SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: ***J.E.N. v. M.J.S.N.***, 2017 NSSC 314

Date: 2017 - 12 - 08
Docket: 1201-068928; SFH-97500
Registry: Halifax

Between:

J.E.N.

Petitioner

v.

M.J.S.N.

Respondent

Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	January 24 - 25, June 28 - 29, 2017
Counsel:	Jocelyn M. Campbell, Q.C. for J.E.N. M.N. self-represented

By the Court:

Introduction

[1] This trial was heard over four days in January and June 2017. When it began, I granted the wife's request for a divorce and an order that her surname be changed.

[2] The remaining issues relate to parenting the couple's son, child support and the wife's claim that the separation agreement signed in 2014 should be set aside because the husband has fundamentally breached it.

Parenting

[3] The child's primary home is with his mother. He is habitually resident in Nova Scotia for the purpose of the *Child Abduction Act*, R.S.N.S. 1989, c. 67. The father's work requires frequent travel and extended absences from Nova Scotia. There is no dispute that the child's primary home will be with his mother.

[4] The issues related to parenting are:

A. Does the parents' relationship make joint custody in the child's best interest?

B. What access arrangement is in the child's best interest?

C. Should the mother be able to obtain a passport for the child and to travel with him, without notice to the father and without the father's consent?

A. Does the relationship between the parents make joint custody in the child's best interest?

[5] The mother seeks sole custody, while the father wants joint custody.

[6] Joint custody is in the child's best interests where each parent has a meaningful relationship with him and each has parenting capabilities that are adequate to meet the child's needs. Joint custody requires that the parents can make decisions together and to co-parent despite their conflict. The child isn't to be involved in conflict between his parents and joint custody should not cause disruption and discontinuity to the child's developmental needs.

[7] The real dispute here is whether the parents can set aside their conflict to act in concert or if their efforts to co-parent would disrupt their son's development.

[8] I conclude that joint custody is not in the child's best interests. Each parent has a meaningful relationship with their son and each can meet his needs. However, they are unable to set aside their conflict to make decisions together and this is disruptive to their son's needs.

[9] I was provided with dozens of email and text exchanges between the parents. Their relationship is such that the father reads the mother's communications to him as disrespectful and dictatorial or taunting. He responds negatively and profanely, when he does respond. They are unable to communicate in a meaningful way.

[10] As primary care parent, the mother made all sorts of arrangements for the child, from daycare and play dates to extra-curricular activities. The father did not accept these arrangements and made his own arrangements for daycare and extra-curricular activities. Replicating child care arrangements and activities undermines the consistency of child care and activities and hinders the child's ability to develop in these situations. This is not in the child's best interests.

[11] The mother will have sole custody. I confirm that the father is entitled to make inquiries and obtain information relating to the child from the child's care-givers, teachers, health-care providers and others involved with the child, such as coaches: subsection 16(5) of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. This order for third party information will be separate from the Corollary Relief Order so the parties may provide it to the information-holders without disclosing unnecessary information to them.

[12] So the father will know who to contact with inquiries about the son, the mother will annually provide the father with a list of the names, addresses, phone numbers and email addresses for the child's care-givers, teachers, health-care providers and others involved with the child. This information will be provided between January 1 and 15 of each year, starting in 2018. If any of the information in the list changes, the mother will provide the father with the new information within 14 days of the change occurring.

B. What access arrangement is in the child's best interest?

[13] The child is 6 and in grade one. He attends pre- and after-school care programs at Cole Harbour Place. He is active in swimming during the school year. He takes part in skating and hockey in the fall and winter, and skis during the winter. During the summer, he plays soccer.

[14] The father works away from home. Typically, he works away for 4 weeks and is at home for 2. The days he travels fall within his weeks at home. The father said his schedule is variable and changes are often made at the last minute.

[15] The parents agreed access arrangements should be firmly scheduled to reduce communication and minimize conflict. The mother proposed a schedule of alternate weekends and alternate mid-week access with additional access for block periods, and at holidays. The father didn't address holiday and block access. The father had specific comments about the parents' communication with the child, and with each other, and parenting responsibilities while with the child.

[16] The mother suggests the child spend little time with the father even though the child's opportunity to spend time with the father is limited.

[17] The mother acknowledged that the son has a relationship with his father. There was no evidence that the father couldn't identify or meet the boy's needs when dealing with the child directly. The child is to have as much access with his father as is in his best interests: *Divorce Act*, subsection 16(10).

[18] The worst thing in the child's life is his parents' relationship with each other: their argument at his hockey game; their physical fight in the arena parking lot; their meeting with the police at Tim Horton's; their repeated calls to the police; their denial of each other's parenting time. When the child disclosed to his mother that a man had shown his penis to the child at daycare, the parents spent more time criticizing each other's response to the disclosure than dealing with their son.

[19] The parents know that their relationship is a problem for their son. Each asks for a parenting arrangement that is structured so their communication and interaction is minimized. A strict and inflexible access arrangement is in the child's best interests.

[20] The child's access with his father has been irregular while the parties have been litigating. The child's access should build its way back to a regular schedule over the father's next 3 work cycles of 4 weeks away and 2 weeks in Nova Scotia starting in 2018. If the father is in Nova Scotia at Christmas in 2017, he shall have access with the child as I outline in paragraph 29.

[21] The father must advise the mother by email immediately of his scheduled return to Nova Scotia and the duration of his stay every time he returns to Nova Scotia.

[22] During the first work cycle in 2018, during the two weeks when the father is in Nova Scotia, the child will be with him from Friday after school until Monday when school resumes during the first week, and from Thursday after school until Monday when school resumes during the second week.

[23] During the second work cycle, during the two weeks when the father is in Nova Scotia, the child will be with him from Wednesday after school until Monday morning when school resumes during the first week, and from Thursday after school until Monday morning during the second week.

[24] During the third work cycle (and during all work cycles after that), during the two weeks when the father is in Nova Scotia, the child will be with the father from starting after school on the day of the father's return to Nova Scotia (if the return is on a school day) or at 10 a.m. if the return is on a day when there is no school. The child will remain with his father until 5 p.m. on the day before the father returns to work, except the child will be with his mother from after school on Wednesday evening until he returns to school on Thursday morning. If the child is at school on the day before the father returns to work, the child will go to school from the father's home and return to the mother's after school.

[25] During the child's scheduled time with the father, the mother may not remove the child from the Halifax Regional Municipality without the father's written consent.

[26] The child must attend his regularly scheduled extra-curricular activities during the time he is with his father. The mother cannot attend these activities while the child is with his father. If the child attends activities while in his mother's care, the father cannot attend these. The child is not required to attend his pre- or after-school program while with his father. The child may be in his father's care at these times. The father must not enroll the child in alternate pre- and after-school programs.

[27] Annually, each parent may spend up to two uninterrupted weeks with the child each summer. In even-numbered years, the father will have first choice of dates with the child during the summer. In odd-numbered years, the mother will have first choice. The parent with first choice must provide the other with notice of the two weeks he or she will spend with the child prior to April 30. The other parent will provide notice of her or his selected dates by May 14. During summer block access the regular access schedule will be suspended.

[28] The only other period when the regular access schedule will be suspended is from December 23 at noon until December 27 at noon each year.

[29] In 2017, if the father is in Nova Scotia this Christmas, the child will be with him from December 23 at noon until December 25 at noon, and with the mother from noon on December 25 until December 27 at noon. If the father is in Nova Scotia this Christmas, this will be the pattern for Christmas in odd-numbered years.

[30] If the father is not in Nova Scotia at Christmas in 2017, the child will be with him from December 23 at noon until December 25 at noon in 2018 and in even-numbered years thereafter. The child will be with his mother from December 25 at noon until December 27 in 2018 and in even numbered years.

[31] Because of the parents' poor relationship, I am not ordering communication between the child and the parent with whom he is not spending time. The parents' relationship is such that this could not be accomplished without conflict.

C. Should the mother be able to obtain a passport for the child and to travel with the child, without notice to the father and without his consent?

[32] The mother wants to be able to obtain a passport for the child and to travel with him, without giving notice to the father and without the father's consent.

[33] The mother said that the father's refusal to sign the child's passport application and the other restrictions he has proposed will make it impossible for her to travel with the child. Her extended family is in the United Kingdom. She's had difficulty obtaining the father's timely consent to travel in the past.

[34] The father said that during his limited time in Nova Scotia, the child's been removed from the province. The father also claimed that the mother removed the child from Canada using a travel consent that the father didn't sign, but which bore a photocopy of his signature.

[35] The *Divorce Act* promotes parents' awareness of their child's circumstances. A person with access has the right to ask and receive information about a child's health, education and welfare: subsection 16(5). As a parent, the father should be aware of his son's whereabouts.

[36] The parent applying for the child's passport must provide the completed passport application to the other parent for signature. The application must be signed by the receiving parent and returned within 14 days. If it is not, a motion to dispense with consent may be filed. Costs are typically sought and routinely ordered in these motions.

[37] Each parent would like to travel with the child. The parent planning a trip that takes the child outside of Nova Scotia must provide the other with a travel itinerary and detailed consent letter 21 days before the proposed travel. The travel itinerary must identify:

> the dates of travel
> the mode of travel and any identifying information (flight numbers, for example)
> the destination
> the address and phone number at the destination

[38] The detailed travel consent letter must identify the same information. The consenting parent must sign the letter and return it to the travelling parent within 7 days of receiving it. If the letter is not signed and returned within 7 days, a motion to dispense with consent may be filed. Again, costs are typically sought and routinely ordered in these motions.

Child support

[39] The mother asks that I order the father to pay prospective monthly child support based on an imputed annual income of $169,000.00 and that the order be subject to administrative recalculation. She seeks a retroactive child support award, as well. Both child support claims include contributions to the child's special or extraordinary expenses.

[40] Prospective child support claims must be addressed before retroactive ones.

Prospective child support

[41] I must first determine the father's income before I can quantify his child support payments.

[42] The mother asks that I base the father's child support payments on an imputed annual income of $169,000.00.

[43] The father is employed by Trinidad Drilling. His work is not guaranteed. He works in different positions, each having its own hourly pay scale.

[44] The father was required to file current financial information but did not. The Statement of Income he filed on January 20, 2017 provided no paystubs, no tax returns and no Notices of Assessment. The Statement attached a bank account printout showing three payroll deposits:

$2,034.22 on December 9, 2016; $2,872.90 on January 20, 2017; and $4,404.36 on January 6, 2017. The father swore that he was paid $3,103.83 bi-weekly ($80,823.72 annually).

[45] The father did not provide any documentary confirmation that he earned an annual income of $80,823.72, such as a paystub, or a letter from his employer or its human resources department.

[46] The amounts deposited into the father's bank account in January 2017 total $7,277.26. This is $541.96 more than the monthly earnings he swore he earned.

[47] The father testified that his gross earnings are subject to deductions for Canada Pension Plan premiums, Employment Insurance premiums, income tax, an RRSP contribution, and garnishees for income taxes and child support. The amount deposited into his bank account is his net earnings, not his gross earnings.

[48] If the father earns a gross income of $80,824.00 annually, he's required to pay the maximum premiums for CPP ($2,564.10) and EI ($836.19). His annual income taxes would be approximately $22,185.00. Without knowing the amount of his RRSP contribution or income tax and child support garnishees, and assuming that annual CPP and EI premiums are paid in equal monthly installments, if the father had net earnings of $7,277.26 deposited in his bank account in January, his gross monthly earnings were at least $9,409.37 (annually $112,912.44). I say "at least" because CPP and EI premiums are not paid in equal monthly installments, but front-end loaded with greater amounts deducted earlier in the year.

[49] A paystub for the bi-weekly pay period of October 23, 2016 – November 5, 2016 shows the father's gross income was $6,462.95. Where the father works for 4 weeks and is off for 2 weeks and is only paid for the weeks he works, this paystub suggests an annual income of approximately $111,938.30 if he worked throughout the year. I am aware that the father had 2 periods of unemployment in 2016. This analysis is intended to show what the father would earn if he worked a full year and not to represent his 2016 earnings.

[50] The father confirmed his 2013 income was $152,985.75. His 2014 tax return shows his income was $169,130.58. He testified that his 2015 income was $113,893.65.

[51] The father said he hadn't yet filed his 2015 or 2016 tax returns.

[52] In 2013, the father's income was derived from earnings and dividends. In 2014, it was comprised of earnings, dividends and taxable capital gains. Without tax returns for 2015 and 2016, I don't know what his sources of income were. This means I can't determine the current amounts of income he receives from each of the sources of income listed in his tax return: section 16 of the *Federal Child Support Guidelines*, SOR/97-175 and *Dillon*, 2005 NSCA 166 at paragraph 23.

[53] The father's incomplete disclosure means that I cannot determine his income under section 17 of the *Guidelines*.

[54] The father's failure to fulfill his legal obligation to provide financial disclosure leaves me in the position where I must impute income to him under clause 19(1)(f) of the *Guidelines*.

[55] Where disclosure is inadequate, the purpose of imputing income is to arrive at a fair estimate of the father's income: *Staples v. Callendar*, 2010 NSCA 49 at paragraph 21.

[56] In 2015 and 2016, the father experienced layoffs. This didn't happen in 2013 or 2014 when his income was high. The father testified that he is not consistently employed in the same position when he works, though the paystubs that were produced because of the production order all showed he worked as a floor hand.

[57] Under clause 19(1)(f) of the *Guidelines* and considering the father's 2016 paystub information and the net earnings deposited in his bank account in 2017, I impute an annual income of $113,000.00 to the father. This amount is calculated on the basis that the father will experience no involuntary layoffs.

[58] Using the Nova Scotia child support tables, I order the father to pay monthly child support of $939.00 beginning on December 1, 2017.

[59] The order will contain the statutorily required provision relating to registration in the Maintenance Enforcement Program: *Maintenance Enforcement Act*, S.N.S. 1994-95, c. 6, section 10.

[60] I require the parents to annually disclose a complete copy of his or her income tax return, including all schedules and attachments, to each other by June 1 of each year, beginning with disclosure of the 2017 tax return on June 1, 2018. The tax return must be provided to the other parent, whether or not it is filed with the Canada Revenue Agency. Annually, within 10 days of receiving a Notice of Assessment or Notice of Re-Assessment, the parent receiving the Notice must provide it to the other. The father must provide the mother with a complete copy of his 2015 and 2016 tax returns including all schedules and attachments by January 31, 2018 regardless of whether he has filed the returns by that date. After the 2015 and 2016 returns have been filed, he must provide the mother with copies of the Notices of Assessment within 10 days of their receipt.

Prospective contribution to special or extraordinary expenses

[61] The mother asks me to award a contribution to child care, health and dental insurance, and extra-curricular activities.

[62] I can only order a contribution to expenses which are special or extraordinary and the mother bears the burden of proving that the expenses are special or extraordinary, having regard to subsection 7(1) of the *Guidelines*. There is no issue that child care costs were incurred because of the mother's employment: clause 7(1)(a). The portion of her health insurance expense which relates to the child is a special expense: clause 7(1)(b).

[63] Childcare costs $350.00 each month. I am required to consider the after-tax cost of

expenses in quantifying the amount of a paying parent's contribution: subsection 7(2) of the *Guidelines*. I estimate the tax savings, discounting the mother's total annual childcare cost by her average tax rate for the year. I believe this is permissible where subsection 7(1) says the amount of special or extraordinary expenses "may be estimated". At her annual income of $74,070.84, the mother's average tax rate is 26.5% and I estimate the annual after-tax cost of childcare to be $2,091.00. The monthly expense is $174.25.

[64] The mother estimates the child's portion of health and dental insurance premiums at one-half their total cost: $67.67 each month.

[65] The other expenses to which the mother seeks a contribution are for a martial arts uniform, registration, swimming, soccer, skating, hockey and skiing. These expenses are claimed under clause 7(1)(f) as extraordinary extra-curricular activities. Most are organized activities or lessons: skiing is a child's season pass at Martock.

[66] The mother bears the burden of proving these are extraordinary extra-curricular activities under subsection 7(1.1) of the *Guidelines*. In total, they cost $1,200.00. This amount can be reasonably afforded, having regard to the mother's earnings of $74,070.00 and the table amount of child support she will receive ($11,268.00). So, she must show that the extra-curricular activities are extraordinary under clause 7(1.1)(b).

[67] The mother has offered no evidence to show these extra-curricular activities meet the requirements of clause 7(1.1)(b). I dismiss her claim for a contribution to the cost of the child's extra-curricular activities.

[68] The mother's most recent Statement of Income shows she receives benefits of approximately $200.00 each month for the child. Her income, for calculating a proportionate sharing of special or extraordinary expenses is $76,470.00. The father's income is $113,000.00. So, the after-tax cost of childcare ($174.25 per month) and the cost of the child's health and dental insurance ($67.67 per month) are to be allocated between the parents on the basis that the mother will pay 40% of the cost and the father will pay 60% of the cost.

[69] The Corollary Relief Order will stipulate that the after-tax cost of childcare is $174.25 each month and the father will pay 60% of that cost ($104.55) and the cost of the child's health and dental insurance is $67.67 each month and the father will pay 60% of that cost ($40.60). These amounts are due on the first of each month, starting on December 1, 2017.

Administrative recalculation of child support

[70] The mother asks to have the child support order enrolled in the administrative recalculation program. Child support is based on an imputed income. Imputing income is an exercise of judicial discretion. Where child support involves the exercise of judicial discretion, it isn't eligible for the administrative recalculation program: *Administrative Recalculation of Child Maintenance Regulations*, NS Reg 2014-439, sections 15 and 9. Section 15 of these regulations does not list imputed income as a circumstance where administrative recalculation isn't available. This is an oversight in drafting. I dismiss the claim for administrative recalculation.

Historic child support claims

[71] The mother claims both arrears and retroactive child support. Each claim includes the table amount and a contribution to childcare costs.

[72] She claims child support based on the separation agreement in 2014, 2015 and for the first twelve weeks of 2016. This is her claim for arrears of child support. There is no question that the father owes the amounts of child support he did not pay. These are being garnished from the father's income. There is nothing further that I need do.

[73] In April 2016, Justice Leger-Sers made an interim order for child support. The mother says the interim order "should have been higher" and that Justice Legere-Sers was prevented from making an accurate determination of the appropriate amount of support by the father's incomplete financial disclosure. The mother asks me to impute an annual income of $145,588.87 to the father and to award retroactive child support for the last forty weeks of 2016 and for 2017 based on an annual income of $145,588.87.

[74] At the hearing before Justice Legere-Sers in April 2016, the father produced a 2015 T4 slip showing total income of $101,983.48. His child support was based on this amount. At paragraph 49, I calculated the father's 2016 income at $111,938.00 **if** he worked full-time. The father was unemployed for two periods in 2016. This means his income would have been lower than my calculation of $111,938.00. I am satisfied that the income on which Justice Legere-Sers based her child support order was appropriate and ought not be changed.

The claim for a division of property

[75] The parties signed a separation agreement in April 2014. The wife prepared the separation agreement which included a complete division of property and debts. The parties agreed the separation agreement's terms would be included in the divorce.

[76] Before I can address the wife's claim for a property division under the *Matrimonial Property Act*, three issues must be resolved in her favour. They are:

A. Should I address the fundamental breach claim where it was made at the end of the trial?

B. If I should address the claim, is the common law relating to contract still applicable where there is a statutory scheme governing marriage contracts?

C. If the common law applies, has the wife shown that there has been a fundamental breach of the separation agreement?

A. Should I address the fundamental breach claim where it was made at the end of the trial?

[77] The wife didn't mention her fundamental breach claim in her petition. She claimed a

division of assets and a pension division when she filed her petition in September 2015. She attached the separation agreement to the petition and noted "The Separation Agreement has not been adhered to." She made no other comment about the separation agreement. She made no mention that she would be arguing that the husband had fundamentally breached the separation agreement.

[78] In her pre-trial brief, the wife made repeated reference to seeking a division of property. She presented her claim for a division of property as if there was no separation agreement. She said the appropriate analysis of her claim was to identify, classify and value the assets and determine how they were to be divided. She described the approach to be taken in determining the date at which property was to be valued and addressed claims that assets were exempt. With her pre-trial brief, the wife provided a spreadsheet to use in calculating the property division. She cited *Gates*, 2016 NSSC 49 as her authority. In *Gates* there was no separation agreement and there was no claim about fundamental breach.

[79] The wife didn't mention any claim about fundamental breach in her pre-trial brief.

[80] The wife made no specific reference to a fundamental breach in any of her four affidavits. She mentioned compliance with the separation agreement in only two of her affidavits.

[81] In her initial affidavit of February 2016, she said the husband "frequently failed to comply" with the provision relating to child support at paragraph 26. She said that she and he had a practice that meant they were "generally able" to comply with custody and access provisions of the agreement at paragraph 30.

[82] In her March 2016 affidavit, the wife further detailed problems with child support payments at paragraphs 8 to 11.

[83] The wife was questioned about asset values and issues relating to a property division at the trial. She was not questioned about her fundamental breach claim.

[84] The wife's evidence would not lead one to believe she was arguing there was a fundamental breach of the separation agreement.

[85] After all the evidence was heard, the issues to be addressed in post-trial submissions were outlined. The outline was taken from the headings in the wife's pre-trial submissions which included the division of property. The wife said that she "wasn't sure the headings were indicative of the arguments in the brief" and the wife said she was seeking to set aside the separation agreement on the basis there had been a fundamental breach of it.

[86] With respect, the headings in the pre-trial submissions were indicative of the arguments it contained: the headings and the argument were not indicative of a claim that there had been a fundamental breach of the separation agreement. There was no mention of any reason why the separation agreement should (or could) be set aside.

[87] The husband's post-trial submissions made no reference to the fundamental breach claim.

[88] In her post-trial submissions, the wife sought to "clarify" her position on the separation agreement. She acknowledged there was a signed separation agreement. She said there was a fundamental breach of the separation agreement by the husband and that she "clearly signaled her intention to treat the Separation Agreement as void" by stated the separation agreement had not been adhered to (in her petition) and by not asking to have the separation agreement enforced. The wife's post-trial submissions were her first explanation of her fundamental breach claim.

[89] The wife's post-trial submissions were 233 paragraphs long. Forty-two paragraphs laid out her claim of fundamental breach, citing authorities from British Columbia and Newfoundland that had not previously been identified.

[90] The Civil Procedure Rules do not perfectly address this sort of situation. They address the amendment of pleadings. A party may amend a notice in an action no later than 10 days after the day when the other party has filed a response, unless the other party agrees or a judge permits, according to Rule 83.02(2). The husband filed his Answer on October 6, 2015. If I treat the wife's fundamental breach claim as an amendment to her petition, she is well beyond the deadline in Rule 83.02(2).

[91] If I treat the fundamental breach claim as an amendment to the wife's petition, it would only be allowed with my permission since the husband has not agreed to it. I am to grant permission to amend "unless the opponent to the application demonstrates that the applicant is acting in bad faith or that, should the amendment be allowed, the other party will suffer prejudice which cannot be compensated in costs.": *Global Petroleum Corp. v. Point Tupper Terminals Co.*, 1998 CanLII 4658 (NS CA).

[92] Applying this test, I do not allow the wife to amend her pleadings. Amending the petition after all the evidence has been heard denies the husband any opportunity to respond, through his own evidence or through cross-examination of the wife and in his post-trial submissions. This prejudice cannot be compensated in costs.

[93] Another perspective is offered in *Slawter v. Bellefontaine*, 2012 NSCA 48. Mr. Slawter appealed an order for supervised access. None of the parties had sought supervised access at trial. The Court of Appeal found the trial judge made an error of law where he did not alert Mr. Slawter to this contemplated order. The Court of Appeal was satisfied that Mr. Slawter was prejudiced where the trial judge didn't tell Mr. Slawter that supervised access might be ordered. Mr. Slawter "had no opportunity to cross-examine, lead evidence or make submissions on this issue." This was a denial of fundamental fairness.

[94] By identifying her fundamental breach claim after all the evidence was heard, the wife denied the husband the chance to lead evidence, cross-examine and make submissions on the issue.

[95] I conclude that I should not address the fundamental breach claim where it was made without appropriate notice to the husband. To address it would be to deprive the husband of fundamental fairness.

[96] Where I have reached this conclusion, it isn't necessary for me to determine whether the common law relating to contract is applicable where there's a statutory scheme governing marriage contracts, and whether the wife has shown that there's been a fundamental breach of the separation agreement.

Criminal law issues

[97] In his closing brief, the husband argued that:

- the wife gave "false evidence in this case constituting perjury, her own testimony covers all areas of the test as described in the criminal code of Canada section 131(1)" and

- the wife and her counsel "did also attempt to extort me to sign and agree to their terms of custody while creating very real duress in my life. Section 346(1) of the criminal code of Canada covers this crime".

[98] The husband specifically requested that I deal with these allegations as criminal matters.

[99] I make no decision about these allegations. To the extent that I have been required to make findings of credibility to reach my decision, I have done so.

[100] The Family Division's jurisdiction does not include the Criminal Code sections identified by the husband. I have no jurisdiction to deal with these allegations.

Conclusion

[101] Ms. Campbell shall prepare the Corollary Relief and Divorce Orders.

[102] If either party wishes to be heard on costs, written submissions must be filed by December 31, 2017 and copied to the other party at the same time they are filed at the court.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia