

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

**Citation:** *A.Y.C. v. S.M.K.*, 2017 NSSC 280

**Date:** 20171101

**Docket:** SFHMCA-036220

**Registry:** Halifax

**Between:**

A.Y.C.

Applicant

v.

S.M.K.

Respondent

**Judge:**

The Honourable Justice Beryl A. MacDonald

**Heard:**

October 12 and 13, 2017

**Counsel:**

A.Y.C., self-represented;

S.M.K., self-represented

**By the Court:**

[1] In March 2008, when the child M was 4 years old, I provided a written decision to her parents who are once again before me litigating about what is to be the appropriate parenting plan for their daughter. At that time, the Father and the Mother had been unable to resolve the parenting arrangement since her birth. A Parental Capacity Assessment was completed. It recommended a shared parenting arrangement under a specific schedule to avoid conflict. The parties agreed to that recommendation but argued about whether the Father could apply for and receive a passport for M and about whether he could make arrangements for someone other than himself to retrieve her from a daycare facility when he was unable to do so during his parenting time. These matters may have appeared to be trivial at the time but were indicative of the parents' inability to problem solve. Both distrusted the other's motivations and misinterpreted communication and behaviour. Sadly, nothing has changed. My analysis indicates their situation has deteriorated and it is having a negative psychological effect on their daughter.

## **Credibility**

[2] In this proceeding I will never know the “truth” about what happened. All I can do is apply the legal principles developed by our courts to assess “credibility”. The action imbedded in this word requires that I sort out reliable from unreliable information and assess what information is most persuasive on a balance of probabilities.

[3] In assessing credibility, I have considered Justice Warner’s decision in *Novak Estate, Re*, 2008 NSSC 283 and in particular his comment that it requires “The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in *Faryna v. Chorny*, 1951 CarswellBC 133, is ‘in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions’”. I also recognize that I am “not to rely on false or frail assumptions about human behavior” and that “There is no principle of law requiring a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part of, or all a witness's evidence, and may attach different weight to different parts of a witness's evidence”. (supra para. 37)

## **Hearsay**

[4] Both parties have introduced hearsay statements as evidence. I have ignored hearsay statements except for those that may be admitted under an exception. I have considered the content of police incident reports under the business records exemption in respect to the personal observations of the reporting officer, the statements made by a party and the child's statements.

[5] I have treated the hearsay statements of the parties' daughter with caution. In doing so I have considered the analysis provided by Professor Rollie Thompson in his article "*Are There Any Rules of Evidence in Family Law*", (2003) 21 C.F.L.Q. 245. The parties are self-represented and neither raised any evidentiary issues. However, I do think it is important that I make reference to what effect "children's statements" have on judicial decisions. The parents must understand that children do not always tell the truth. They can tell a "lie" to avoid punishment, to gain a benefit, to provoke a reaction, such as parental pleasure when a parent hears what the child knows the parent wants to hear. As a result, it is very important to understand the context within which the child's statement has been made. In addition, a reporting parent may distort or exaggerate what a child has said to suit

his or her own purpose. Although a court may admit statements made by children, those statements are not always reliable.

[6] In this situation, some of the child's statements about her relationship with her Father are admitted under the "state of mind" exception to the hearsay rule. Others are admitted under the child abuse hearsay exception developed in *R. v. Khan* [1990] 2 S.C.R. 531 and refined in subsequent decisions of the Supreme Court of Canada.

### **Background**

[7] On July 6, 2016 the Mother commenced an application to vary the parties shared parenting arrangement. M is now 13 years old. Both parents agree their daughter's circumstances have materially changed since the date of the last order. There has been a significant deterioration in the relationship between this child and her Father. She has been refusing to go to his home and has not been parented by him except on an occasional weekend when she has been convinced to spend time with him.

[8] The Father wants to know why his daughter does not want to continue to be parented by him. His initial proposition was that his daughter has been "poisoned"

against him by her Mother. The Mother's response was that the Father is physically and psychologically abusive of the child leading to her request that he no longer have contact with her unless she requests that contact. As the proceeding progressed both parties began to recognize their situation was more complicated than they realized. There was a dynamic within their family structure, their personalities and parenting styles that created this child's response. Their accusations against each other had factual underpinnings that had been ignored, exaggerated or misunderstood.

[9] Wendy Greene MSW, RSW, has prepared a very detailed Custody and Access Report that does provide some explanation about what has happened. She does not assign blame nor should she have. She has recognized each of these parents has contributed to the situation that has caused this child to express a choice about the home in which she will be parented. Ms. Green does not suggest the child's choice should be honoured in its entirety but she is sensitive to the psychological damage that can occur if attempts are made to force this adolescent to have contact she has convinced herself is unwanted.

[10] The most recent events leading to M's decision began on June 30, 2016. On that date, at approximately 4:30 p.m., the Mother arrived at her home to find M

present although this was the Father's parenting time. In her affidavit sworn July 6, 2016, filed as Exhibit 1, in this proceeding the Mother stated:

5. M was very distraught, crying hysterically, and in obvious physical and emotional pain. It took quite some time to calm her down to find out what had happened to cause her to arrive in such a dire state.

6. M informed me that she had an argument with (the Father), which resulted in him choosing to punish her by taking away her cell phone. After which, (the Father) chose to force M to join he and his wife and 2 other children for a walk, despite M wishing to not go for a walk with them. He proceeded to lock M out of the house. M had with her her journal, and she further explained to me that, once outside, (her Father) physically wrestled the journal from her, and that in that exchange, he pushed her. This caused M to feel very scared and very upset. M attempted to take space away from the group in an effort to calm herself and assess the situation, at which time, she chose to alleviate the uncomfortableness and fear that she was experiencing, and seek the comfort and safety at my home.

7. (The Father's) house is approximately 7.5 km from my home. M having memorized the route that the bus uses when she is commuting to school from (the Father's) house, walked the bus route for over 2 hours to arrive at my home. Having been relieved of her cell phone, M had no immediate way of contacting me, and in her emotionally fraught state, she did not consider other strategic options to contact me for help or to pick her up. By the time that she'd arrived at my home, M said that she had not eaten and was dehydrated, and I noticed that she was wearing only flip-flops on her feet, resulting in large blisters on the inner side of her feet.

8. I assessed the situation, and became very afraid that if M was sent back to (the Father's) house she would run away again, and I

was not fully comfortable in being certain of the extent of M's safety with (the Father), so I called the police to find out how to proceed. The incident number is: (\*\*\*\*\*)

9. When I contacted the police, I had given them (the Father's) phone number and in a misunderstanding, I thought that they would be contacting (the Father) to notify him that M was safe at my home. (The Father) called my cell phone while I was speaking to the officer. I sent a text message when I got off the phone with the police, to let (the Father) know that M was safe in my care, but that I did not call to avoid arguing with him.

10. When the police arrived at my home, they spoke with M and assured her that she would not be forced to return to (the Father's) house, and that she, as far as they were concerned, was mature enough to be able to make up her own mind as to where she primarily resides. In addition to her maturity, the officers explained to me that removing her from my home to return her to (the Father's) care, as per the custody order, would only traumatize her. They informed me of their duty to report this incident to Child and Family Services, and they recommended that I filed for a variance in our custody order as soon as possible.

11. While the police officers were in my home, they asked M to call (the Father) and speak with him. M spoke very briefly, before becoming upset and giving the phone back to the police officer. (The Father) then asked to speak with me, which, due to the nature of our personal relationship, I hesitantly agreed to. (The Father) was aggressive and forceful in trying to convince me to return M to his care even though it was not what she wanted. He became focused on attempting to find out why I had called the Police instead of calling him immediately, and I explained that I was shocked and trying to figure everything out, and due to our history, I was afraid of him. He became more upset, at which point the police officer took the phone from me and instructed (the Father) that M would not be returning to his care and we do not know when she will want to return to his care.



12. Immediately after ending the phone call with (the Father), I received a text message from him, informing me that my behaviour is inexcusable, and that M was expected to be returned to his home as soon as possible and that the police have offered to bring her. (The Father) also stated that M does not have the maturity to decide where she would like to be.

[11] This child did not return to her Father's home.

[12] In response to the Mother's version of the events of June 30<sup>th</sup> the Father provided the following in his affidavit filed as Exhibit 9 in this proceeding:

11. On the morning of June 30, (the Father's partner) took (their older child) out shopping. In her absence I took (our youngest child) for a walk around our neighbourhood in her stroller. As it was a beautiful day and our family encourages an active lifestyle, I invited M to join us. She declined my offer but agreed to join us on our next walk later that day.

12. That afternoon around 1 PM, we decided to take another walk as a family, this time to the playground in our neighbourhood. Our residential community is small and safe and we follow the same route every time. Typically M joined us on these walks willingly and enthusiastically so we are able to get fresh air and exercise as a family while enjoying her company.

13. When I invited M to join us for the 2<sup>nd</sup> walk, she refused and was unwilling to provide an explanation for her refusal. As we did not feel comfortable leaving her alone in the home, and wanted to ensure she got some fresh air and exercise that day, we strongly encouraged her to join us outside as we always lock up our home while we are out on our walks.

14. Since she refused to come on the walk, we suggested she sit outside in the shade of our front porch, or back deck or in the fenced in backyard. At the time I thought she would simply join us on our walk.

15. As we would only be gone a short while, and only within a 500 meter radius of our home, M did not have her cell phone with her.

16. At no point during this interaction did I push M or forcibly remove her from our home, as suggested by (the Mother).

17. While we were walking, I noticed M walking down a side path that connects our street to the next one. I asked her what she was doing, and she simply replied “walking” and proceeded to walk back towards our home.

18. At the time M appeared annoyed with having to exercise, but was not upset or angry, nor did she express any desire or intention of leaving our home.

19. When we returned from our family walk, M was not at our residence. There is a ponds nearby with a walking trail and benches, so I assumed she had gone for a walk around the neighbourhood to calm down.

20. With each passing minute that she did not return home I became increasingly worried. By 4 PM, when she had still not returned, I began driving around the neighbourhood looking for her. I could not find her, so I went to every store in the shopping area near our home asking if she had been seen. Nobody had seen her.

21. Concerned she may have tried to walk from our home to (the Mother’s), I drove along her school bus route looking for her. At 4:45 PM, I drove all the way to (the Mother’s) home where I saw her vehicle parked in the driveway. As I trusted (the Mother) to

contact me if M had walked to her home, I concluded M was not there and drove home.

22. When I arrived home, (my partner) and I drove around looking for M, further expanding our search perimeter, becoming increasingly worried and distraught.

23. At 5:39 PM I tried to reach (the Mother) on her cell phone. There was no answer. I tried to call again at 5:41 PM. Again there was no answer, so I left a voicemail.

24. At 5:45 PM I contacted Halifax Regional Police and reported M missing. On their request, I provided (the Mother's) address and cell phone number as a contact, and indicated I had been unable to reach her. HRP immediately dispatched a mobile unit to (the Mother's) address.

25. Constables..... Attended at her address at 5:47 PM.

26. At 6:11 PM, I finally received a text message from (the Mother) indicating M was in her care. As I was extremely worried for my daughter's safety, I was very relieved to learn that she was safe, but confused as to why I had not been contacted as soon as she had arrived there, nearly 2 hours earlier.

27. (The Mother) would not clarify how long M had been in her care or why she had not immediately contacted me.

28. I later learned from Halifax Regional Police that they had received a call from (the Mother) at 4:32 PM, nearly 1.5 hours before she informed me that my daughter was safe.

29. While the officers were at (the Mother's) home, I was able to communicate with Constable... He confirmed M was safe, and facilitated a brief conversation directly with M. On the phone, M sounded annoyed and was reluctant to speak with me.

[13] The police incident report about this event, attached as Exhibit C to the Father's affidavit filed as Exhibit 8 in this proceeding, discloses the following:

M states she does not like staying with her Father anymore and did not wish to return. While M was talking about this (she) started to become emotional and cry. M stated she was locked out of the home today, her Father took her cell phone away as punishment so she started walking to her Mother's home.

The Mother stated she was unaware M was going to walk back home today, however stated she did not wish to force her return to (the Father's) home.

I spoke with (the Father) via phone and then placed M on the phone with (the Father), their conversation seem to escalate and M became upset and handed the phone back to me.

I informed (the Father) I would not be forcing M to return home against her request. (The Mother's) home did not present any concern as being an unsafe location for M. (the Father) took issue with M only being 12 years old and not being able to make her own decision and felt the court order should be upheld.

I advised (the Father) the court order has been in place for the last 8 years and was initially put in place when M was 3 years old and not able to convey her own thoughts and required her decisions to be made for her. I advised... The court order needs to be revised to reflect M's wishes, now that she has input on her own environment.

(The Father) requested a "concrete" answer as to when M would return home to his address and I advised him I could not provide him with that answer. My advice to "the Father" was to let M stay the night with (the Mother) to re-address the issue tomorrow with M.

(the Father) spoke with (the Mother) via phone while we were present however that conversation seem to escalate as well until he was ended by (the Mother) stating she was not comfortable speaking with (the Father) any longer.

[14] The incident report then indicates the officer contacted CAS which I take to be a reference to a worker employed by the Minister of Community Services pursuant to the *Children and Family Services Act*. A report about this incident was made. In conclusion the officer reported, “It is possible M simply does not like the level of discipline, her Father imposes on her while she is there. It is not clear from the report whether this is a conclusion of the Officer or information provided by the Mother.

[15] Although the Father may not realize this, his version of what happened on June 30 confirmed significant aspects about what M disclosed to her Mother and the police. The Father did lock M out of the house. His testimony is he always locks his house when the family are “out on our walks”. However previously he indicated that when both he and his partner were out of the house, while he was walking the youngest child, M was left alone. The reasonable presumption, given that M did not want to be outside was that M was inside the house at that time. As a result the Father was “comfortable” leaving her alone in the home. Why did he

become uncomfortable leaving her in the home on the second occasion she refused to go for a walk? As I read his information the primary issue was her refusal to accede to his request to go for a walk when his wife and their other child returned. A punishment was required. She was not permitted to return to the inside of the house, she was locked out.

[16] The child reported an additional punishment to the police “her Father took her cell phone away”. The child does not explain to the police how he took it away. The Father admits the child did not have her cell phone with her when she was locked out of the house. He does not admit taking it from her. Nor does he admit the other allegations that he “forced her to go for a walk, physically took her journal away and pushed her while doing so”.

[17] Something significant happened between Father and daughter on June 30<sup>th</sup>. The Father’s version of events is incomplete. I cannot accept his statement that “....M appeared annoyed with having to exercise, but was not upset or angry”. This child, left his home and walked 2.5 Km to her Mother’s home arriving with injured feet. When police arrived and spoke to her about this event “(she) started to become emotional and cry”. When she did speak with her Father the police officer reported “their conversation seemed to escalate and M became upset and handed

the phone back to me”. The Father’s version about their conversation is “M sounded annoyed and was reluctant to speak with me”. An understatement at best!

[18] The Father complains about the Mother’s failure to call him immediately when she arrived home to find her daughter there. The reason she did not do so initially is obvious. She did not know how she was going to force her daughter to return to her Father’s home and she believed that her daughter may not be safe if she was returned. She was afraid of the Father’s response which she knew would be critical of her. She also was worried she would be in breach of the order if she did not force her daughter to return to the Father’s home. She decided to call the police and she did so at 4:30 p.m. The Father’s response when he did learn that their daughter was at her Mother’s home was accusative and aggressive.

[19] When the Father spoke with the Halifax Regional Police at 5:45 p.m. he was informed his daughter was safe. He immediately questioned how the court order was going to be enforced to have his daughter returned. The officers involved went to the Mother’s home and spoke with M. Although the Father was informed the child did not want to return to his home and that the police would not force her to do so, the Father persisted in his attempt to have the child returned and demanded a “concrete” answer about when M would return”.

[20] After the June 30<sup>th</sup> event the parents made efforts to reinstate the shared parenting arrangement. Those efforts failed. I do not intend to repeat the events subsequent to June 30<sup>th</sup> but one was serious enough to cause the child to be admitted to the IWK with what appears to be an anxiety attack leading to a second report to the Minister of Community Services. The Minister completed an investigation into allegations that the Father physically and emotionally abused their daughter. Those complaints have not been substantiated. What appears from the evidence is a power struggle between the Father and child that results in discipline that does appear somewhat harsh at times.

[21] I have no doubt the Father loves his daughter but I do have a concern about his apparent overwhelming need to have her “obey”. He appears to lack empathy. He was unable to understand that their disagreement on June 30<sup>th</sup> was serious enough, in his daughter’s eyes, to have prompted her to walk to her Mother’s home. He did not understand then, (although I believe he is gaining insight now), that his desire for conformity and obedience may be resented, causing his daughter to be rebellious possibly even fearful.

[22] The Mother has expressed a fear of the Father that has never abated. There is no evidence he physically abused the Mother. The Father does have what can be



called an “authoritarian personality”. Authoritarian personalities can be perceived to be emotionally abusive. This is not the Father’s intent but my analysis of the evidence suggests this is likely why both Mother and child have formulated their opinion about him. Some of the child’s opinions have likely been influenced by the Mother’s, but both may have originated for the same reason, their personal experience with the Father.

[23] Once a child has developed a resistance to contact with a parent it may be very difficult to remediate this rift.

[24] I am asked to decide whether this child is alienated from her Father and if so what contact, if any, the child should have with her Father. In an article, *Alienated Children and Parental Separation: Legal Responses in Canada’s Family Courts*, co-authored by Nicholas Bala , Barbara-Jo Fidler, Dan Goldberg and Clare Houston, reported in Queen’s Law Journal, 33 Queen LJ 79 the following analysis appears:

... Alienation is categorized by very significant differences between the child’s expressed feelings and perceptions about the rejected parent and the actual history of their relationship. Without realistic justification, an alienated child expresses hatred or intense dislike of the rejected parent. This rejection and vilification is done without apparent feelings of guilt or ambivalence by the child, and sometimes children appeared to enjoy the fight. When these children are interviewed, often their stories have a rehearsed quality, their language may be

age inappropriate and they may mimic information provided by the alienating parent. While a child's conduct may appear to be willful, it is clearly inappropriate to blame the child, as the behaviour may be the most emotionally adaptive response to the pressures that he or she is experiencing. Because the alienated child's perception is distorted, the parents whom they demonize and reject are often not bad parents. For the most part, they fall within the range of marginal to good enough and sometimes better. However, certain characteristics of rejected parents may influence or encourage a child's rejection. Rejected parents, generally fathers, tend to be lacking in warmth, empathy and understanding of the child's viewpoint. They may engage in emotionally abusive behaviour with their former partners or children, and often have difficulty managing emotional responses. Faced with these unexpected responses from their children rejected parents may be inclined to distance themselves further from the child thereby contributing to any negative feelings the child may have.

[25] To understand how alienation occurs the authors describe the more recent emphasis on what is called a system based model. It encourages clinicians to consider several different factors when investigating possible cases of alienation including the age and development level of the child, the psychological vulnerability of the child, the behaviours and personalities of both parents, sibling dynamics, the remarriage situation, and the adversarial nature of the custody litigation context. They suggest the psychological literature identifies as an important aspect of an assessment whether a child is rejecting one parent with good reason, for example because of abuse, causing the child to be realistically estranged, or whether there appears to be no reason for the rejection other than

unjustified or pathological alienation. This determination does not require a clinical diagnosis, but rather a factual determination.

[26] My factual determination is that it appears the Mother's underlying suspicion and fear of the Father combined with the child's personal experience in his home, and in particular her exposure to his authoritarian parenting style, (which is so different from the more permissive parenting style in the Mother's home), has resulted in this child's request not to have contact with her Father. The child may view the Father's discipline as abusive. It may be difficult to change her mind and courts have no means by which to "make her obey". Holding the Mother in contempt in such a situation is no solution; given this child's age there is no guarantee a contempt order would result in the child's obeying the Mother's direction to go to the Father's home and remain there during his parenting time.

[27] There appear to be two approaches used to discern an older child's best interest when that child is reluctant or refuses to be parented by a parent. The first is to protect the child's immediate psychological wellness by refusing access to that parent. This is often recommended because it is believed forcing contact with that parent will cause trauma to the child. This is a common response when therapeutic interventions have failed or when the child has been so severely

alienated from a parent that therapeutic intervention is not likely to be of any assistance.

[28] The second approach is to require therapeutic intervention involving the entire family. The approach is unlikely to be successful unless the parents both recognize and accept their role in creating the circumstances leading to the child's rejection of a parent. This approach may be impractical for many parents because therapy is expensive and not always available where the parties live. Orders must be based upon what is practical, available and affordable.

[29] In this case both parents are prepared to engage in the therapy recommended by the assessor. The most important therapeutic intervention is the involvement of a "family therapist". I have been informed the child already has a therapeutic relationship with a therapist who is prepared to extend her terms of service. The Father is prepared to pay for the required therapy. The Mother has limited income and her financial resources may be more appropriately used to pursue her own individual therapy.

[30] The assessor has recommended both parents engage personal therapists for reasons I do not intend to repeat. I will not order these parents to engage personal

therapists. That is advised but I must recognize their financial situation and I do not want to expose either to a complaint if either is unable to engage a personal therapist.

[31] There is evidence these parents have difficulty making the decisions required of joint custodial parents. The assessor does not recommend any change but does suggest the parties engage a mediator to resolve future disputes noting that shuttle mediation should be used to avoid joint and shared discussion. This involves more expense to the parties but they must find a way to resolve their disputes without resorting to court proceedings. A mediator can help each party understand the perspective of the other, something courts are not always able to provide.

[32] In respect to the parenting schedule, the assessor said “it is too premature to recommend that an Order be created to reflect that M live primarily with one parent and have visitation with the other or to continue the 50-50 previous shared parenting arrangement. The Court may consider an Interim Order that reflects M lives primarily with her mother.” This recommendation contemplates what is in effect is a suspension of the terms of the previous order until the recommended therapeutic interventions result in either a return to those arrangements or a

recognition by the parents that another parenting schedule is in the child's best interest. I expect this recommendation has been made because the assessor was of the opinion the Father "is amenable to treatment/therapy and change". This opinion followed her analysis which I will repeat:

"M feels criticized, belittled and ashamed at times in her father's care; this seems to be in direct response to he and (his partner) making attempts to parent her with clear direction, rules, high standards and rationality. What seems to be lacking from their approaches flexibility when needed and the provision of warmth and understanding in a manner which M can accept. It appears that (the father) is capable of providing this and does feel very deeply for M but likely the most significant issue that has interfered in his parenting of is that he feels disempowered and seems to have adopted the belief that if he is permissive with M or does not consequence for ill behaviour he has lost power. (The father) has shown insight into this dynamic and his parenting/relationship struggle with M"

[33] While I commend the assessor's optimism I remain concerned about the psychological effect on a child who is regularly exposed to parenting that is so fundamentally different in each of the parents' homes. As I have said in previous decisions, parents in a shared parenting arrangement must exhibit an ability to cooperate and jointly plan for their children. They must be able to do so on a continuous basis, far more frequently than is expected from parents who have other parenting arrangements. Conflict and the potential for conflict must be at a minimum. Each parent must respect the other and their value systems. Methods of discipline should not be substantially dissimilar. Parents must be able to

communicate face to face. They must respond quickly to inquiries from the other parent about issues involving the child, focusing on the child's need not on the parent's issues. Routines in each household should be similar to ensure the child is not confused by or encouraged to become oppositional because of different standards and expectations in each home. None of these prerequisites to a successful shared parenting arrangement appear to exist in this case. Perhaps both of these parents can affect changes that will result in significantly more similarity in their parenting style and technique but I cannot presume they will be able to change enough to make a shared parenting plan suitable for this child.

[34] Children are expected to obey their parents and parents must not empower a child to believe he or she has a choice about whether he or she will have a relationship with a parent. However, once a child begins to express a preference, in circumstances such as those described in this case, the focus must be on the child particularly when that child is suffering from anxiety and distress. This child's anxiety and distress is real. The Father may believe it has been artificially induced by the Mother's failure to make it clear to their daughter that she must obey the rules in the Father's home. He may have expected me to order the Mother to do so and to return the child to his home every time she "runs away". The Mother may

have expected me to accept her opinion that the Father is abusive. It does not matter what the parents may believe or think. The reality is this child is now suffering considerable anxiety and distress about the proposition that her parents will continue to share her parenting. To merely expect her to cope with the considerable differences in parenting she will receive in each of her parents' homes is a greater expectation than should be placed on the shoulders of a child. It is the responsibility of the parents to recognize that this child needs both of her parents in her life, working together, making changes to enrich, not belittle, her experience with them. I will not make a final determination about a parenting schedule until these parents have had time to explore the options and implement change therapeutic intervention may bring.

[35] The Order dated June 9, 2008 and the Varied Order issued October 19, 2016 are completely varied and the order to be issued in this proceeding will contain the provisions described in the parenting plan attached to this decision as Schedule "A". This parenting plan does not provide the Father with scheduled parenting time. This is because I do not know what schedule is in this child's best interest. I do consider it is in her best interest to have a relationship with her Father but, given present circumstances, I must be realistic about what can be accomplished by court



order. Because of this I will require the parties to return to this court for a conference before me on June 19, 2018 at which time I will be informed about whether the situation has improved and whether any further court proceeding is required to bring the matter to a conclusion. Any further court proceeding will be a review relieving the parties from the necessity to establish a material change of circumstance.

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Beryl A. MacDonald, J.

Attached: Schedule "A"

## **Schedule “A”**

### **Parenting Plan**

#### **Joint Custody**

1. The Father and Mother must have joint custody of the child, meaning the Father and Mother acting together have the responsibility and authority to make decisions that have significant or long lasting implications for the child or that impose responsibilities on a parent - for example, decisions about physical or mental health, dental care, physical and social development, counseling, education, and enrollment in recreational activities.

#### **Service Providers**

2. The Mother must provide the Father with the name, address and telephone number, or other contact information for the persons or institutions providing services to the child for example, a physician, dentist, therapist, teacher, recreational provider.

3. The Father and Mother must jointly decide who or what institution or organization will be providing services to the child if present service providers must be replaced or new services must be provided to the child.

#### **Dispute Resolution**

4. If the parties have a disagreement about joint decisions they must make, before a court proceeding is commenced, they must have participated in mediation to resolve the dispute.

#### **Day to Day Decisions**

5. With respect to daily decisions, including non-emergency medical care, the parent who has care of the child according to the parenting schedule must be the decision-maker with the other parent being advised about non-emergency medical care decisions made.

### **Emergency Decisions**

6 With respect to emergency decisions, the parent who has care of the child according to the parenting schedule must be the decision-maker with the other parent being advised as soon as possible about the emergency and the decision made.

### **Listed as Contact**

7 Each parent must be listed as a contact parent on all documents pertaining to the child.

### **Right to Contact Third Parties**

8 The Father and Mother are, subject to any privacy arrangement jointly agreed upon with service providers, each entitled, without formal consent from the other, to directly contact the child's doctors, dentists, therapists, teachers, and other third party service providers to request and receive information and consult about the child.

### **Parties' Addresses/ Contact Information**

9 The parents must provide each other, and continue to provide each other, current addresses, telephone numbers, and e-mail addresses and all other contact information.

### **Parenting Schedule**

10 This schedule is based upon the following:

### **Therapeutic Intervention**

10.1 The child has recently been and is in the primary care of the Mother although both parents recognize it may be in her long term best interest to return to the former shared parenting arrangement.

10.2 The appropriate parenting schedule cannot be ordered until the parents and the child have been given an opportunity to engage in family therapy the purpose of which will be to:

- facilitate and strengthen the child's ability to maintain a healthy relationship with both parents
- help the child avoid being caught in the middle of the parent's conflict
- strengthen the child's critical thinking skills
- help the child maintain a balanced view of each parent
- have contact between the child and the Father occur at times and conditions recommended by the therapist

10.3 The Father and Mother must engage a therapist who will provide the required family therapy and the therapist is to be given a copy of this order and a copy of the Custody and Access assessment prepared by Wendy Green MSW, RSW.

10.4 The Father must pay the fee charged by the therapist providing family therapy.

10.5 The family therapist must not be contacted by the parents unless the therapist has invited a parent to do so.

10.6 The Father and the Mother must act on recommendations made by the therapist.

10.7 The Father and the Mother must inform the therapist if either has engaged a personal therapist and if so that parent must consent to communication between therapists for the purpose of assisting the family therapy process.

### **Primary Care**

11 Until otherwise ordered or agreed upon by the Father and the Mother, the Mother must be the child's primary care parent.

**Review**

12 The Father and Mother must return to this court on June 19, 2018 for a conference before Justice Beryl A. MacDonald to inform the Justice whether the situation has improved and whether any further court proceeding is required to bring the matter to a conclusion. If a further court proceeding is required it will be a review relieving the parties from the necessity to establish a material change of circumstance.