22:36 pm.

[288] The mother arrived home on May 29<sup>th</sup>. In light of the history with these children the father considered declining a scheduled visit between the mother and children until the agency decided whether it was appropriate to interview them.

[289] After careful thought, he told the mother it would be better if the children saw her but cautioned her “ ***...don't talk to the girls about it. If they raise it just tell them what I told them: the adults are dealing with it.***” He advised he would follow up with the agency and Dr. Gerrior.

[290] The father's response was appropriate. In ordinary circumstances this event might not trigger the necessity for such caution. This high conflict child protection family dynamic required a different response.

[291] These children had four years of chronic investigations. The oldest child's advanced sexual knowledge may have come from viewing of pornography as well as the investigative process that followed false allegations of sexual, emotional and physical abuse.

[292] It was the mother who accessed pornography on her TV and had considerable research on her computer regarding child trafficking.

[293] Yet the allegations raised by the grandmother and mother, arising out of the A's sexually explicit knowledge did not put the mother- child relationship at risk. It exposed the children to extensive questioning, examinations and interviews compromising their emotional health and the father to almost two years of restricted contact, police arrest and investigations.

[294] The children's relationship with their father was significantly affected. Many therapists and service providers were required to investigate and provide services. Extensive court proceedings resulted. Many community members became involved. Much medical intervention followed.

[295] Returning to a healthy normal significant and primary relationship with their father has been financially and emotionally costly and fraught with obstacles.

[296] Both parents were aware of the extensive evidence in the first 29 day disposition, from an expert on child statements; the child therapist Dr. Gerior, the police and child protection workers , about the importance of restricting the investigative process and avoiding questioning children until those who are qualified question children.

[297] The mother e-mailed the father after he informed her of these events. (Sunday, May 30, 1:19). She was concerned that they would access pornography “while in their father’s care.”

[298] She wrote of her displeasure and finally her agreement that she will advise them if the subject is raised that the adults are dealing with it, as requested.

[299] The balance of her response and the e-mail on June 1, 8:15, is her explanation about her conversation with the children and what she learned as a result. (exhibit 130, p. 2 of 5)

[300] The mother later told Dr. Gerior what she said to the girls. Based on what the mother said, the therapist was satisfied the situation was handled appropriately by both parents.

[301] However, when the therapist actually received a copy of the email setting out the 11 points of information the mother gleaned from the children (June 1, 2010, exhibit 130), Dr. Gerior confirmed that the children had effectively been extensively interviewed by the mother.

[302] If there was a necessity of any action by the police or agency, their testimony and their memory would now be tainted. In the light of the history of false allegations, this is extremely concerning.

[303] What the mother said she did was significantly different than what actually occurred (as documented by herself).

[304] This is important on many different levels.

1. The best interests of these children require sensitivity to their past trauma. At the time of the discovery of pornography given the past history both the children and the father needed their interests to be protected.
2. In this instance, it quickly became known where the children got the information. This reduced the concern that an adult was involved.
3. The children did not immediately tell the truth for many understandable reasons. They and the father were at risk of an overreaction to what might be an innocent and unfortunate discovery by the children when exposed to the mother's friend's child.
4. The mother's first response is to suggest this occurred in the father's home (an issue of blame) and in latter e-mails a list of inaccurate conclusions regarding the use of the DSI.
5. If there was something untoward happening, the children's evidence would be tainted. This substantiates the concern about future risk for the children's disclosures and the father's concern that he will forever be afflicted with false allegations absent hyper vigilance and contact with the CAS and police at every turn to defend himself against spurious allegations.
6. If the father's liberty is in jeopardy, the children's relationship with him, the stabilizing parent, is in serious jeopardy.
7. The essence of co-parenting is collaboration. The mother understands the terminology of co-parenting collaboration, verbally endorses it and simply, unilaterally, ignores any counsel from numerous experts and the father and forges her own course.

[305] She believes she acted correctly, sees nothing wrong with her approach and considers herself an "awesome mother" with specialized information and skill when it comes to dealing with children.



[306] Historically, the advice of the experts has not resulted in the mother gaining insight into her arbitrary conduct. Without insight she is likely to repeat her past behaviour particularly because she maintains she did nothing wrong in all of the above.

[307] She does suggest, reluctantly, on the last day of her testimony that in hindsight she could have handled some of these crises differently.

[308] She advises that she is the only person who understands her children and knows what is best for them. She is their confident; the only one with whom they feel free to confide. The evidence does not support this belief, yet it is her belief. In the moment, however, there is no stopping her.

[309] The father advised the mother by email on Monday morning, May 18<sup>th</sup> at 9:42. He had great difficulty with the course of events.

[310] He also had difficulty getting any information about the foreclosure action and timing of sale. He had approached the child therapist to assist the children in dealing with the loss of their home.

[311] In her e-mail that evening, the mother promised to tell Dr. Gerrior as well in order that she could help the children adjust to this news.

[312] When the father found out through the children on the weekend that the mother was unavailable and that she was transferring schools he contacted the agency and both parties placed the matter before the Court for a review on an urgent basis.

[313] At this June 2, 2010, review, the agency and father sought to have the Court restrict the mother's transfer. The June 2<sup>nd</sup> review (referred to elsewhere) identifies the mother's intent to proceed regardless of opposition knowing that the Court had authority over custody and that this transfer was significant.

## **The Child Physiologist/Therapist**

[314] Dr Gerrior, the children's therapist, was initially engaged with the mother and children privately since October 12, 2005, (pre- child protection proceedings) to September 12, 2007.

[315] She had an opportunity to assist the mother and children while the children were in her care. She had less of an opportunity to meet with the father during this period of time due to the fact that the mother was reluctant to have the father attend therapy. She preferred to relay to him the course of the sessions.

[316] The father consulted Dr. Gerrior when his supervision was lifted. Dr. Gerrior concluded the father had put in place many strategies which were benefiting the children. She provided him with educational material. She saw him again on June 17, 2009. By the summer of 2009, this educative therapy ended.

[317] In August 2009, Dr. Gerrior was asked by the agency to continue to be the child therapist after the children had completed their counselling through St. Martha's Regional Hospital Outpatient Service and Adolescent Mental Health Services on June 30, 2009.

[318] Mental Health Services informed the agency worker that they agreed with the proposed systems based approach. They could not provide this service. They cautioned that it was necessary for the parents to be engaged in therapeutic education first; otherwise the children's therapy will not be productive. They also advised that if there continued to be conflict, these coping strategies would be tested and their strategies may break down. They noted that the girls had met their goals and were coping well.

[319] Dr. Gerrior recommenced sessions in August 2009 to the present. She has had significant involvement with the children. She has had sufficient opportunity to observe the children with their father.

[320] Other than lay third party observers, she is the professional who has had the most objective and independent evidence of the children's progress.

[321] She has had significant contact with other service providers including the mother and her counsellor.

[322] She spoke to the girls relationship with each parent. She recommended, in assessing the children's best interests, looking to which parent would be best able to include the other parent.

[323] She reflected back to August -September 2009 when the agency plan was aimed at assist the parents and children move forward to resolve the high conflict and damage that had occurred in their family dynamic.

[324] Dr. Gerrior started with an attitude of hope to put into effect individual therapy which could result in a joint session allowing Child Protection to withdraw and the parents to move into a collaborative process.

[325] The children engaged well with Dr. Gerrior. She was pleasantly surprised in August 2009 with how well the children were doing after the First Disposition Decision lifted all restrictions on the father.

[326] She watched the girls laugh and giggle in doing exercises with their father. She was taken aback by how well the children were doing before the transition to their new community. She concluded it was an indication as to how resilient the children were.

[327] Both she and the father were pleasantly surprised at how well the children adjusted to their new home in the new community.

[328] Dr. Gerrior continued to observe very positive interaction between the children and their father. Her contacts with the father are respectful and cordial.

[329] She spoke clearly and without exaggeration. She spoke simply of what she observed. She was respectful of both parents.

[330] Her value as a witness was as a third party professional observer of the children's functioning in their new environment. It confirms the bulk of the evidence (except for the mother's) that the children appeared normal and positive.

[331] Dr. Gerrior observed the comparison between the presenting problem of her early involvement (exhibit 29, p.1) when the oldest child presented as difficult, with problems establishing routines toileting, dressing, with a history of temper tantrums and non compliance (para 373, p.55 and para 489, p.74) ( see also Dr. Hartley, exhibit 79, p.17, last paragraph) to 2 months previous to Final Disposition when she concluded that she and others saw the children as well adjusted, happy, engaged, social, doing really well academically and emotionally improving.

[332] Initially, she advised, “both parents worked hard on strategies to make this transition easy on the girls and families to support each others initiative”. Both parents actively sought advice and suggestions around parenting issues and have gone on to implement new ideas with success.

[333] She noted over the course of the children’s therapy, several “potential crisis were addressed and resolved quickly with full cooperation from both parents”.

[334] She described both parents as follows:

(The Mother)

it is easy to see the strength of the emotional connection between Ms. S. in their conversations about shared activities and echos of her gentle guidance in decision making in their reflections.

And again:

(The Father)

There is an easiness in A. and V.’s relationship with their father that is very much evident in the giggling, teasing and high spirits that accompany them to the waiting room and therapy sessions. A. and V. benefit from Mr. S.’s attention to detail, consistency, structure and organizational skills that has set healthy routines in place, encouraging consideration of others, and promoting self motivation and autonomy.

She also wrote:

Many changes have occurred over the past year and a significant change in direction has begun that sets the stage for the possibility of co-parenting. This family has come a long way from where they were situated at this time last year, and even from their position four to five months ago when clinical interventions were started and case coordination initiated. There is still much hard work to be done to consolidate these beginnings. It is my firm belief that decisions regarding A. and V.'s future should be dependant on the progress of the parents in their individual and joint sessions. ( my emphasis )

[335] The therapist recommended the focus should be on how much support one parent can give to the relationship the children have with the other parent.

[336] She advised that children need a secure base from which to go out and explore the world. Their security has been undermined by the accusations, the conflict, the investigative process of police and child protection and (unnecessary and repeated) medical intervention brought on by the false allegations.

[337] She confirms that although the litigation has further exacerbated the conflict, initially she saw the parents were able to work well together without talking together. She implemented strategies which she would do with each of them separately in order to address issues.

[338] She did caution that the parents need to be able to continue on eventually **without all the help that is in place to address the high conflict**. They need to be able to work together on shared goals.

[339] While the intelligence and academic performance of the children is historical she noted that the children were well adjusted. They made "a lot of progress" which she attributed to the very stable calm and consistent environment in which they lived with their father.

[340] She witnessed them trusting to talk about their feelings, working on problem solving with her, bringing issues and problems to therapy and working on applying what they learned in therapy.

[341] Her therapeutic involvement successfully addressed many issues with respect to the children. She found the children cooperative with the

activities arranged and noted there “were many opportunities to discuss specific topics or concerns in more depth”.

[342] They were doing well in therapy before and after the transfer to their new community. She observed the healing and repair of the relationship between the father and children. She worked with the recommendations of Ms. Rule as it related to addressing the disconnect between what the girls said about their father and what she observed when they were together.

## **Change**

[343] However, later on, as a result of the several crises, Dr. Gerrior began to witness a regression in the children’s behaviour. They returned to *the distortions* in their perception, evident when they lived with the mother. Dr. Gerrior was disturbed to see these distortions return given their hard earned progress.

[344] The mother explained her reasoning, her perspective in response to these crises. The therapist saw a disconnection between what the mother actually said and what actually happened. She concluded she could not always trust the mother’s perspective of what she did. (e.g.: the recent pornography issue.)

[345] She also noted there was a disconnection between what she saw when the children were with their father and what the children described verbally. The children suggested to her that everything was horrible and awful with the father and wonderful with the mother.

[346] The disconnect related to how they behaved, truly felt and how they were portraying things to her.

[347] She concluded what they said was incongruent with their actual experience with their father. Dr. Gerrior continues to see evidence of this disconnect.

[348] Dr. Gerrior became concerned about the subtle messages the children may be getting from their mother with respect to their father. She

incorporated Ms. Rule's advice to gently confront the children's distortions when possible.) Ms. Rule called it a reality check.

[349] Ms. Rule had recommended the children be debriefed to illustrate to them what actually happened during visits with their father as opposed to what was alleged to have happened during these visits.

[350] Dr. Gerrior was concerned as a result of her discussion with Mr. Doucet and Ms. Van Kessel how difficult it was for the mother to acknowledge the father as a good parent. This was quite evident in court.

[351] The therapist became concerned that the children were conveying messages dutifully to her as instructed. She concluded that somewhere and somehow in the course of time, the children were fixed with the task of telling the therapist where they wanted to live.

[352] Despite her work with the children, it was difficult to convince the children that this was not their responsibility.

[353] In a number of sessions, out of context V. would advise the therapist that she knew the therapist was going to talk to a judge and that she should tell the judge that she wanted to live with her mother. The therapist noted these reports did not appear congruent with what was taking place in therapy.

[354] V. spoke to Dr. Gerrior about the unfairness for her mother to have two days and the father having five days with them. The therapist explained to the child that the period of time that the father had was activity structured around doing chores and homework and not necessarily free time for the parent as the mother had.

[355] Dr. Gerrior reported to the agency that the mother gave her the impression that if the children were unhappy with the father, that they would want to live with her and the Court would move them back.

[356] She advised that it is important for the children to develop a life in their own community now.

[357] There continues to be much hard work to be done to consolidate the beginnings. The therapist concluded the mother needs to do things differently with the children.

[358] These children, she said, need a safe place to live with a parent who supports their relationship with the other parent in a healthy way.

[359] Spending more time with a parent who cannot support, in a healthy manner, the relationship with the other parents could alienate the other parent.

[360] She became very concerned that a lot of progress was overshadowed by the continuing crises occurring as a result of poor decisions made by the mother.

[361] These decisions resulted from difficult and sometime non existent communication, lack of timely disclosure and collaboration with the father and herself regarding major issues affecting the children's lives.

[362] Dr. Gerrior advised that the father was doing a wonderful job providing stability through these crises.

[363] These included the loss of the family home, the recent pornography issue and the mother's move to the children's new community together with her transfer to their school in September 2010.

[364] The plan was to have the child therapist deal with these and to put in place supports for the children. The collaborative approach was anticipated by Dr. Gerrior. These were the very issues the mother was working on with her counsellor to facilitate a collaborative approach with the father to support the children. This was abandoned by the mother.

[365] Instead, the mother continued to take unilateral action without consultation, telling the children as she returned them from their last access visit with her prior to her departure to \*; leaving the father and the therapist without any knowledge of what had transpired and leaving the children holding the secret about their mother's new job.



[366] The therapist spoke of having to address with the children, the brunt of some very bad decisions by the mother affecting the children. These decisions did not, in her view, reflect on the best wishes of the children, rather it reflected on the needs of the mother. She concluded that the mother confuses her interests with those of the children.

[367] Dr. Gerrior advised that, in light of the significant history, it would be emotionally harmful at many levels to have the mother in the children's school.

[368] Having worked very hard at developing a safe neutral place where the children make new friends, new relationships, new teachers, developing trust in other people, the mother's decision to transfer into the children's school brought the parental conflict back into the new school.

[369] Dr. Gerrior noted that much effort had been spent on creating an environment; free from the conflict of the last four years. This new environment seemed to be working despite all the children had been through, including relocation and a change of custody.

[370] She concluded that the move of the mother into the children's school would be disruptive. She observed that it was extremely difficult to contain what the mother chooses to do. Her concern was for the present and the future. (The oldest child suggested to the therapist she should fail her grade at school in order to be in her mother's class.)

[371] She advised that the children could not deal adequately with their own issues (eg. the loss of their home) because the mother's interests and needs were central to her decision making. If the children were sad (as was anticipated) about the loss of their home, they would be torn because it meant the mother would be moving to their school. If she did not move the loss of the home was for nothing.

[372] The therapist had grave concerns about the children's future and the mother's ability to allow the children to be independent, trust other people including their father and teachers and develop other relationships as they grow. The mother confirmed in her testimony that when in her presence,

the children expressed a lack of trust in the agency and other professionals.

[373] While not addressed with the therapist, the mother testified she had previously arranged with the children a strategy for them to cope with her absence at night when they are in their father's custody. They are to think of her and meet her in the stars at night.

[374] The decision to move into the children's school reflected the mothers need to be in the centre of every relationship with the children. The therapist noted the children did not need her to be there. They were doing very well in this new environment and this environment needed to be protected from conflict.

[375] When the therapist learned of the mother's plan she tried unsuccessfully to connect with the mother only to find she could not leave a message as her voice mailbox was full.

[376] The mother left her no information regarding the transfer.

[377] In the context of the work she had been doing with the children and the progress that had been made, Dr. Gerrior confirmed what the agency worker and father feared. The manner in which the mother informed the children and the father threatened their progress, further alienated the father, effectively setting him up for the children's resentment if he did not approve. The course of events was "emotionally damaging". It used the children as pawns.

[378] The children were set up by this process. If anything prevented the mother's move, the father would be blamed. The therapist determined they were incapable, at their age and stage of development, of understanding the decision making around the home, the move etcetera.

[379] Despite the work being done by the mother's therapist, their 'role playing' communication strategies and the belief expressed by the therapist that the client /the mother "got it", the mother's actions do not support this conclusion.

[380] Dr. Gerrior confirmed that equal time sharing is not a prerequisite to establishing an effective co-parenting agreement. Should the Court determine that the children remain with the father, the therapist determined there were ways to work things out for the best of the children.

[381] The parenting strategy should not, she advised, include bussing them back and forth to achieve an equal 50/50 split. She advised there would be lots of opportunity for the mother to get involved in their community and to work with the girls closer to \* rather than in their old community.

### **Ms. Valerie Rule**

[382] Ms. Rule completed the original Parental Capacity Assessment. She continued to be retained by the agency as a consultant.

[383] At the Review Hearing (decision - September 2009), she recommended that the agency provide short term intensive therapy to the mother to deal more rapidly with her counselling issues within the time frame of the Act.

[384] She identified her concerns regarding the influence the mother has on the children's perspective of the father (exhibit 119, p.4, 4<sup>th</sup> para.)

[385] She recommended this specific intensive therapy, as opposed to supportive counselling, be offered. She suggested a number of options. She offered her office in New Glasgow to reduce the driving time for the mother and the therapist, should one of the therapists, Dr. Hann, be retained.

[386] The agency followed her recommendations and made this therapy available for the mother. The mother declined the services of this therapist and proceeded to seek her own individual therapist. Time was lost because the first two therapists proposed by the mother were unable to offer the service. When the mother found a therapist she was prepared to work with, the agency assumed the costs.

[387] Ms. Rule also subsequently recommended that the mother be offered a psychiatric evaluation to assist in determining why she appeared unable

to move beyond the past four years and move forward more effectively and timely to address the personal issues that impeded the creation of a viable co-parenting plan. This offer insulted the mother.

[388] After some discussion with other therapists, including the mother's therapist, and service providers, Ms. Rule refined this recommendation to suggest an up to date psychological assessment which would involve a more intensive examination over a broader range of issues.

[389] The service providers were concerned that progress with the mother was slow. This assessment might have assisted to identify whatever it was that appeared to inhibit the mother's progress. The Court did not order this because the mother, an educated adult opposed this service. The mother had the option to request this and to participate. The mother refused this service.

[390] Ms. Rule had an advantage over other therapists and experts in this case. She was the only expert who testified that possessed an overview of the entire proceedings and had access to other service provider reports and an overview of the entire proceedings.

[391] The mother alleged that all service providers were biased by historical information provided by child protection. However, other experts involved as therapists had limited knowledge of the historical picture. They were focussed on a limited goal with limited information.

[392] Ms. Rule had difficulty obtaining consent from the mother to speak to her therapist to report to the Court. The mother delayed giving this permission until late, when the final report was being finalized. Ms. Rule was required to provide her questions in advance to the mother before consent was given. The Court imposed a deadline for disclosure to facilitate reporting.

[393] Ms. Rule advised that both Mr. Doucet and Ms. Van Kessel had access to her draft of their discussions and approved of the content of her report as an accurate reflection of what transpired.

[394] Ms. Rule's recommendation are shared by others. The child welfare and private litigation must end. The mother's individual issues need to be addressed to provide the optimum opportunity to have the children's lives return to normal.

[395] Once the mother obtained some insight, there was a greater possibility of moving forward peacefully, without intervention.

[396] Dr. Hartley noted that while child focussed counselling was necessary, returning the children to a dysfunctional situation would sabotage the intervention.

[397] Ms. Rule observed, in common with Dr. Gerrior and Dr Hartley, that cooperation had to be mutual (double faceted). There was a disconnect between what the mother was saying and what was happening. There had to be more than outward changes in the mother that appeared to model cooperation. There had to be more than an expression of intent to cooperate.

[398] Ms. Rule, as other professionals, believes that the mother has the cognitive ability to move forward. She was unsure whether she had the emotional stability to do so.

[399] Ms. Rule observed what is quite evident in the testimony; the mother has a difficult time accepting anyone else's point of view. She has been observed by Mr. Doucet and her own therapist to be rigid in her thinking.

[400] The children have been exposed to significant conflict over at least a four year period. The mother's cooperation must be internalized to address this conflict. The intention to cooperate has to be believed and acted on in order to move forward.

[401] There was, in the mother's behaviour, consistent evidence of her failure to internalize and sustain cooperation over the long course.

[402] While each therapist could identify certain conduct that demonstrated small changes exemplifying the appearance of change, the over all observations regarding the mother showed little progress.

[403] The progress was not enough and not sufficient within the legislated time period. She has been unable to develop any empathy regarding the father's or the children's situation.

[404] In her consultations with the other therapists, Ms. Rule, Mr. Neufeld and the children's therapist noted that much time was spent trying to identify and address the mother's needs and issues. This focus took away from a child centred focus and made forward movement difficult.

[405] Ms. Rule and other therapists confirmed that the idea that the mother expressed her intent to go back to court every year if she does not get what she wants is problematic to sustaining a conflict free, co-parenting strategy. This right to litigate was referenced in the mother's written submissions.

[406] This is seen as contrary to recommendations from all therapists to resolve the child welfare involvement and **limit the litigation** which, by its nature, feeds into and perpetuates the conflict. She notes that the parents are in different places emotionally.

[407] Ms. Rule, as most therapists involved, spoke to her general proposition that two parents are best for the children. The goal is to minimize the behaviour that causes the risk.

[408] In this situation, she recommended against a shared parenting plan. She believes the behaviour that most escalates the risk of conflict can be contained with a sole custody order in favour of the father with good access to the mother. This plan would best address the children's needs.

[409] Ms. Rule expressed her concern that if the mother were to move into the children's school her influence will be difficult to contain and manage.

[410] This is echoed in Dr. Gerrior's testimony. This would be unfair to the children when they are stabilizing in the father's care.

[411] Ms. Rule concluded that the father engaged and is consistently child focussed. He has done well in therapy. He has complied with all requests.

There is, she said, not one instance where he failed to follow advice, even when he may have had a different opinion. The father has moved significantly forward.

[412] Dr. Gerrior noted that the father was well settled in his day to day custody and care role. She noted that A. was doing extremely well and behaving more age appropriate and V., while missing her mother, was doing well with her father.

[413] Mr. Neufeld, the father's individual therapist, recommends he proceed on his own without the need for ongoing therapy and if necessary, if the conflict between the two does not subside, then he can return to develop strategies to address the on going conflict.

[414] Ms. Rule recommended that if the maternal grandparents "... have no insight", should they remain antagonist to the father and suspicious of him, they are potentially a risk to the emotional welfare of the children.

[415] To achieve the ultimate goal, the therapists intended eventually to have a family meeting with the parents and the children. It was hoped the children would benefit from an open and assisted meeting. This was conditional on the parents progress in their therapy.

[416] This meeting never occurred. Dr. Hartley determined the parents were not at the point where it would be helpful to have them and the children in the same room. She confirmed that the parents were occupied with preparing for and responding to the mother's appeal of the Review Hearing, scheduled for January 2010, and the Final Disposition Hearing, scheduled to commence in February 2010.

[417] In consultation with the mediator, Dr. Gerrior and Dr. Harlley, it was decided that the joint meeting planned for late 2009 was premature.

[418] The course of events, the litigation and the mother had not progressed sufficiently to have that meeting occur before the mandatory dates for Final Disposition.

[419] Dr. Gerrior was concerned, as was Valerie Rule, that the sessions with the therapists tended to focus on the mother and less so on the children. There was a lot of difficulty in getting things where they needed to go with the mother. She noted that mostly once or twice a month, conversations with the mother well exceeded the time it took with the father. She confirmed she spent a lot of time talking to the mother.

[420] It was her view that the parents were not in a position where they could effectively co-parent. There needs to be more work in the collaborative piece with all the therapists. That could not be completed until the mother complete her own therapy satisfactorily.

[421] Finally, Ms Rule and Dr. Gerrior did not agreed the proposed move to Halifax was in the best interests of the children. The therapist noted, given the long history of turmoil in the children's lives and the transitions, this would be another significant transition and it would be risky. There would have to be a new school, a new therapist, a number of new issues that the children would have to deal with.

[422] The agency and the father, when presented with the mother's third option, also did not agree it would be in the children's best interests.

[423] Dr. Gerrior emphasized her concern that the father be very clearly endorsed as a valid parent. The (false) allegations have presented roadblocks to his parenting in the past. She was impressed with the father's tenacity. He has not given up on the children and continues to be significant in their lives. She confirmed that she has not seen or heard anything from the girls that the father undermines the mother and she confirmed her belief that the father can effectively parent the children.

[424] In a letter of advice on another matter, the therapist wrote to both parents:

Be careful with your own feelings. Only a small part of communication is verbal and both girls are very bright and will pick up lots of information from your tone, your body language, what is said, what is not said, your behaviours, and any other inconsistencies between what you say and and what you do.

## **Mediation**



[425] Alfred Doucet was the Court appointed mediator. The mother asked for this service. The agency believed it was premature. The Court wished to get the parents sitting at the same table working on trying to settle some issues as quickly as possible given the limited time available for resolution. Ms. Rule suggested this was premature until the mother significantly engaged and made progress in therapy.

[426] The mediator presented an unsigned memorandum regarding 33 points of agreement. The mother wished to limit the life of the agreement, as “for the time being” and subject to review.

[427] The mother started out with the mediator by suggesting she felt he was potentially biased in favour of the father. The mediator spent extra time with the mother to gain her trust. In total, over the course of the session she spent 9.5 hours with the father and 13.75 hours with the mother.

[428] The mediator confirmed he was not provided case recordings or other material other than the Decision. He confirmed the agency presented no barriers to his independence. They did not interfere with the mediation process. They allowed him the time and space to meet, made arrangements for meeting space, renting rooms, etcetera. He confirmed the worker was understanding of the mother’s work schedule.

[429] He further confirmed that the worker did not speak disparagingly of the mother. She presented to him a balanced approach to facilitating the meetings.

[430] The mediator spoke well of both parents, indicating they were cooperative and caring. The mediator observed that the father was more efficient in his communication skills while the mother took longer to move through issues.

[431] The first meeting proceeded fairly well, although **subsequent joint sessions were suspended**. In his report of January 4, 2010, he said:

While the initial joint session was productive and the respondents were cordial with each other subsequent sessions were less effective. The parents’ past history

of shared hurt and mistrust contributed to an atmosphere that was counterproductive to the task at hand and I was spending much of my time managing the emotion. As a result I made the decision to temporarily discontinue the joint sessions and to continue the mediation process with individual meetings . These sessions have been focussed and productive although rather time consuming.

[432] He observed both parents were capable intellectually of making an agreement.

[433] To be successful, he felt that they both have to be child focussed, to deal with the issues that reside within each of them in personal therapy. He also advised that both have to buy into the strategy or decision in order to go forward. Otherwise, it will be very difficult to mediate.

[434] He acknowledged that **they were unable** to agree on big issues, eg. how frequent the phone contact should be when the children are in the father's home.

[435] The mother wanted nightly contact and did not want to be restricted to a specific time as that might impair her ability to respond to her duties as a teacher. The father wanted to avoid having the children on hold for a number of hours per evening awaiting the call. The calls became intrusive.

[436] Dr. Gerrior confirmed that in high conflict situations, consistency and predictability are important as well as preserving the integrity of the household. She confirmed that once or twice a week is sufficient in order to maintain the connection. She supported the father's proposal.

[437] She was concerned that the mother's request to have unrestricted daily conversations with the children in the father's home may become interruptive to the father's ability to have time with the children. The mother had three out of four weekends; the father has the daytime, school time activity. The mother would not agree to this schedule.

**Dr. Hartley**

[438] Dr. Hartley was qualified as an expert in the psychological assessment of children and in regards to therapeutic intervention of children.

[439] The agency consulted Dr. Hartley to assess the children's state of emotional health before the First Disposition.

[440] She was chosen as a therapist outside the proceedings due to the mothers allegations of bias against most third party service providers.

[441] The agency agreed to limit the information provided to her to avoid the allegations of bias and to get the mother to "buy in".

[442] In an earlier proceeding, (exhibit 79, Tab 1, p.16-17) she reported that the children were functioning well but compromised by adult conflict. She recommended the following:

parent education and therapy to assist the parents in reducing behaviours which may be putting the children in the middle or supporting the children's position in the middle when the children themselves act in ways which place them there, and to assist parents in understanding how their behaviour affects the children. In most cases of high conflict these sessions would be done with each parent separately, but ideally conjoint session would be eventually held. (My emphasis)

Parent-child therapy.

The children would benefit from the opportunity to have barriers to their relationship with each parent dealt with in the context of a therapeutic setting. This would include , but no be limited to , , having (the father) address the children's (especially A.'s) perception that he has harmed them and take responsibility for this perception, including reassuring them of their safety with him. It would also include session with each parent in which the parent will express their support of right of children to love and have a relationship with the other parent.

The focus was to be:

- 1 Building resilience in the children
2. Offering a safe therapeutic environment in which the children can express fears, grief, worries, hopes, likes and dislikes.

3..Supporting their relationship with both parents through the reduction in conflict and adult behaviours that put the children in the middle.

4. Building healthy relationships with both parents

[443] She met with the father after her first assessment to review her report on June 18, 2009, and while the offer to explain the report to the mother was made to the mother on May 11, 2009, (exhibit 17) the mother did not meet with her until July 29<sup>th</sup>.

[444] After the First Disposition, her recommendation was put in motion. Individual counselling was offered to each of the parents, the maternal grandparents and a child therapist was involved.

[445] The mother sought to have mediation services offered. The agency argued this was premature. The Court ordered the service of a mediator be provided immediately to move the parents together as quickly as possible.

[446] The Court ruled that the collaborative approach be adopted immediately. Limited time remained before the commencement of the Final Disposition.

[447] Dr. Hartley was to provide strategic oversight to other professionals and work with the parents to develop strategies to co- parent, to offer direction and encourage parents when needed and to refer their issues to their counsellors.

[448] Her focus during the five months from the September 2009 court order was to assist the parents and the children in addressing their issues; to assist the family to come to the most attainable conflict free (for the children) joint parenting arrangement.

[449] There was not unanimity among therapists as to the appropriate strategy to resolve this high conflict divorce. Ms. Rule opined that the collaborative systems based approach was premature. She emphasized the need to have the parents first successfully complete their own personal educative therapy as recommended before moving into a collaborative

process of joint meetings and, ultimately, an assisted meeting with the children.

[450] While Dr. Gerrior agreed with the approach, all service providers recognized the need to complete the educative psychotherapy and gain insight, was critical to moving forward on an agreed upon plan.

[451] Each parent was to commence, with their own personal counsellor in the time remaining, a focus on addressing the parents' issues and creating the best possible environment for a co-parenting agreement.

[452] Dr. Hartley had little historical information. She was unable to comment on the relationship between the grandparents and the children. She knew little of the day to day history regarding the father's progress nor of problems identified between the agency and the mother.

[453] She was unaware of the recommendations of the father's therapist.

[454] Dr. Hartley confirmed that it was not her role to second guess the agency. She did not participate in the risk assessment or the Parental Capacity Assessment. She reminded us she was only one piece of the entire strategy. She attempted to assist the mother to see how her behaviour was perceived by others.

[455] Dr. Hartley recommended that both parents address with the children, their role in the conflict with the children.

[456] She was unaware that early in the proceedings, while the father was under supervision, he met with an agency worker (Ms. McPherson) and the children and addressed with the children directly his part as a parent in the conflict that has engaged the children in order to assure them they were safe with him.( case recording) In court, she advised he need not repeat this nor take responsibility for actions he did not commit.

[457] This piece has not been completed with the mother and children in a therapeutic setting.

[458] Dr. Hartley met with the parents on October 5 and October 21 and November 5, 2009. Her written report said she had consistent regular contact with the service providers including Dr. Gerrior, both parents' counsellors and the mediator. She would have preferred more contact with the father and children's counsellor.

[459] During the first encounter with the parents, the therapist met with the mother and obtained her agreement that she would not tape the sessions without everyone's consent.

[460] The next session began badly. The father served the mother with some legal papers. Once that turmoil was dealt with the mother excused herself, went into the washroom and returned. The father then asked her if she was taping the session. After some discussion, the mother admitted she was doing so. The session was only salvaged after the mother removed the hidden recorder and assured the father she ceased taping the session.

[461] The earlier session with Dr. Hartley (reviewing the initial session) had apparently been taped as well.

[462] This therapist had to spend extra time with the mother answering her questions, addressing her concerns about bias. This therapist confirmed that she adopted an empathic approach designed to engage the mother in the process.

[463] The mother then incorporated into her affidavit many comments made within these sessions to support her case against the agency and to criticize the agency for its management.

[464] Dr. Hartley confirmed that many of her comments to the mother were taken out of context.

[465] Dr. Hartley was concerned about the custody of these tapes, concerned that a clinical interview would be taped and available for dissemination or lost as the mother contends.

[466] The mother initially refused to provide these tapes to counsel. Once ordered to produce the tape, the mother advised the Court she could no longer locate the tapes. After much time lapsed, despite repeated requests from counsel and the Court direction to provide disclosure, the mother was ordered to file an affidavit addressing the tapes and the efforts she made to locate them. Her evidence is that her father burnt the tapes by mistake.

[467] The last meeting with Dr. Hartley was cancelled for a number of reasons. The father asked that the agency worker be included in the appointment scheduled for December 2, 2009, due in part to the concerns raised in the mother's correspondence.

[468] Dr. Hartley cancelled the appointment needing time to obtain further information from the father as to why the agency worker should be present. She needed to obtain consent from the mother to include the worker before meeting.

[469] Scheduling problems, the intervening Christmas break and the approaching appeal and Final Disposition caused Dr. Hartley to decide that the service providers and the parents could not properly focus when the parents were in the process of preparing for an appeal and the Final Disposition Hearing. She said:

there was a time when people needed to make a decision where they wanted to put their energies ...energies were being placed on preparing for court and that's where energy was placed. .... People make choices during that time it was placed elsewhere.

[470] Dr. Hartley reiterated what other service providers have said. Each parent was cooperative with her. Each has the intellectual capacity to understand what is necessary. She observed earlier on that the children have a good relationship with both parents. The children are caught in the middle.

[471] As stated by all service providers, the individual parent's progress in personal therapy was determined to be essential to effecting an environment where a peaceful co-parenting arrangement can be implemented.

[472] The obstacle that continued to exist was the inability of the mother to address her emotional issues and gain insight . This impaired the parent's ability to implement the strategies.

[473] She found the father to be reasonable in his approach and concerned about his children. He had a reasonable understanding of the children and their problems. Dr. Hartley advised:

- 1. Care should be taken to ensure with and after the children's attendance at therapy they should not return to a dysfunctional situation.**
- 2. The service providers should ensure the parents' issues were addressed so as not to undermine the process.**
- 3. Continuous litigation is counterproductive to the efficacy of a peaceful co-parenting strategy.**
- 4. Best parenting happens when the parents find a way to communicate .**
- 5. Co-parenting is not about time.**
- 6. Allow children to have a relationship with both parents**
- 7. Parents need to find a way to work together towards a common goal.**
- 8. If the emotional issues continue to impede face to face discussions important to stand back, involve continued intervention at individual level and mediation.**

### **The Mother's Witnesses**

[474] J.D. is the maternal grandmother's sister, the mother's aunt. She was one of referral sources who complained to the agency after the Review Hearing in an effort to get them to investigate why the children were so afraid to go with the father to \*. She has high praise for her niece, S.S. She has seen the children with their mother in the 2010 year. She



observed them to be very happy with her. She has no personal information or observation about the father.

[475] V.S.C., the mother's aunt, had earlier called CAS after the Review to advise that she spoke to the children on July 12, 2009, prior to their trip to \* with their father. She reported her concerns to CAS about their reluctance to go with him to \*.

[476] She noted that recently she attended the child's first communion in her new community. She noted that everyone was able to be civil. Members of both families were in the church during the celebration.

## **The Mother's Counsellors**

### **Ms. Fran Reddy Chishlom**

[477] Ms. Reddy Chishlom is an experienced counselor of 35 years, 25 with the Nova Scotia Teacher's Union. She first became involved with the mother in June, 2007, and continued through October, 2009. There were a combination of 18 phone and in person sessions. This service provided through the union was also utilized by the mother previous to this counsellor in 2005.

[478] Ms. Reddy Chishlom has little outside information, no consultation with other service providers and had not considered it relevant to her supportive and educative counselling role to read the decision which outlined the issues existing in this matter. Her information is solely from the mother.

[479] She was available to assist the mother when the mother called her. She addressed co-parenting issues and answered questions dealing with parent/child issues.

[480] She advised that the mother was able to articulate with her the importance of the father/child relationship and articulated she understood this was important. She was not in a position to assess the mother's functioning other than by self reporting. She offered stress reduction advice.

[481] She continues to be available to the mother in this supportive role. She saw her role as supplementary to the work of the mother's principal therapist Jennifer Van Kessel. She appeared to have a good working relationship with the mother.

### **Ms. Van Kessel**

[482] This therapist was engaged by the mother to complete the Court ordered psycho educational and short term intensive therapy for the mother. (letter confirming retainer - August 19,2009, exhibit 50) At the time of this letter, the mother had one 2 hour session on August 18<sup>th</sup>.

[483] At that time she advised her client was presenting as keen, open and forthcoming.

[484] She advised in her November 18, 2009, letter:

this is difficult work for (the mother) ...I have noted improvements in her understanding around the need for more effective communication. I have also noted increased application of skills at times when she need to engage with others with whom she has had a history of difficult communication /low sense of trust

[485] On January 4, 2010, there were noted improvements in understanding the impact of her own past experiences on decision making and communication and how this may have influenced her relationship with her ex-partner. The therapist reiterated that this is challenging work for the mother.

[486] In her final report, she confirmed there were 14 in-person sessions and seven phone calls. She notes the significant stress under which the mother operates. She provided assistance in managing the resultant elevation in her risk of coping with the significant stressors.

[487] She acknowledges that:

(the mother) has maintained , albeit variably, a belief that (the father) sexually harmed their two children.

She reports feelings and thoughts commonly experienced by others in the context of extreme stress and trauma. ...The consequences of the past four years have been damaging , both personally and professionally

[488] This therapist acknowledges that, for the most part, she relies on her clients self reporting. Her client advises her she is making progress.

[489] Her client acknowledged in therapy the children need to be allowed, supported and encouraged to love their father.

[490] She advises there continues to be considerable acrimony between the parents. She notes there is more progress through emails than in-person contact between the two.

[491] This therapist made some important observations.

[492] She opined that her direct parenting efforts do not appear to be impacted by these beliefs:

The mother advised her she no longer believes the children to be at risk of sexual harm by their father . (The mother) has further identified that the strength of conviction around the PBS is less than in the past. She indicates that her conviction around these beliefs has varied in different contexts and that she has not always felt sure that these events took place, at other times, such as when listening to a disclosure from her daughter, her certainty of belief has been strong, she does not report preoccupation with the PBS,(the mother) asserts that her most powerful experiences of distress emerge from:

- 1)not being a day to day caregiver to her children at least half of the time
- 2) concerns about the adjustments they are facing in a new community and new school
- 3)her knowledge that her children's separation from her has been difficult for them and worry that service providers and (the father) may not be as aware of this or sufficiently concerned; and
- 4) her future role in her daughter's lives.

It is my observation that (the mother's) conviction around past harm of the children increases in contexts where (the mother) is pushed to justify this position

or in a context of feeling threatened or “cornered” in what has been a quite adversarial process. When pressure is reduced (the mother) reports lower conviction and a greater willingness to explore alternative possibilities. (The mother) retreats to this old position under duress as a way of explaining her past actions and justifying the steps she has taken to protect her children. She has regularly and firmly stated that she has put this matter in the past and is far more concerned with working towards a reasonable co-parenting relationship with (the father) ...Most recently she has articulated an openness to “nurturing the doubt” that lies with this PBS

### **Combative Pattern of Relating**

The combative style of relating reported by the agency and some service providers involved with (the mother) since has understandably created difficulty in communicating with (the mother). It has also increased confusion about expectations, rationales and overall goals due to the inherent difficulty in communication that this style brings

Guardedness and suspicion can be understood as manifestations of anxiety, worry and the perception of threat. It is a common experience for many people who come into contact with child protection services or who are embroiled in high conflict custody and divorce proceedings. The presence of features such as paranoia and suspicion is not inherently indicative of mental illness and, like anxiety, can be understood as appropriate and adaptive in potentially dangerous situations. Like anxiety, these experiences become problematic when the context does not warrant, fit or benefit from fearful or guarded responses and a heightened level of apprehension and expectation of threat becomes more harmful than helpful

[493] I have carefully considered the remainder of her counsellor's letter as to why the mother entertains this approach. The combative style has played a significant part of her presentation in court.

[494] Her therapist advises the barriers to making clinical gains include the distance to travel for therapy (a circumstance brought on by the mother's choice) her schedule, mandated therapy and the ongoing court proceedings.

[495] To have significant change the mother needs to feel safe, to take risks and needs to allocate a significant degree of personal resource. The focus on court and self representation was an obstacle.

[496] The therapist suggests that once she is no longer embroiled in court proceedings, she is hopeful the mother can heal and change. She notes (this is not in dispute) that the mother is deeply committed to her children. She advises that the mother could benefit from additional therapy and suggests that the most significant gains will be in a less adversarial setting.

[497] The therapist responded to the mother's question: "Can I co-parent effectively?", she responded:

...with adequate supports (i.e.), with an individual therapist, mediation services and relationship therapy (presumably couple) it could work.

[498] While she acknowledged that she could not speak to the father's progress she suggested that both would need therapy to coach and address the relationship issues.

[499] She acknowledged that she was 9-10 months into individual therapy with the mother and there was still much work to do. This is in addition to the ongoing supplementary counselling through her union.

[500] She acknowledged the mother had considerable difficulty seeing anyone else's perspective, difficulty managing and modulating her anger, her anxiety and emotional response, difficulty when angry and anxious(ness) interfered with how she heard the message.

[501] While her therapist suggested the mother made gains in therapy, she also acknowledged she was pretty combative when challenged. She was unable to comment on whether there were gains or a reduction of this combative style out of therapy.

[502] Contrary to the mother's assertions that neither she nor her therapist knew what the expected goals of therapy were, this therapist knew what was expected of the sessions and felt she knew what was wrong.

[503] She suggested at one point that it might help if the mother apologized to the father. There is no evidence that was done or that the mother was prepared to do so.

[504] Finally, this therapist was not informed that the mother was seeking therapy from Ms. Reddy Chishlom and had she known, would have expressed concern about the possibility of different messages being communicated to the mother.

[505] She also was not informed or consulted by her client about the transfer to the children's school.

[506] She worked with the mother through 'role play' on how to address the children to try to give the mother the perspective of how others might feel or respond. When confronted with what the mother called the death thoughts, she advised the mother to speak to the therapist. She considered these comments were clinically important but presented no imminent risk.

[507] When confronted with the manner in which the mother unilaterally addressed significant issues directly with the children, she advised this was not appropriate including speaking directly to the children about the transfer and in relation to the mother's comments regarding abuse. (exhibit 49, p.8, para 59)

[508] This approach adopted by the mother was not determined to be appropriate and was not what was intended by Dr. Hartley when she and the other service providers worked towards a session with the parents and children together where the parents take responsibility for the trauma the children expressed.

### **The Mothers Character Witnesses**

[509] Besides her counsellors and herself, the mother called 19 witnesses including her father. Although directed by the Court, affidavits were not filed for all witnesses.

[510] Many of the affidavits are expanded versions of evidence originally tendered and withdrawn by the mother's counsel in the Review Hearing. Thus, much of the affidavits pertain to material that was considered in past proceedings (information regarding the allegations contained in case

recordings) relating to children's statements tendered for the purpose of diminishing the father's role and criticizing his parenting.

[511] J.D., (Aunt, exhibit 109 & 111); V.S.C. (Aunt, exhibit 107) and B.M.I., (Great Aunt, exhibit 104) spoke highly of the mother's ability to parent, her kindness and compassion and sense of responsibility.

[512] J.D. and V.S.C.'s affidavits speak to what they perceive as the children's fear of going to \* with their father, the children having such pain and discomfort in their stomach that they request heating pads at night to help relieve the pain (para 8), urging the agency in the summer of 2009 to prevent the \* trip and supporting the return of the children to the mother.

[513] J.D. speaks to the inappropriate sexualized behaviour she has observed by the girls, repeating much of what she had heard from the mother's family as contained in their previous testimony.

[514] They speak of the children's distrust of agency personnel, a distrust that has been clearly and repeatedly articulated by the mother and her parents.

[515] As noted by Dr. Gerrior, this presents a risk to the children's ability to trust other professionals now and for the future. It is not an attitude that is prevalent other than as voiced through the maternal family.

[516] These affidavits speak to the ongoing environment of hostility, fear and allegations surrounding the maternal family, confirming how entrenched and polarized the extended family has become.

[517] These witnesses could not give any relevant or valuable information about the actual circumstances of the marriage. They denied the existence of conflict in the family (in stark contrast to the factual evidence of the actual conflict that has existed) and could not speak from their own knowledge to the issues before the Court. They were not familiar with the intimate family details. They simply believe the children should be with their mother. When asked, they have very little personal and first hand knowledge of the father.

[518] The remaining witnesses either taught the mother in school, lived in her community and taught with her at school. They, and the mother confirm how private the mother is, thus explaining why they have little knowledge of her marriage, her home life and the issues before the Court. They simply speak to her presentation in school as a student and now a teacher and they speak highly of her professionalism and dedication as a mother and a teacher. They express their opinion that 'children should be with their mother'.

### **The Mother**

[519] The mother's approach continued to be combative and defiant with child protection, with the father and with the Court.

[520] She clearly has the ability to be cooperative with the mediator and with Dr. Hartley but that cooperation did not trickle down to the ground roots, the relationship within which she would need to operate once the Court proceedings terminate.

[521] She, too, denies much of the conflict in contrast to the obvious existence of ongoing acrimony.

[522] There is a stark difference between her conduct as observed by her character witnesses and that described by those involved in this proceeding. It indicates that the mother is capable of altering her behaviour to achieve her goals. She has simply chosen not to alter her behaviour with the father, principally, and with agency personnel and others in authority or in a position of giving counsel.

[523] Ms. Rule agreed with Dr. Gerrior that having the mother move her employment situation to teach out of the same school as the children is placing the them in a risky situation.

[524] The father is concerned that this has real potential to bring to their new school the unresolved conflict and historical divisions that made staying in the community and school of origin impossible. This was particularly true if the mother has not developed insight into how she contributed to the environment in the children's old school.



[525] The mother's affidavit and extensive written materials show no material change in attitude. Her primary focus is on blaming the father and the agency for the emotional turmoil the children have experienced.

[526] Her witnesses deny that conflict existed in the community and the school, that there is no evident (to them) conflict between her and the father and admit they know little of the couple's home life. This is in stark contrast to the litigation history, police and agency involvement and conclusions of multiple therapists that these children were seriously, emotionally compromised.

### **Allegations of Bias**

[527] Initially, the mother accused most, if not all of the therapists, police, agency workers, including access supervisors, and the mediator, except her counsellor's Ms. Van Kessel and Ms. Reddy Chilsholm of being biased in favour of the father. This is in spite of the time between 2008 and 2009 when the agency imposed no restrictions on her parenting time while many were imposed on the father.

[528] She alleged the agency provided the supervisors and therapists with information to negatively affect their view of her. This subject formed a large part of her cross examination of agency and expert witnesses.

[529] Most of the therapists spent considerable additional time with the mother to work out these assumptions to the mother's satisfaction. The mediator and Dr. Hartley were successful. Others were not.

[530] She accused the access supervisors of being biased against her and writing their reports in a more favourable fashion towards the father than her.

[531] To attempt to establish their bias, she required the agency to provide for cross examination seven (7) of the access supervisors to the mother's interaction with the children. The mother's most recent affidavit speaks to her ongoing allegations that they collaborated on their reports and left out vital information about her.

[532] Her cross examination established that the access supervisors had been told almost nothing of the family circumstances. They were told only to supervise and write their reports. Their notes reflected no bias. Nor did their testimony.

[533] The end result proved beyond doubt that the agency did not speak negatively to experts or assessors about the mother. They identified the strengths and weaknesses of both parents.

[534] During her short period of supervision, they spoke positively of her interaction with the children. Their main concern was her tendency to whisper to the children in the presence of a number of supervisors.

[535] Mr. Doucet confirmed with her, contrary to her allegations, that the agency tried to accommodate the mother's meetings with the mediator by arranging scheduling around her work schedule.

[536] The allegations of bias touched almost everyone who became involved in the strategy adopted after First Disposition, a strategy hopefully aimed at restoring the joint parenting plan by the provision of extensive services to address the underlying causes of conflict.

[537] Dr. Hartley spent considerable extra time with the mother to gain her trust and assure her she was not biased by information she received from the agency. Mr. Doucet, the mediator, also spent extra time satisfying the mother he was not under the influence of the agency or the father.

[538] The mother originally retained Dr. Gerrior privately to address A.'s presenting problems.

[539] Once Dr. Gerrior was retained through the agency to address the recommendations of the previous assessors, she became the focus of the mother's accusations of bias.

[540] The mother alleges this therapist had been influenced by the agency perspective and documentation. In fact, the therapist had not received

agency case notes or affidavits from any parties. She had reviewed the decision and the reports from Dr. Hartley and Valerie Rule.

[541] Dr. Gerrior confirmed that the agency had not involved themselves in the therapeutic contact. They encouraged but did not intrude on contacts between professionals.

[542] This environment of suspicion within which the mother operates resulted in her secretly taping the father, her phone calls with the children during supervised telephone calls, her telephone conversations with the agency workers, her initial two meetings with Dr. Hartley despite her specific promise to Dr. Hartley she would not do so without the knowledge and consent of Dr. Hartley and the father, and others.

[543] Dr. Hartley expressed concern regarding the dissemination of the tapes, counsel sought their production to verify the contents of an affidavit provided by the mother.

[544] This did not deter Dr. Hartley from engaging with this couple.

[545] The mother entered into an access supervision contract with the agency (common practice) within which the terms and conditions of the provision of supervised visits are set out. She signed the contract and faxed it back to the agency having torn off the page (appendix) that prohibited taping.

[546] In this fashion, when questioned, she justified taping the children to protect herself from false allegations by access supervisors. Because she signed, yet did not fax back the portion that prohibited taping, she did not consider herself bound by that provision.

[547] This issue regarding suspicious and paranoid thoughts was the subject matter of a therapeutic approach adopted by her counselor. (exhibit 120) There has been no diagnosis made. Absent a professional diagnosis, I do not conclude that the mother suffers from a psychiatric illness.

[548] Her behaviour throughout has, however, been marked by the belief that other independent medical, police and agency personal have been

biased against her, failed to execute their function professionally due to bias against her or favouritism towards the father.

[549] She believes these service providers have received information which deliberately portrays her in an unfavourable light by the agency.

[550] Without exception each witness she confronted proved the contrary.

[551] Unabated, and currently not sufficiently addressed in therapy and in practice, this has resulted in conduct that has made it very difficult to assist her move beyond her current state and enter into an effective co-parenting arrangement.

[552] Both parents started from May 2008 with the same access to services provided by the agency.

[553] The mother refused to accept and was antagonistic towards the assessor Ms. Rule. To assist her to engage in a strategy that would move her beyond the allegations, into the future with the hope of entering into a shared parenting arrangement, the Court as requested of her, appointed Dr. Hartley to work with this couple in a systems based strategy to coordinate the multiplicity of services offered this family to deal with past trauma. Dr. Hartley had not been involved in the original assessment.

[554] Both parents were invited to conference in person with Dr. Hartley to address her report regarding their children. The father contacted her in May to complete this piece; the mother in August. This required two sessions for the mother to review with the therapist the report's conclusions.

[555] Both parents had access to individual therapists provided by the agency. The father commenced his therapy in June 2009 completing two sessions the first month, one in July, one in August; completing 11 appointments by February and concluding successfully his therapy.

[556] His report continues to elaborate as does his testimony that the father needs no further assistance unless the conflict arising from this ongoing relationship escalates.

[557] The mother rejected the provision of services by the agency although they were not informed in a timely fashion. They continued to try to engage a therapist while she searched for a counsellor of her choice. Her first counselling session with this therapist was in August in Halifax, further complicating the mother's attendance.

[558] Creating further delay was the mother's decision, not advice from Ms. Reddy Chishlom, a fact that was clarified in testimony; to travel to Egypt in early summer and to schedule a trip to Australia for vacation which was later cancelled.

[559] In addition, she had union business out of province, taking her away from the area at a time when she would have been free from child related responsibilities to attend intensive therapy.

[560] Every relevant service had been offered. Finally, a judicial settlement conference was arranged. There has been no satisfactory resolution.

[561] A retrospective view of the entire proceedings confirms that there is a historical reluctance by the mother to agree to child counselling selected by the father or the agency.

[562] The Court was required to intervene early in the proceedings and transfer to the agency the right to choose a therapist for the children when the mother refused to accept the available therapist proposed by the hospital because he was male. She opposed Dr. Gerrior's services believing the children and she had not forged a successful relationship (see exhibit 69, para 142). The evidence suggests otherwise.

[563] This conduct, refusal to take advice or counsel, inability to agree on a process of communication and resolution for large and small issues from medical intervention to school resource issues, has required **significant intervention** from third party service providers and the court.

[564] Day to day decisions are either entered into arbitrarily and without consultation by the mother or delayed resulting in the children's needs not being addressed. They are inevitably engaged in the middle of this ongoing conflict that had undermined their stability.

[565] The mother continues to struggle with the role others play in her life, taking away valuable time to focus on her own conduct.

[566] She articulates that she understands what her counsellors and her research teaches her about parental conflict, her role, co-parenting, children, collaboration, communication, etcetera but she has consistently failed to demonstrate that she has incorporated this learning into her conduct. Quite the contrary. There is a definite disconnect between what she articulates and her conduct.

### **Abuse**

[567] There is much evidence that illustrates that the mother did not present, nor believe she was abused by the father. This is confirmed in evidence from herself, Ms. Rule and Dr. Hartley in the mother's self report (exhibit 69, p.11, first paragraph) where in Dr. Hartley reported:

both parents describe a significant amount of tension and stress in marital relationship since 2003 or 2004. This has been described by both parties as mostly verbal in nature.

[568] The court made findings on the evidence that these allegations of abuse by the mother were unsubstantiated (Decision, May 08, 2009, p.81, para 537).

[569] There is no new evidence.

[570] In her latest affidavit, (exhibit 40, para 58) she advised that since her work with the local transition house over the past couple of years she believe she was, in fact, abused.

[571] There is no evidence to support her belief.

### **Gary Neufeld**

[572] Pursuant to the Plan of Care, Mr. Neufeld, a clinical therapist since 1991 and an individual known to the Court to work in the area of family

therapy, individual, couple and group work, accepted a contract with the agency and engaged as the father's therapist.

[573] On June 17, 2009, he had completed one individual therapy appointment and one in July. He confirmed in his report of August 3, 2009:

it seems that the girls asked developmentally appropriate questions and (the father), by his reporting, did an excellent job of answering

[574] Mr. Neufeld testified that not only did the father utilize the handouts given out at meetings, he did his own research to augment the counselling experience. He was cooperative, easy to engage, always prepared and respectful.

[575] He had another session in August to continue with the therapy as prescribed by the agency and endorsed by the Court. The goal was to help the father assist the children in adjusting to the separation and their new way of life. The counsellor was impressed with the father; considered him as forthright and open to other possibilities and interventions.

[576] He emphasized both in his oral testimony and his report that the father was able to stay child focussed.

[577] His November 3<sup>rd</sup> report continued and acknowledged that the father attended September and October sessions.

[578] Mr. Neufeld, had the opportunity to consult with the mother's individual therapist on one occasion.

[579] His December 9<sup>th</sup> and January 7, 2010 reports confirmed the father's continued attendance . He concludes that the father took therapy very seriously and has been responsible in doing his homework.

[580] In conclusion, in his February 2<sup>nd</sup> letter, Mr. Neufeld stated:

By the time I met (the father), he quite clearly had gleaned educational information from a number of sources that assisted him in ensuring that he keep the best interest of his children as the guiding principal in his parenting and co-

parenting. Since that time, I have presented educational hand outs and engaged (the father) in conversations on how to keep the children out of the conflict...

[581] If conflict continued and escalated, he believed that the father would benefit from further therapy but concluded, in essence, there was no further need for the father to attend counselling.

[582] Mr. Neufeld, as all other service providers, noted that they did not have extensive materials other than the Decision to review. The mother was not successful in proving that there was any particular bias against her or her parents.

[583] Indeed, he advised that they did not spend a great deal of time in their sessions focussing on the mother, as his task was to assist the father.

[584] He confirmed, in his opinion, that if this situation were not high conflict, the father would have no difficulty with co-parenting. He recommended further therapy in the event high conflict continued. He also advised that based on his contact with the father, he would be a parent who would function well in a sole custody situation.

[585] He was satisfied, after having counselled him for a period of months, and he concluded that the father made it clear from the beginning that he valued the role of the mother in the children's life and "was able easily to articulate positive qualities about the mother".

[586] The counsellor noted he had no concerns about the father's ability to protect the children.

[587] In addressing the plans of care proposed for parenting these children, this counsellor noted that while children are resilient, these particular children have been lived through an awful lot. He recommended the least amount of change possible in their location. He recommended against relocating to Halifax.

[588] The counsellor noted that the father has an above average ability to put the children's interest first and has been able to demonstrate on many occasions how he integrated the learning materials that came his way.



[589] In spite of the way he has been attacked/accused in the past, he noted the father has been able to be respectful of the mother in the children's presence.

[590] He confirmed that one of the difficulties he perceived in the collaborative approach between the counselling was that the discussion among the counsellors generally focussed on the mother. Because of the difficulties that continued in this case, he felt that the discussions were not child focussed, they were clearly focussed on the mother and the difficulties she was incurring.

[591] He noted that conflict and litigation almost always make things much more difficult. The longer the times goes on, the harder it is to step aside from the conflict and adequately parent.

[592] He disagreed with the mother's allegations in cross examination that the agency and in particular, the worker, was responsible for making her the focus of attention. Mr Newfeld testified that the worker said the least in the meeting. The focus in the meetings on the mother occurred as a result of discussions by her therapist, who did what he considered to be 60 percent of the talking.

[593] The mother asked Mr. Neufeld why he felt the focus was on her and he responded *"it was because you had the most work to do from the Decision and from your counsellor"*.

[594] Mr. Neufeld concluded that the father was in a good place therapeutically and he was advised by the mother's counsellor that she had a long way to go. He confirmed that the agency facilitated his ability to work and collaborate with other professionals.

## **The Father**

[595] The father provided the Court with affidavits and oral testimony. They are unchallenged except by the mother.

[596] He confirmed the details of the children's life with him, their school and extracurricular activities, his attempts to find resolution on the many day to day issues regarding the children. His testimony has been verified by third party service providers.

[597] His ability to parent and his effectiveness have been observed extensively in the case notes and access supervisors notes, as well as more currently evident in the testimony of his therapist, the assessor and the children's therapist.

[598] The improvements in the children's stability and emotional health with him have been verified through in the evidence. I will, therefore, not set out in detail his evidence other than as already discussed.

### **E-mail Communication**

[599] In a co-parenting situation, communication is an essential key to ensure the free flow of child centered information. The father submitted his emails to and from the mother for the period of time August 28,2009, to February 2010. (exhibit 75) The mother made allegations they were not complete as of the date of filing. Subsequently, this was discovered to be false.

[600] Both parents were advised by their counsellors to communicate through e-mail to control the conflict and ensure proper information flow.

[601] The mother copied many of her emails to her therapist to obtain assistance reviewing the appropriateness of her response.

[602] The mother's responses to e-mail enquiries were not always timely or helpful.

[603] I have reviewed all of the e-mails submitted and given both the opportunity to tender any messages not available in order to have a full view from which to draw conclusions. They illustrate just how difficult , at times impossible, arriving at consensus can be .

[604] One only has to read through these numerous emails to conclude the father kept the mother informed **in detail** of the children's school and daily extracurricular activities, registration, first day at school (photos) activities, performance, medical and dental visits despite the mother's allegations to the contrary.

[605] His e-mails were forthright, clear and informative devoid of any sign of aggression or conflict.

[606] The mother complained repeatedly she did not receive timely school information in spite of the almost daily emails from the father and in spite of the fact that she had already established **a direct line to the principal** of the school and had easy access, explanations and answers to any questions she might have.

[607] The mother, when she responded, usually presented self serving information as if speaking to an audience.

### **Difficult Establishing ongoing Contact**

[608] The father began his information messages on August 28, 2009, to the mother's NSTU account up to October 2, 2009. These emails were attempts to set up a communication system, discuss phone calls, confirm pick up and drop off locations, etcetera.

[609] On October 6<sup>th</sup> he tried her hotmail account without luck. As a result of information he received from her he checked for reply messages and found none.

[610] On October 7<sup>th</sup> he began using her live account until February 3, 2010, after which he moved back to her NSTU account. By September 29, 2009, he had sent 8 e-mails with photos including one on September 17<sup>th</sup> which followed a phone call with the mother.

[611] On September 29<sup>th</sup> he recommended she set up a hot mail account and try using that. He noted he had not received any answers thus far.

[612] He continued to use her NSTU account and on October 1, 2009, asked the mother for the girls' uniforms and badges as they had their first Girl Guide meeting that week. He talked about a piano instructor and asked her for input. The piano teacher (called as a witness by the mother) confirmed she received a call from the father asking her advice and referral as well. He also confirmed as of October 1, 2009, that he still had not received any response from her.

[613] On October 5, 2009, he sent a test email to the address provided by the mother at her hotmail account and this message bounced back as undeliverable. She created another account @live .com and on October 7<sup>th</sup> he advised he finally received a reply.

[614] The mother frequently admonished the father for failing to inform her of daily events even when she had direct access to the information.

[615] She had to be reminded that he sent the information and it was a problem on her end. On February 10<sup>th</sup> and 25<sup>th</sup> messages bounced back due to her account being overfull. Again on February 27<sup>th</sup> and 28<sup>th</sup>. He asked if he should use another account.

[616] Again on March 1<sup>st</sup> and 2<sup>nd</sup> , at which time he asked:

I would like to know which of your e-mails you want to use for our communication because I am again receiving the following message when sending to your NSTU account

[617] Although the father's messages were being bounced back it is interesting to know that Mr Doucet, the mediator, sent her the agreement with a note (to her NSTU account) and she received the note although had difficulty opening the attachment.

[618] In her email to the father, copied to the mediator and her therapist, she advised:

2. On a second note I'm happy to see that emails sent from your address can get through to me at my NSTU email account because that was one of the issues I brought up to Alfred. Could you please e-mail me from now on at my NSTU address as before because I can access it from work? As I told you on the phone

tonight (on a separate call from my call with the children) my internet has not been working and I asked if you had any info or questions you had sent to me by email (to my hotmail account) that needed answering to let me know by phone. I acknowledge you refused to do so which is problematic for me this week. Now that I know that you can access my NSTU account which I in turn can easily access from work I request that you please forward any of the emails from last week to this address and communicate with me from this point through this email account. That will make communication much easier.

[619] On March 2<sup>nd</sup> she advised him to keep using the NSTU account (copying her therapist) as it was accessible at work. On March 10<sup>th</sup> he sent the report cards to the NSTU account and she acknowledged receipt and on the same date two other attachments were bounced back.

[620] Also on March 12<sup>th</sup> he confirmed with her in person that although she was insisting he use the NSTU account it was not working. He asked her to switch back to the address with which they had the most success (live). She refused.

[621] By email dated March 16<sup>th</sup>, she told him she was receiving email from others on that account so continue to use the NSTU as it is more accessible to her. After this he used two emails addresses on occasion to ensure the message is received.

[622] When the mother has an issue of concern to her the messages are sent and received. When it is the father who needs information, the e-mail appears not to work or he does not receive a timely response.

[623] The mother is a professional well used to using email. She is on the executive of her \*, has been described by her witnesses as intelligent. There are emails back and forth to the principal, therapist, mediator, etcetera with no mention of the same difficulties.

[624] The father is not the only person who has difficulty communicating with the mother. The agency and the child therapist has, on many occasions throughout their involvement, raised this issue regarding service of documents in a timely fashion, inability to contact the mother, leaving her messages, having no success because of a full voice mail box or being able to connect with her.

[625] The mother has informed the agency not to contact her at school, not to deliver documents to her home by courier and offered little alternative to them. At the same time she has complained about their lack of disclosure.

[626] Her home message machine is frequently full. The therapist, Dr. Gerrior, has confirmed her difficulty. The mother is, to those with whom she wants little or no contact, close to unreachable.

[627] The evidence conclusively illustrates that in spite of the frustration and lack of cooperation regarding the mother's intent to fix the problem with her emails, the father continued to provide the mother information, attempted to inform her, advise her and continued, undaunted, to follow through with his responsibility to keep the mother informed.

[628] He has done this well beyond what can be reasonably expected. The mother is in a position to make herself accessible and has not done so.

[629] In fact, she has made this communication obstructive. Her expression of intent to be available in the emails is not matched by her conduct. Even as she continues to advocate for a shared parenting arrangement, she continues to be evasive.

[630] On February 2, 2010, the mediator sent to the parents a copy of the draft agreement for their review. Although the agreement (exhibit 21, tab 4) shows a date of February 4<sup>th</sup>, his email to her via her NSTU account is dated February 2<sup>nd</sup> (10:55). She responds, speaking to the mediator at 02/02/10 4:37 p.m. and citing certain caveats regarding the agreement terms they worked on and notes that #11 is problematic. It reads as follows:

11. The parent will check their personal email at least every second day. The normal response time will be from the same day to three days; for matters requiring a more immediate response a voice mail will be left alerting to the email.

[631] The history shows that she was complaining about not receiving emails. The father attempted, over the course of many months, to find a

solution. Not finding one, he advised her that although he was using her NSTU account, he was receiving the messages back undeliverable.

[632] She insisted and he suggested other methods including the “live” line which was the most successful. At the same time, she complained to the mediator that the problem was that the father insisted on using another account other than the NSTU account, which was difficult for her.

[633] On March 3<sup>rd</sup> another message to her NSTU account was bounced back. He advised her on March 3<sup>rd</sup> that he would keep using this account, although it did not look like she received the information sent.

[634] On February 25<sup>th</sup>, the mother advises her NSTU account was full and noted once she deleted old messages he should be able to send new ones.

### **Access to Medical Coverage**

[635] The father asked early on whether they could be assured of continuing the child therapist services under her employee plan. She failed to answer him until her testimony in court when she assured the Court she would continue coverage.

### **Lack of Cooperation regarding Children’s Uniforms**

[636] On October 8, 2009, the father asks once again for the Girl Guide gear asking to pick it up when they exchange the children and, in a subsequent same day email, asks for the children’s piano books. He reminds her on the 15<sup>th</sup> to bring them at the exchange, as the girls needed them that week.

[637] She replies on October 19, 2009, and advises him that A. and V.’s Brownie shirt has been packed and saved along with the badges and the Sparks shirt. She suggests he buy new ones and if she can help, she will. She also packed the music books saying: “I’m sorry about that.” Again, she suggests he buy new books and if she can help, she will.

### **Difficulty Reaching the Mother when Situation required Urgent or Immediate Contact**

[638] On October 16, 2009, at 2:42 p.m., the father emailed the mother at her “live” account because their daughter was ill. He called her cell phone. A person sounding like the maternal grandmother answered and said he had a wrong number. He left a message on her voice mail. He picked up A., took her home and let her sleep after giving her Tylenol for her fever. He suggested, rather than putting her in the car for an hour to drive to the mother’s, he would let her sleep and drive her in the morning. He asked for a call back.

[639] Although they must have resolved this by phone, the mother sent an email back on Sunday the 18<sup>th</sup> confirming why she did not agree. She also advised him as follows:

but I would like to reiterate that attempting to contact me during the work day by cell phone, by voice mail or by e-mail will not be effective since I am not permitted to have my cell phone on at school, I don’t always come home for lunch to check my voice mail and I can’t access the hotmail account at school since it is one of the sites banned.

[640] She gave him the school number in case of emergency.

[641] This was one of those instances where if the children were the primary focus their comfort level would have been respected and an accommodation made for an early morning exchange at the father’s expense. Not only did it not happen, it sparked the only real response well after the fact from the mother.

### **Dentist -Medical Information**

[642] The mother made an appointment for the children to attend the dentists in their old community sometime early in September and called the father to tell him the time and place and asked him to confirm he would attend. (This approach to scheduling is obviously not appropriate.)

[643] As a result of a conversation between the two, the father sent an e-mail to the mother on September 15<sup>th</sup> advising that the appointment she



set up had to be rescheduled. Due to September being all booked, he asked to be on a cancellation list. He advised he would arrange they see a dentist in the new community.

[644] On October 19<sup>th</sup>, the mother wrote, distressed, because she had received a call from the dentist office looking for her medical numbers for the claim. She admonished him to keep her informed.

[645] On October 21, 2009, the father advised the mother about the appointment results and asked the mother for health benefit information for the dentist.

[646] On January 6, 2010, the father took A. to the dentist again to have a chipped tooth fixed. He was advised by the office they sent forms to the mother after their first call to her and again in December and did not receive the necessary signatures.

[647] The mother advised she did not receive the forms and had no message from them. The father spoke to them and asked them to resend the forms to the mother.

### **Halloween 2009**

[648] On October 26<sup>th</sup> (Monday) the mother wrote the father. In her discussions with the children they had apparently decided what the children would wear. (They would be at the mother's on Halloween). She offered to drop off the costumes in advance for the Girl Guide party that Thursday, October 29<sup>th</sup>. She needed some pieces, and when they were ready she would drop them off.

[649] He responded on the 26<sup>th</sup> (Monday) asking her to call him when she was in the area and he would meet her to pick up the costume parts. She wanted to take them to the school (an arrangement that was not yet approved or encouraged). He heard back from the mother at noon on Thursday the 29<sup>th</sup>. He did not want to be without for the Girl Guide evening and purchased costumes for the evening.

[650] On the 29<sup>th</sup> at 4:34, he advised the mother that the girls wanted to be something else so he went shopping for costumes. He advised they changed their minds many times although they might still want to be what she had planned come Halloween night.

[651] None the less, the children wore the costumes she made on Halloween.

### **Mental Health Issues**

[652] The report cards were received on November 19<sup>th</sup> and the girls were reported to be doing well. The father made arrangements with the teachers to have the report cards sent to the mother. The father attended and received generally a very positive report.

[653] The mother attended separately and advised she was told the girls were doing great, adapting well and socializing well. They have very satisfactory reports in almost all aspects and received positive comments. The mother noted as concerns. 1. The children were arriving late to school (The principal checked on this complaint and did not consider this a concern); 2. A.'s regression in her writing skills; 3.A's need for adaptation in math; 4. A. arriving in class either sad or angry (not verified); 5.V. being withdrawn in class and with other class mates; 6.V's. writing in her journal on occasions that she misses her and V. not socializing much.

[654] In this message, the mother advises that V. commented about suicide to her. She advises that she shared these comments with Dr. Gerrior who spoke with the girls on November 30<sup>th</sup>. She advised she would be meeting Dr. Gerrior on December 7<sup>th</sup>.

[655] The original comments were dealt with by Dr. Gerrior. The transition time between the parents was causing the children distress. This was corrected. However, the mother saved the contents of the journal until her court appearance, attempting to show a very different picture of V; one of a child suffering, crying, withdrawn.

[656] This caused Dr. Gerrior to be concerned enough to seek time to digest the materials. She was concerned that the child's privacy was

violated by the disclosure of her journal. The mother painted a very bleak picture. The therapist was concerned because this had not been brought to her attention when first discovered.

[657] After actually viewing the journal extracts, the therapist was not as concerned and did not meet to address this issue with the children.

[658] The difficulty with this is two fold. The mother waited a few weeks to clearly articulate what she called the “suicidal comments”. The lack of timely disclosure by the mother to allow for a collaborative approach, is a contraindication to shared parenting or joint custody. The benefits the mother sought to gain, should the children’s state be seen as deteriorating, took precedence over the actual best interests approach for the children.

[659] This is a repetition of the unbalanced interpretation of events that created this prolonged litigation. In the past, the mother searched for doctors, therapists and police, who could verify her concerns. In the midst of the trial, these exaggerated concerns cause the regular flow of life to stop, calling all participating adults to cease their focus on regular day to day functions while the emergency is assessed. It is an exhausting use of resources which distorts the focus.

### **The First Communion Dress**

[660] On January 17, 2010, the father scanned the school and religious education information to the mother. The notice informed the parents that First Communion would be Palm Sunday, March 28, 2010.

[661] On January 20<sup>th</sup> he reminded her and invited her as it was his weekend. He asked if V. could wear A.’s dress.

[662] The mother responded by email January 21<sup>st</sup> that she was not aware of this. She advised, “I will be attending and will wait until closer to that date to see if A.’s dress fits her, but I figure it probably will.”

[663] On January 27<sup>th</sup>, the father asked the mother to get V. to try on the dress A. wore previously to see whether it would fit and if it didn’t, to advise him advise him so he could purchase one.

[664] He replied that he had scanned the info earlier and sent it to her and he said:

I don't want to take the chance of not having a dress for her and I would appreciate if you could let me know if it fits sooner than later.

[665] On February 16<sup>th</sup>, the mother advised the dress fit and could not have been tried earlier because it was not at her home.

[666] On March 12, 2010, and March 26, 2010, the father sent a reminder notice to the mother asking her to bring V.'s first communion dress on Sunday so he can prepare and shop for accessories, if necessary. The dress was finally delivered Saturday, March 27<sup>th</sup> late in the afternoon.

### **Advance Information Regarding Child Care**

[667] While the father was given first right of refusal for providing child care when the mother attended meetings in Halifax, he was not advised on a timely basis (January 22, 2010 exhibit 17, p. 181).

[668] Rather than have the children at home with the father while the mother attended her regular \* meetings the mother interpreted this clause as allowing the father to follow her to Halifax, care for the children while she was in her meetings and let him return leaving the children with her for the balance of the weekend.

[669] The refusal to cooperatively share her information and schedule is in stark contrast to the father's regular efforts at keeping the mother informed. This information would prove useful in making plans for the children's care.

### **MATERNAL GRANDPARENTS**

#### **Michael Bryson**

[670] In the First Disposition Decision (May 8, 2009 - p. 89), the Court ordered the agency to offer to the grandparents, short term educative counselling to assist them during transition. The goal was to address their

role in the conflict, educate them and develop a strategy to involve themselves in the children's lives as grandparents subject to the rights of both parents. Failing their participation and a positive report, the final order will consider a prohibition against unsupervised access.

[671] The worker first contacted Mr. Bryson by telephone on July 17, 2009. They spoke on July 20, 2009. On August 6, 2009, the worker confirmed his availability and he accepted by letter dated August 6, 2009.

[672] The Agency sought to retain his service for the fall and confirmed this by letter dated August 6, 2009 (exhibit 2).

[673] The agency followed up with letters to the grandparents on August 7<sup>th</sup> and a reminder letter on the August 14<sup>th</sup> sending their Policy 75 access agreement that required their signature.

[674] Both the agency and the service provider had signed this agreement on August 6<sup>th</sup> and 9<sup>th</sup> respectively. The grandparents were asked to sign and return this agreement.

[675] Mr. Bryson and the Agency left with the maternal grandparents' the responsibility for making contact with him the week of August 17 to 21 to begin scheduling appointments.

[676] In this agreement they were advised they could ask if they wanted to have activities or the presence of other persons.

[677] The grandfather's affidavit sets out the suffering he and his wife endured by not being allowed to attend family events. No requests were made of the agency regarding these events except a last minute request for a wedding.

[678] The grandfather could not remember reading the agreement and complained about the visits having to take place in the home. Nor could he recall any of these letters or enclosures.

[679] The maternal grandparents never signed or returned the agreement.

[680] The contract for educative counselling was for four hours monthly for a three month period.

[681] Mr. Bryson testified that he never actually provided the service and the grandparents never attended his office. Various attempts by his office to engage the grandparents were unsuccessful. Scheduling was problematic.

[682] In the period just before the commencement of the Final Disposition Hearing he also entered into negotiations with them to obtain their consent to enable him to provide a report to the agency for the Court. He was unsuccessful in obtaining their consent.

[683] The grandparents and he were not in agreement with the terms of the draft letter regarding the attempts to engage.

[684] The draft letter as provided by Mr. Bryson, dated February 15, 2010, acknowledges that the maternal grandmother contacted his office on August 21, 2009, was offered an appointment on September 10, 2009, which they declined. The maternal grandmother wanted an appointment after the September court date.

[685] An appointment was scheduled for September 15, 2009, which appointment had to be rescheduled due to Mr. Bryson's absence from the province.

[686] The maternal grandparents requested an appointment between 2:00 and 3:00 p.m. in order to accommodate their travel. She contacted the office to reschedule the September 29<sup>th</sup> appointment to October 20<sup>th</sup>, that date was rescheduled by Mr. Bryson due to court requirements and they were asked to contact his office to reschedule.

[687] From the October 5, 2009, fax Mr. Bryson testified that he heard nothing from either of the maternal grandparents until his office phoned them on October 15<sup>th</sup>. They informed him their telephone was down. The grandmother advised that she would telephone him later to reschedule. The number was confirmed.

[688] There was no call to confirm another appointment.

[689] The maternal grandfather then contacted the office of Mr. Bryson on December 16<sup>th</sup> and asked to book an appointment, giving the appearance they were still actively looking to attend.

[690] However, at the same time, they were actually seeking assistance from a private counsellor, Dr. Gail Andrew. By letter dated October 29, 2009, their family doctor referred them to Dr. Andrew asking for psychological counselling for the stress the last four years of litigation has caused them.

[691] Their first meeting with Dr. Andrew was on November 23, 2009. They had attended at least two sessions when the grandfather, on December 16<sup>th</sup>, contacted Mr. Bryson for an appointment with his office. He accepted an appointment with Mr. Bryson for January 27, 2010, and on January 18<sup>th</sup>, the maternal grandmother called to cancel the scheduled appointment on January 27<sup>th</sup>.

[692] They did not advise they were attending another counsellor.

[693] On January 18, 2010, the grandfather advised the Court they were attending another counsellor. He admits this was the first time the agency was advised they were going elsewhere. He admits the service of Mr Bryson was still offered.

[694] On February 15, 2010, Mr. Bryson called the grandmother and **she advised they were attending psychological treatment elsewhere**. They advised the Court they were following the Court's direction in therapy with Dr. Andrew.

[695] In fact, this is not accurate. On October 29, 2009, the maternal grandparents obtained a referral from their family doctor to Dr. Andrew (exhibit 56). Their family doctor advised Dr. Andrew that his patients had been in a four year legal proceeding:

dealing with alleged sexual abuse of their grandchildren by the children's father. The case...has caused a huge deal of stress for the (maternal grandparents...It is my understanding that the courts have sided with the father and he has regular

access to his children...Whether or not the abuse has occurred, the accusations and the stress of the court cases have taken their toll on the (maternal grandparents) and they are in need of psychological counselling. ..I look forward to your assessment and your help.

[696] At the date of this letter, the father had care of the children and their daughter was the access parent.

[697] Dr. Andrew is a psychologist who graduated in 2004 and was registered in 2007. She comes into the profession as an educator obtaining her Ph.D. in clinical psychology in 2004.

[698] She was contracted privately and began sessions with the maternal grandparents on November 23, 2009, December 12<sup>th</sup> and 21<sup>st</sup>, 2009, continuing in January 12<sup>th</sup> and 19<sup>th</sup> and February 2, 2010. During the Final Disposition she advised the sessions were suspended.

[699] She accepted the terms of the private referral letter as the objective of the sessions. She responded to the maternal grandparents' request to help them get over the trauma of the last few years so they could move on with their lives. (exhibit 115) They advised her the stress in their lives was exacerbated by their 'significant medical conditions' as reported by them.

[700] Dr. Andrew confirmed that she did not intend and **did not** provide the counselling required by the decision. She was advised by the maternal grandparents they would be contacting Mr. Bryson to have the other aspects of the educative counselling addressed. She did address some issues (boundaries, rights and roles of parents v. grandparents) their role in the conflict, and cultural differences with some emphasis on Acadian culture.

[701] Dr. Andrew testified she never represented that she was providing the service directed by the Court and was not retained to do so.

[702] She was engaged by the grandparents to address their stress issues. In the course of the sessions, they did touch on parenting issues and boundaries. She did discuss how they may have misinterpreted the children's statements. For the most part, she offered strategies in dealing with their stress including diet and other stress reduction techniques.



[703] She was required to provide a report when required by the mother to testify. At the end of the sessions, and before drafting the report, she was provided with the decision which would have identified the issues to be addressed. She advised she did not read all these documents prior to writing the report. She had no contact with the agency.

[704] Based on the self reporting by the maternal grandparents, she advised it was her belief they don't believe they did anything wrong, they needed no supervision. She believed they have a good understanding and are prepared to respect the findings of the Court, they are agreeable to respect the father's wish to be involved in his children's life and to support his involvement. She believes they are highly motivated to meet the Court's expectation and she advised that they told her they harbour no anger or resentment.

[705] She was not informed by her clients that the grandfather was involved in physically removing all of the mother's and father's personal possessions and matrimonial furniture from the home to prohibit the father from seeing it or having access to it when completing his court facilitated inspection in January 2010.

[706] Nor was she informed by the maternal grandparents that in the summer of 2009 the grandfather held a street sale of the father's possessions and continued unabashed to do so despite the father coming upon this sale and bringing a police officer to the scene.

[707] She was also not advised that when one of the grandfather's residences was apparently broken into (as he self reported) in September 2009, he gave the father's name as a possible suspect despite the father being on his job site at the time of the alleged offence.

[708] She had no knowledge that the grandfather had applied for a peace bond against the father and this application had been dismissed by the Provincial Court.

### **Discrepancies Regarding Dr. Andrew's Retainer**

[709] The mother and grandparents maintain that Mr. Bryson was unavailable during appropriate dates and they ultimately engaged their own counsellor. They represented to the Court this was in the place of Mr. Bryson's service provided by the agency to fulfil the Court direction.

[710] The Court and the parties were only advised of the existence of Dr. Andrew when, on January 18, 2010, at an administrative pretrial - Review Hearing preparation (p.271, line 14) she was simply proffered as an expert witness for the mother.

[711] Upon further questioning (p. 238 line 17) the mother stated:

...Mr. Bryson could have started the counselling in August ...or it might have been the end of July...which was intended to be short term...ordered on May 8<sup>th</sup> . However this was declined and an appointment was...preferred for September .(Blaming the agency for late set up) The first appointment needed to be cancelled due to medical concerns with (the grandfather)...and..So these appointments have been cancelled and theres a misrepresentation that's occurring ..as to why there is not engagement by (the maternal grandparent) there was a rescheduling. **All** of the successive appointments have been cancelled by Mr. Bryson ..

And at page 239, line 7:

...I'm addressing concerns....because of Mr. Bryson's role and his cancelling of appointments and the time has passed, the delay that the Agency has, ...been responsible for ....

[712] When asked who she was and what was her involvement, the mother advised (p. 279 line 17):

...well due to the fact that Mr.. Bryson was not doing the piece with (maternal grandparents) and they felt it was important to follow the court's direction, she has been providing them with psychological services...which they are paying for on their own.

She further advised the court:

...there is still an appointment with Mr. Bryson. And who they choose to see for their own purpose is not really for anyone in this room to , in my opinion , comment on . ..Who are we to say who they go to the doctor's to?

And further, the Court was assured by the mother that:

There is no indication of them.....getting around the order.

[713] The grandfather was in court at the time and asked to clarify. He said:

...We've been starting to see them since the first part of December, maybe the last week of November ...since we felt that possibly there was a problem with Mr. Bryson was cancelling appointments. We felt that the urgency that we found ourselves in with the trauma that we've gone through since May of last year, that we needed to approach someone.....provided us with Ms. Gail Andrew , who has been very proficient in her work and is more than happy to come to court , provide a report to this court or Children's Aid , if they so request.....she would also would like to ..myself anyway would like to find out just exactly what it is that the court has requested form us, because we have been seeking counsel from four different people and this is our third psychologist , they still don't understand what is meant by our involvement in the conflict, ....

[714] On this point, I have reviewed the evidence of Mr. Bryson and the business records (case notes) as well as the letter retaining Mr. Bryson, the contract signed by the agency and Mr. Bryson (not by the grandparent's), read Mr. Bryson's reporting letter and the grandparent's response, the grandfather's affidavit and heard his testimony.

[715] Mr. Bryson, the letters, the case notes and the contract accord with each other as it relates to time and dates.

[716] The grandfather's testimony does not, nor does Dr. Andrew agree with the proposition put forward by the mother and grandfather that Dr. Andrew was intended to address the relevant issues for the Court.

[717] There was a six month period between September 2009 and February 2010 to complete this short term therapy with a very specific focus. Mr. Bryson acknowledged it would take three months and perhaps more but that he had engaged in contracts with the agency previously and found them flexible in the event progress was being made or a different schedule of counselling needs to take place. They had sufficient time to achieve the requisite number of counselling sessions.

[718] It is clear that the grandparents did not exhibit any intention to volunteer, cooperate or engage in services which were provided by the agency. In fact, while negotiating one of their dates for attendance, they were actually engaged with another counsellor to address issues identified by them rather than address the educative issues identified by the Court as necessary.

[719] They denied they were resisting engaging in counselling with Mr. Bryson. The grandfather called to book an appointment for the week of January 27<sup>th</sup>, calling on December 16, 2009, when in fact he was already engaged with counsellor Gail Andrew on November 23, December 12, and December 21, 2009 and January 12, January 19, and February 2, 2010, being six sessions with the counsellor of their choice.

[720] Further, they acted in a manner as if they were addressing the issues albeit late in the process.

[721] I accept the evidence of Dr. Andrew that she was under the impression Mr. Bryson was completing the required service. I conclude that the maternal grandparents deliberately failed to inform her and to attend with Mr. Bryson and intentionally represented that they were abiding by court ordered counselling through Dr. Andrew.

[722] I find they did not accept and attend or cooperate with the counselling offered to address their participation in the conflict that evolved since 2006.

[723] I find they avoided scheduling appointments with Mr. Bryson and intentionally focussed the blame on Mr. Bryson's scheduling and the agency to divert the Court from the fact that they avoided this service.

[724] I find that the service they sought focussed on their needs and issues and not on addressing their significant role in the creation and perpetuation of false allegations of sexual abuse by the father against the children. It appears that, to the extent possible, Dr. Andrews believes they have addressed this stress in their sessions together.

[725] I reject the conclusion of Dr. Andrew that they are motivated to abide by the Court's order and are respectful of the father's role with his children.

[726] I find as a fact that their conduct does not match what they have told their counsellor. To the contrary, their conduct is antagonistic and harmful to the father and his relationship with the children. While there may be an understanding and capacity to change as noted by Dr. Andrew, in fact their conduct suggests quite the contrary.

[727] The grandfather is openly antagonistic with the father and there are no signs other than what they said to their counsellor (who was uninformed of the extent of their involvement) that this conduct will abate.

[728] The original false allegations came during the separation out of the grandmother's reports of her conversations with the children. She continued to escalate these allegations in the Divorce Hearing, necessitating multiple medical and police interventions with the children. She was scheduled to testify in these proceedings. Just before her testimony, the Court was informed she was ill and unable to be present. I do not have the benefit of her testimony in the Final Disposition Hearing.

[729] It is clear in the access notes that the children love visiting their grandparents and the grandparents provide for their physical needs during their supervised visits.

[730] The risk that is associated with these visits is the active hostility and harmful behavior and attitude the maternal grandparents have toward the children's father and how that has significantly affected the children, impacted on the children in the community and their relationship with the father and, ultimately, with their mother.

[731] Without appropriate intervention to address their role in the conflict and confirmation that they have insight and the intention and capacity to avoid this in future, the risk of their continued open hostility towards the father continues.

[732] Despite the allegations by the mother that Mr. Bryson was biased as a result of previously acquired knowledge, he testified he only received a

copy of the court decision where in he identified what the Court required him to provide to the maternal grandparents in order achieve a goal that would lift their supervision.

[733] He did not have the access facilitator reports or receive reports from the previous disposition. He had very little information about the background and received very little information from the worker with the child protection agency.

[734] The mother was not successful in cross examination in establishing any prior knowledge or bias against herself or the maternal grandparents.

[735] I am satisfied that the service was provided as required by the agency in a timely fashion and was never accepted by the grandparents. I do not find the grandparents credible with respect to any reasons for failure to engage in counselling with Mr. Bryson.

[736] Unsupervised maternal grandparent contact with the children is not appropriate.

## **Conclusion**

[737] The father started these proceedings at a great disadvantage, falsely accused by the maternal grandparents and the mother of sexual abuse and more recently accused of physical and emotional abuse of the mother.

[738] Police and agency protocols required he be removed from his home. An investigation was launched. The police and agency approached the allegations as if they could be true.

[739] Ms. Rule, in her early assessment, also testified that she approached the allegations with the hypothesis that it could be true. Vigilance proved to be the order of the day with police, agency personnel and service providers.

[740] The father received no benefit of doubt from any investigators as protocol demanded his contact with his children was restricted each time the allegations were made. Their interests were paramount.

[741] The father did not run from these allegations or the scrutiny. No substance was found to these allegations despite repeated and escalating reports by the maternal grandmother and the adoption of these allegations as true by the mother and grandfather.

[742] Over the course of five years, after several investigations and a protracted court process, the one conclusion consistently made is that the father does not pose a risk to the children.

[743] The children entered therapy with Dr. Gerrior presenting as troubled. The oldest child has been described by her mother as difficult:

with many sensitivities (e.g. tags on clothing) There were problems establishing routines such as toileting and dressing in the morning. A. has a history of temper tantrums and non compliance with adult requests, She is aggressive with her younger sister....(The mother ) has great difficulty teaching A. skills such as tying her shoelaces... is not well behaved etc.

[744] The children have, since September, 2009, achieved a measure of stability in their father's care in their new community.

[745] The father has been required over these five years to submit to the authority of the Court, the police and the agency and has persevered without focussing on blame and retribution towards the mother and her parents.

[746] His primary focus has not wavered in word or deed as witnessed by multiple supervisors, agency personnel, his therapist , the court appointed assessor and others.

[747] His rights as a parent have been secondary to his focus on the rights and needs of the children. He has had to moderate his contact through several years and he has complied in a disciplined fashion.

[748] There are no examples in the evidence where he has diminished the mother's role. There is pervasive degradation of his role and constant diminishment of his personal and professional conduct by the mother.

[749] He has consulted the mother, advised her in advance and continued to function as the stabilizing parent through great difficulty.

[750] His plan was devised to address the children needs, not his own. He has raised his own wish to return to \* to be surrounded by his family and with his girlfriend.

[751] Before he was aware of the mother's decision to transfer into the children's school he decided against this because the children, had with considerable supports, established a safe school zone free from parental conflict.

[752] He has settled the children in a new community availing the children access to an education in French; a value held by both parents as essential for their children.

[753] Before the mother effected this transfer to their school; keeping the children in their new school was the best available option that would address their best interests.

[754] The substantial supports available now will terminate. A sole custody order in favour of the father with block parenting time with the mother would preserve that which was positive and nurturing for the children.

[755] The father has demonstrated he has the substantial patience and presence of mind and is now equipped with a skill set as a result of counselling that allows him to avoid conflict and move forward on a day to day basis outside the conflict with the mother. The mother has not.

[756] The father has demonstrated he is prepared to keep the mother informed in a detailed fashion of activities, school and religious functions. The mother has not.



[757] The father had established a pattern of advance notice, communication as recommended by email providing documentation, pictures, etcetera to keep the mother part of the day to day life.

[758] The mother has demonstrated an unwillingness to be forthright with the father and others, a refusal to be available through cell phone and email during the day and does not keep her cell phone and email active and in good working order.

[759] There is consistent common evidence from service providers including Dr. Gerrior, the agency, counsel, and the father where attempts have been made to contact the mother through her cell phone, voice mail or email unsuccessfully.

[760] The service providers and the father are accused of not keeping her informed. Due to her own technical problems or unavailability she has not received or read the documentation or information given to her.

[761] Service of documentation had been made difficult due to the mother's instructions and restrictions as to when and where she is prepared to receive it.

[762] The father has agreed to consult, the mother takes unilateral action. When consultation does take place in advance (which is rare), if she disagrees with a particular course of action, she acts on her own advice regardless of opposition. This leaves everyone else dealing with the consequences of her decisions.

[763] The mother continues a pattern in her daily life which attempts to push the father away from substantial involvement in the children's lives.

[764] It is entirely foreseeable that false accusations and allegations will continue from the maternal family, including the mother, if it supports her as the central figure in the children's lives.

[765] There has been no demonstrable change in the maternal grandparents behavior and insufficient progress in the mothers. Indeed the mother's combative behavior has escalated.

[766] There is a danger, should false allegations resurface, that the stability provided by the father's life could again be challenged due to the authorities' obligation to investigate child abuse complaints.

[767] The further danger is that these children are vulnerable to outside risks as long as there are false allegations. Community response has to remain vigilant.

[768] The danger increases if the mother brings the environment of conflict into the school destabilizing their neutral environment.

[769] The best option would have been to keep the children in their current community. There is no support for a return to their community of origin.

[770] There was no support from the professionals for a move to Halifax, pulling both mother and father from their current community and establishing anew. There are no particular supports in this community that would indicate it is a preferred option.

[771] Her proposal to move to Halifax was based on her belief she could be employed in a Halifax school and close to her brother and family. Everyone else would change to accommodate her employment.

[772] The best option, **if the mother is not teaching in the school**, is for the children to stay where they are.

[773] A return to \* would open up for the father the availability of his extended family support. However, he carefully considered the children's needs when he put forward a plan to stay in the current community and reestablish himself.

[774] The mother knew moving into the school would not be an acceptable option to the father and the agency. She knew that Ms. Rule advised against it.

[775] Subsequent to Ms. Rule's testimony on March 16, 2010, she made the decision to apply for a position. She thought about this. She testified she did not tell the father because she knew of his opposition.

[776] She consulted the union lawyer and human resources in advance and learned that the Court could not tell her where to work or the school not to employ here. She applied. She was hired on May 13<sup>th</sup>, told the children on the 16<sup>th</sup> before she went away and did not inform anyone until they were informed by the children.

[777] This significantly affects the options available for the Court.

[778] Based on the evidence, I find it would be detrimental to the children to have their mother teach in their school. I find that the weight of the evidence including professional evidence indicates the risk of conflict will continue if the mother and children remain in the same school.

[779] This is a specific finding relative to this family, this mother, these circumstances. It is not a generic statement or finding as to whether children are advantaged or disadvantaged if a parent should be a teacher in the same school as their children.

[780] The mother had indicated her intention to remain in this new school despite the consequences and objections. Although she has not voluntarily paid child support, her wages have recently been garnished and the children benefit from her employment.

[781] I agree with and conclude as accurate the statements made by Dr. Gerior and Ms. Rule that the mother's behavior is difficult to contain.

[782] Regarding the test in Section 45 of the ***Children and Family Services Act***, the mother had not and is unlikely to make sufficient gains in understanding and applying the elements that made a co-parenting strategy operable in the near future.

[783] The conclusion of Ms. Rule, Dr. Gerior and the Court is the children will not thrive or be free from parental conduct largely due to the mother's

comportment and inability to consider and incorporate an opinion other than her own in a joint or shared custody situation.

[784] Since these proceedings began when the parents separated (**pre** child protection involvement) to date, the parents have not successfully negotiated or formulated a co-parenting strategy that did not involve repetitive false allegations against the father, significant child welfare and police involvement and multiple court applications in the Supreme Court (Family Division) and Provincial Criminal Court. Both the mother and her father unsuccessfully sought Peace Bonds against the father.

[785] According to all the involved therapists, litigation is one of the elements that exacerbates the conflict. The mother suggests her combative behavior is caused by the need to represent herself in court and because both the agency and the father are united against her position.

[786] She suggested to the witnesses (Dr. Hartley and Dr. Gerrior ) and the Court that her behavior outside of court is different, more amenable to a joint parenting arrangement. She suggests repeatedly that once child protection is out of her life, she and the father will be able to co-parent in a shared parenting arrangement. Her actions outside the court as evidenced do not support this proposition.

[787] A co-parenting plan does not have to be a 50-50 time share. Several service providers including Dr. Hartley, Dr. Gerrior and Ms. Rule have agreed that co-parenting does not require a 50-50 split of the children's time to be workable. A 50-50 time share is not essential to the children's best interests.

[788] I agree with Dr. Gerrior when she indicates there are many ways to preserve the mother's parenting plan with the children other than a 50-50 split.

[789] In this circumstance, the parents were given everything they needed to develop a co-parenting, shared custody strategy.

[790] Despite her allegations to the contrary, the individual therapists confirmed the agency worker was not intrusive, did not unnecessarily

intervene in the therapeutic work, facilitated connections, provided the opportunity and place for mediation and access to occur in as respectful a manner as possible.

[791] The case recordings and evidence of the agency worker is very clear. She spent many hours and took much criticism from the mother while continuing to assist the service providers and parents connect with therapy and facilitate the flow of information.

[792] This is a situation where the parents, intelligent without cognitive impairment, without the impairment of drug or alcohol abuse, with supportive families, were provided access to services and permitted the opportunity from the May, 2009, decision up to an including the February to July hearing in 2010 to arrive at consensus on matters large and small. They did not achieve this even with significant supports.

[793] It is the behavior of each of the parents individually observable in their personal and professional lives as proven by the observations of those who have had sufficient opportunity to observe them both professionally and personally that tells the tale.

[794] Which strategy, which parent can in accordance with the test under the ***Children and Family Services Act***, the ***Divorce Act*** and case law can best address the risk issues and provide for the best interests of the children as identified throughout this proceeding.

[795] The parents will be without the extensive services provided by the agency. This proceeding has exceeded the time lines ordinarily expected by at least seven months during which time significant resources continued to be provided. They are moving into a private custody order.

[796] The Court has the information to date, necessary to make a private custody order respectful of the principles of custody set out in Section 16 the ***Divorce Act*** and case law including reference to ***Foley v. Foley***, 1993 CanL II 3400 (NSSC) what parenting strategy most effectively addresses the best interests of the children who have lived in significant conflict since 2005 until the September, 2009, move into their new community when they stabilized.

[797] All therapists have agreed. Continuing the litigation whether under the ***Children and Family Services Act*** or other legislation is counterproductive to eradicating the conflict.

[798] The mother has indicated early on her intent to appeal if she does not achieve a 50-50 time split. In consideration of the likelihood that there will be future proceedings, the conflict must be contained.

[799] The children must be stabilized in what has become an inevitable fact of life. The litigation will go on. Therefore, every effort must be made to ensure they are permitted as normal a life as possible given their parental reality.

[800] A joint , shared or parallel custody order would certainly keep these children in the middle of the parental conflict without question.

[801] Decision making has been and continues to be problematic. The mother knows no bounds when deciding what the children do, what they need and who will provide it.

[802] The move in September, 2009, was a drastic step made necessary by the conflict arising out of the false allegations and the mother and her parents' continuing efforts to reduce the father's role in the children's life.

[803] Moving schools, as Dr. Gerrior indicated, is not to be easily considered as appropriate, **unless**, when balanced with the alternative, it become necessary to address the best interests of the children. Moving jurisdictions means selecting a new therapist, new friends, new school, etcetera.

[804] The mother's move into the school was not her only option. Much evidence was given by her initially as to the stability her current school location offered. A residential move could have brought her closer to the children's residence and school allowing her to maintain her employment. She chose not to move to another school board as it might reduce her seniority.

[805] The mother kept her plan secret until after all but her evidence was in. She knew this was not going to gain the approval of the therapists and the father. She also knew the Court might not regard this as appropriate, thus she obtained legal advice.

[806] The Court declined to issue an order restraining the mother before conducting the hearing and having the benefit of all the evidence . The Court advised the mother (transcript - June 2, 2010) that this decision might affect the children's placement.

[807] On May 20<sup>th</sup> the agency and father learned of the transfer. On June 2<sup>nd</sup> the Court was advised. The mother completed her case on July 7, 2010.

[808] The only response available in a timely fashion to this new evidence was the rebuttal evidence of the therapist on July 9<sup>th</sup> ,who strongly recommended against this transfer. The case concluded July 9, 2010.

[809] In contemplating the possible and appropriate options, the Court is very aware that a decision must be made before the coming school year if the children's interests are to be protected.

[810] The mother has made decisions to resign her position, leave her school and move. She has done this in a time frame which puts her out of the normal hiring schedule.

[811] However, the risk to these children is too great. The mother must now bear the consequences of this decision so as to avoid having the children bear the consequences.

[812] She will have to resign her position in the children's school, possibly work for another board, obtain a job in her old school or another as a substitute teacher **OR** the children will have to be removed from the school. The timing, while unfortunate, is of her making.

[813] The Court has much evidence of the conflict and difficulty this family experiences when the parents and children lived in the community and the mother and children attended the same school.

[814] The best way to guarantee stability and a conflict free environment is to give to the custodial parent the best option toward stability and support in an environment in where he can create neutrality for the children, as conflict free as possible.

[815] This father has stood the test of time. He has consistently made solid, difficult decisions for his children and he has faced many obstacles.

[816] I have carefully considered all options. I have paid particular attention to the advice of the children's therapist most consistently involved in the lives of these children. Her evidence is supported by Ms. Rule's testimony. I cannot undo what the mother has done by her move.

[817] The mother must take responsibility for her actions. She is to take responsibility for creating this most difficult dilemma. She entered into this course of action knowing it would be opposed and chose not to stop, reflect and obtain advice.

[818] The children may remain in their current school **only if the mother tenders her resignation and provides proof of this to the father by August 15<sup>th</sup>, 2010.**

[819] In the event she does not provide written proof of her resignation and, in fact, resign such that she is not professionally occupied as a teacher in their school, the father shall remove the children from this school.

[820] He shall not be restricted to Nova Scotia to find a place where he can create an environment of stability and safety from conflict.

[821] This includes making plans to return to his home in \* where he can access the considerable support his parents have given him throughout.

[822] He shall not be obliged to seek the permission of the Court to remove the children from the jurisdiction should the mother not comply with removing herself from the children's school.



[823] I place no restrictions on his mobility within Nova Scotia or to return to \*. Any other move would require the consent of the parties or an order of the Court. He shall always keep her apprised of the location and phone number of the children.

[824] Therefore, the mother has the option of having the children remain in Nova Scotia accessible to her and she to them. If she resigns the children will stay in their current school.

[825] The father has a history of child focused decision making. His extended family and girlfriend have traditionally been civil and respectful of the mother's position with the children regardless of her behavior towards them.

[826] The father is entrusted with this sole custody order given his conduct and his testimony are committed to the best interests of the children and in light of his belief expressed in word and deed that he understands the importance of the children's connection with their mother.

[827] He has also exhibited a sustained commitment to accessing resources for his children when they find themselves in conflict or he finds himself needing professional advice.

## **Order**

[828] The children shall be in the sole custody of the father. He shall be responsible for making the day to day decisions as well as the major decisions in the lives of the children.

[829] On larger, non urgent matters, he shall continue to be the final decision maker. Except as it regards to the location of the children's school and relocation , as set out in this decision, he shall meaningfully consult in advance with the mother on all major issues regarding education, spiritual, emotional and medical intervention.

[830] He shall first attempt to reach consensus with the mother directly or through mediation.

[831] If there is no consensus, he shall have the right to make the final decision.

[832] If there is no agreement after consultation with the mother, he shall ensure he has the advice of the medical or educational authority to support any decision he makes.

[833] On urgent matters, he shall take urgent action and immediately inform the mother.

[834] The mother shall have direct access to all third party service providers as is reasonable to keep her apprised of the children's school and medical progress.

[835] If the children remain in their current school, she shall have direct access to the school information, report cards, notices, etcetera in like manner as the father.

[836] The nature of the detail required if the children remain in their school is less than what will be required if the children move schools and the mother has less ability to access information directly. Currently, the mother has the ability to access all information directly.

[837] The father shall simply keep her apprised of major events, difficulties and functions in the school where a parent is invited to attend. The mother has the ability to access all other information directly.

[838] If the father is required by virtue of this order to remove the children from the school, he shall revert to his historical method of keeping the mother informed in detail of their school and extracurricular events and choices of activities and ensure the school administration are able to provide her necessary and appropriate information.

[839] Providing the mother keeps him apprised of her address, he shall keep the school authorities advised of the mother's address and ensure they have permission to forward information from the school to her in the ordinary course as a parent.

[840] The father is responsible for making educational, in school decisions after consultation with the mother.

[841] If the children continue in their current school, he shall consult with the mother regarding extracurricular activities and they shall each agree on one activity and each will sponsor and pay for this activity.

[842] Neither parent shall plan any activities during the other's time without their consent. Once agreed, each will ensure the children attend as required on a regular basis as often as possible.

[843] The father has agreed to raise the children in the Catholic faith and he shall continue to ensure this commitment is followed having regard to their age and stage of development.

[844] He shall continue to consult with the mother regarding this educative spiritual experience and ensure she is consulted and keep apprised of their progress and events. She shall be entitled to attend all religious events.

[845] The parents may designate someone to effect the transfer of the children between their households in the event they are unavailable and shall alert the other parent of the person so designated. The maternal grandparents shall not be designated in this regard.

[846] The mother shall have the right to twice weekly telephone calls with both children, each call being 10 minutes in length with each child. The parents shall agree on the evenings to ensure a balanced connection with the mother throughout the week. The father shall have regard to the therapists' recommendations as to timing and frequency and may include other opportunities as he determines appropriate and in the best interests of the children.

[847] The father shall have the same contact with the children when they are with their mother during block access and once per weekend when they are with her during her weekend. The mother will facilitate this contact.

## **Parenting Time for the Mother**

[848] Providing the children remain in their current school, the mother shall have parenting time very second weekend from Friday after school to Sunday at 6:00 p.m. She shall be primarily responsible for transportation.

[849] The parents are free to agree in advance through email to the time and location of such transfer and may, as in the past, agree to accommodate each other by sharing transportation on such terms and at such times as possible.

[850] The mother shall have the opportunity to have and schedule on her weekday contact one weekday activity (other than religious) for the children. She shall keep the father informed in the same manner he is to keep her informed of activities inviting parental involvement. This is not to meant to be an addition or extension of weekday contact.

[851] The parents may agree on splitting this activity and the evening for each child to allow for individual attention having regard to the differences in the age and stage of development of the children. They may agree to different nights for each children.

[852] Failing agreement, one night per week shall be devoted to the children's activity with the mother. She may pick the children up after school and return them to their home by 7:30 p.m. unless otherwise agreed by the father.

[853] Should the children remain in their current school, the mother shall have the right to have the children with her on storm days and in-service days returning them to their home at 6:00 p.m.

[854] She shall advise the father of the in-service days in advance at the commencement of the year and advise him of her availability or lack there of to facilitate him making other child care arrangements.

[855] Should the mother fail to keep the father apprised in a timely fashion as to the mother's availability or lack thereof on in-service days 24 hours in advance, he may make alternate arrangements for child care and they shall not be disturbed.

[856] On storm days, the mother shall advise of her availability in the morning before 6:30 a.m. after which time the father may make alternate arrangements.

[857] Except with prior notice to the father and with his consent, the mother shall not attend at the day care or place of child care. The father shall keep her apprised of the circumstances of their ordinary before school or after school child care arrangements and advise of any changes to these arrangements.

[858] The mother shall have the right to have the children with her on even numbered years on the eve of the 24<sup>th</sup> of December to noon on the 26<sup>th</sup>. The balance of the holidays shall be split to ensure equal sharing of time and allow for the father to travel to \* during the vacation.

[859] On odd numbered years, the children shall be with the father over Christmas in the same manner with the balance of the holiday being split between the parents.

[860] The mother shall have the children with her on Easter eve until Easter Sunday at noon for odd numbered years and the father on even numbered years.

[861] The parents shall alternate March break so as to allow the children to be with the father on odd numbered years and with the mother on even numbered years. The parents may agree to alternate scheduling of March break providing it is agreed upon in writing and in advance.

[862] The father and mother shall share summer vacations, each having one month in order to reduce transitions between the parents and allow for expanded block access. The father shall have first choice of summer vacation in odd numbered years and he shall advise the mother by May 15<sup>th</sup> of each year.

[863] The mother shall have the first choice of summer months in even numbered years notifying him in writing by May 15<sup>th</sup>.

[864] Failure to notify of the selection of summer access shall result in the parent who failed to advise forfeiting their choice for that year and the other parent's picking up first choice.

[865] The parents may agree to alter the distribution of summer months provided it is done in advance and in writing.

[866] The mother shall keep the children covered under her health plan as long as possible.

[867] In the event the children move with the father and the mother does not move, the mother shall be entitled to block access at Christmas, Easter and March Break and one month during the summer. The block access around Christmas must be arranged so that the children experience Christmas eve and Christmas day alternately in each parent's tradition. The location and details of which shall be approved in advance by the father.

[868] Likewise, if the children move with the father and the mother does not move, she shall be entitled to the same scheduled telephone access and access to third party service providers as is set out above.

[869] There shall be no unsupervised access between the maternal grandparents and the children except with the consent and on the terms and conditions agreed upon by the father. There shall be no on overnight access to the maternal grandparents .

[870] In the event the father is unable to be present to the children due to further allegations of abuse made by or on behalf of the mother necessitating police and agency response, the father is the parent responsible to designate the adult in whose care the children will reside until the matter is resolved or the court orders otherwise.

[871] I have reviewed the agreements reached in mediation. With some adjustment they shall be attached to this order and incorporated into it to guide the parents on matters they have already agreed upon.

[872] I have made changes relating to paragraph's 18, 24 and 31.

[873] Paragraph 32 of the agreement shall be effective providing the children attend school in Nova Scotia with the book bags coming with the children on their weekend visits. The mother shall ensure they are returned with the children on Sunday's

[874] Finally ,the raw test data from the 2007 Valerie Rule report shall be sealed with the courts Decision of March 20, 2008 .

[875] The investigative interviews of the children tendered into evidence shall be sealed. Publication of these interviews is prohibited except with court authorization.

[876] The terms of the agreement to be incorporated are as follows:

**General Parenting Approach:**

1. The parents will exchange directly with each other all necessary and relevant information related to the children and will discuss this information with each other as necessary.
2. The parents agree to ensure the children are not placed in the middle of their parents' communication and will ensure the children are not inappropriately exposed to adult matters.
3. The parent will not use the children as messengers to pass on information to or to see information from the other parent.
4. The parents will refrain from attempts to obtain, either directly or indirectly, from the children information about the other parent's activities and plan during the children's time with the other parent.
5. In the event the children make statement to one parent about their time with the other parent that are of concern, the parent's first action will be to

ensure that this concern is not shared with the children. Should the parent wish to obtain clarification about the information, this will normally be done through direct communication with the other parent using their approved communication strategy.

6. Each parent will refrain from making negative comments about the other parent in the presence of the children.

7. The parents will not discuss either their own financial situation or the other parent's financial situation in the presence of the children.

**Communication Strategy:**

8. Relevant information about the children will be shared between the parents via email, as soon as is reasonably possible.

9. The email language is to be cordial and respectful.

10. The content of the emails will be subject specific. Items requiring a response will be clearly identified and will contain clear questions.

11. The parents will check their personal email at least every second day. The normal response time will be from the same day to three days; for matters requiring a more immediate response, a voice mail will be left alerting to the email.

12. Phone call to the father will be made to his cell phone; phone call to the mother will be made to her home first and then to her cell phone if necessary.

13. Phone call between the parent will be brief exchanges regarding specific information. The tone will be cordial and respectful.

14. Each child will have an opportunity to have regular phone conversations with the other parent.

15. These phone conversations will be between the children and their parent and will be child focused.



16. When a parent anticipates not being available for a phone call with the children at the designated time, that parent will contact the other parent in advance if possible. When advance notice is not possible, the parent who missed the call will contact the other parent as soon as possible to provide an explanation and, if possible, a suggested date to reschedule the phone call at a time that is convenient for the children and the parents.

17. Unless both of the parents agree to changes in advance, the transfer of the children from one parent to the other will occur at the father's home.

### **Exchange of Health Related Information**

20. Information related to the various aspect of the children's health will be shared between the parents.

21. The father will share in advance the dates of upcoming appointments the children have with medical professionals. This information, along with the reasons for the appointment, will be shared as soon as possible after the appointments have been made. This exchange of information will also involve, as necessary, a discussion between the parents about the specific health matter.

The father shall be responsible for making medical appointments. The mother shall not take the children to any mental health providers without the prior written consent of the father.

If there are medical emergencies while the children are in her care she is to take immediate action and advise the father immediately giving him the details of the admission and all pertinent details to allow the father to attend and follow up.

22. Results, recommendations and any relevant information pertaining to all health related appointments will be shared, after the appointment, with the other parent as soon as is possible and convenient for both parents. This exchange of information will also involve, as necessary, a discussion between the parents about the specific health matter.

**Parents Attendance at Events:**

25. Both parents are welcome to attend extra-curricular and school events involving the children.

26. The visiting parent will normally greet the children, if possible, upon arrival. This will normally be a brief visit. The parent who is with the children will encourage the children to greet the visiting parent in the event there is reluctance or confusion on the part of the children.

27. The parent will not be seated together during these events unless both parent have agreed to this in advance.

28. During the event, the children will remain with the parent they were with prior to the event following the brief greeting with the visiting parent. The visiting parent will encourage the children to return to the other parent in the event there is reluctance or confusion on the part of the children.

29. Following the event, the visiting parent will have a brief greeting with the children, if possible.

30. Concerns regarding comments or actions at such events will not be raised during the event. Should matters of concern arise from these contacts, they will be addressed directly between the parents, as soon as is reasonable for the parents, using the agreed communication strategy.

[877] Counsel for the Agency shall draft the order the dismissal order and counsel for the Respondent Father shall draft the Section 16 order.

Moira C. Legere Sers, J.