

Date: 20021004
Docket: SFSNF 12347

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

BETWEEN:

B.L.R.

APPLICANT

- and -

N.M.M.

RESPONDENT

DECISION

HEARD: By the Honourable Justice M. Clare MacLellan, A Justice of
the Supreme Court of Nova Scotia (Family Division)

HEARD AT: Sydney, Nova Scotia on July 4, July 5, September 3,
September 26, 2002

DATE: October 4, 2002 (oral)
October 30, 2002 (written)

COUNSEL: Charles Lorway Q.C. counsel for Ms. N.M.M.
Douglas MacKinlay counsel for Mr. B.L.R.

Ms. N.M.M. = Mother
Mr. B.L.R. = Father
A = the six year old son

[1] The matter before the Court is the matter of Ms. N.M.M. and Mr. B.L.R.. The issues originally in dispute were custody, access, and division of assets. Ms. N.M.M. was the first Applicant, filing on July 3rd, 2001 for custody and exclusive possession. Mr. B.L.R. filed on September 4th, 2001 for custody and division of assets per alleged constructive trust. During the hearing the parties settled the division of assets.

HISTORY:

[2] The parties commenced a common law relationship from October 1995 to July 2001. The exact nature of their relationship in the Spring and Summer of 2001 and particularly their time in Nova Scotia is questioned by the parties. It is not particularly relevant to any determination the court has to make. However it was clear the final separation took place in July 2001. A, the subject matter of this hearing was born August 23rd, 1996 and he is six years of age now.

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[3] The parties were in frequent conflict before, during and after their separation.

Both parties attended the Parent Information Course made available by this court.

[4] Evidence was heard on July 4th, and 5th, 2002 on the custody and access issues only. Evidence was heard on September 3rd and September 26th, 2002 at which time summation and rebuttal was completed. It was hoped that a decision could be given at that time, however it was adjourned so I could consider rebuttal evidence, the summation, review the evidence, and the reports of the various treating physicians, and psychologists.

[5] Prior to a full hearing, both parties made Interim Applications for custody. An Exparte Order was granted on January 2nd, 2002, to Mr. B.L.R., for sole custody of A with supervised access to Ms. N.M.M.. The Ex-parte Order was extended by another Justice in an Inter Partes Hearing on January 15th, 2002 and a psychological assessment and disclosure of CAS files were ordered. Supervised access continued.

[6] The evidence heard in this matter can be precised as follows, Josephine MacIsaac, A's teacher, described A as a bright nice boy who got along

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reasonably well in school, was neatly dressed, and brought appropriate lunches.

[7] Fraser Patterson, a guidance counsellor, saw A for two reasons, number (1) A was rough with other children, and number (2), A was making comments that he was a robot in a robotic world. He describes A as an above average student, per his report card but with a firmly entrenched imagination regarding robots, satellites and the effect both have on his behaviour.

[8] Judy Hussey, an Access Supervisor, described A's interaction with his mother. She described the interaction as very positive. She had problems with the manner in which Mr. B.L.R. dressed A and A's hygiene. Her evidence on this point is at variance with evidence provided by Josephine MacIsaac.

[9] Dr. Landry filed a lengthy report. Dr. Landry had performed numerous tests on both parties and determined that A was not at risk with either parent. He describes Ms. N.M.M.'s interaction with A as warm and fun. He describes her emotional state at page 11 of that report as follows:

Ms. N.M.M. presented as an intelligent individual with a history of significant trauma and existing

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psychopathology, depression, post traumatic stress disorder and dissociative disorder. Her attentional style manifested both on her behaviour and her responses to the questionnaires were highly focussed. She is able to think clearly and rationally about most issues, but she's clearly concerned with the possibility of harm and issues of abuse constitute part of her emotional conflicts. There is some evidence to suggest that Ms. N.M.M.'s personal style may lend itself to providing verbal reports consistent with her need for self-aggrandizement.

Ms. N.M.M. is socially skilled and capable of warm engaging social interaction. She is generally an emotionally controlled and many accounts are consistent with role regulated interaction with other individuals even during periods of stress. During these proceedings, Ms. N.M.M. has evidenced a willingness to cooperate with others, Children's Aid Society, Mental Health Services of Cape Breton Healthcare Complex, and the whole process of assessment despite the tremendous feeling of having her privacy invaded, including the trust of a therapeutic relationship. The primary area where Ms. N.M.M. is likely to have difficulty regulating her feelings are in situations of conflict where she may be experiencing a sense of feeling vulnerable or humiliated. Her feelings may be discharged intensely as anxiety, depression or anger. This anger has been evident from some of the collateral sources. Ms. N.M.M. can also be quite rigid in her approach to dealing with individuals, particularly if she has a conviction that she is right.

Reports from collateral sources indicate that Ms. N.M.M. has suffered from a history of anxiety and depression and dissociative disorder. There were no indications of

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previous reports of more debilitating mental health difficulties involving a loss of contact with reality such as psychotic or delusional disorders. Ms. N.M.M.'s presentation throughout the assessment including her responses to the questionnaires detailed above also indicate that she is not presently experiencing any psychotic or delusional disorders. In addition, the experience of anxiety and depression has reportedly been well controlled through her use of present medication, Effexor, as well as psychotherapy at Mental Health Services at the Cape Breton Healthcare Complex.

A number of issues are also relevant to consider given the concerns expressed by Mr. B.L.R.. His expressed concern with regards to Ms. N.M.M.'s apparent difficulties with emotional regulation and her allegations about his conduct. It's these allegations that have prompted Mr. B.L.R. to wonder if she is psychotic. Some of Ms. N.M.M.'s concerns about Mr. B.L.R.'s behaviour may be due to the anxieties she experiences as a result of her own reported abuse experiences. This heightened fear and loss of a sense of control may contribute to the significant harms that may not be easily allayed, particularly, as noted above, Ms. N.M.M. may become quite rigid in her cognitive style.

[10] Dr. Landry's assessment of Mr. B.L.R. appears at page 16.

Mr. B.L.R. presented as an agreeable, amicable individual who was concerned with his son's welfare. He noted that he had a very traumatic background as well and that his early life was characterized by poor psychological

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adjustment. He presented as being quite intelligent despite the fact that earlier Neuropsychological assessments had determined that he was suffering from a mild cognitive impairments. While he was concerned with A's welfare, his cognition were dominated by the frustration of Ms. N.M.M.'s allegation and their persistent matrimonial strife.

Mr. B.L.R. is capable of appropriate social interaction and there have been no recent reports of inappropriate social interaction with anyone with whom he has been involved, such as the personnel from the Children's Aid Society of Cape Breton-Victoria. Mr. B.L.R. describes himself as a loner and has few close friends. His interpersonal relationships may be affected by his tendency to be inflexible and to blame others for the difficulties he is currently experiencing.

While Mr. B.L.R. reports that he has had a history of very challenging behaviour, he notes that his behaviour has improved significantly since he stopped abusing substances in the early 90's. He denies any current mental health concerns and his responses to the questionnaires would support the assertion that he is not experiencing any Axis I mental difficulties presently.

[11] Dr. Landry was more impressed with Ms. N.M.M.'s ability to play in a nurturing manner than Mr. B.L.R.'s more restrictive interaction with A. He believes Ms. N.M.M.'s, coping skills are improving. He agreed these skills were not witnessed during her interaction with Constable Sophocleous. Dr. Landry

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agreed that Ms. N.M.M. had seen ghosts and heard voices in the past. He believed when she tucks in her imaginary child in bed at night that this could be a coping mechanism to deal with the loss of that child years ago. Dr. Landry agrees that there were a few incidents where Ms. N.M.M. did not exhibit good coping mechanisms. He endorses this concern on cross examination and in his report where he contrasts her stability in comparison to Mr. B.L.R.'s. This is at page 24 of the report.

Ms. N.M.M. as reported above has had a range of mental health difficulties. There is no indication that she is psychotic, delusional, or has a multiple personality disorder. Her difficulties, as reported elsewhere, are consistent with significant anxiety associated with Post Traumatic Stress Disorder and depression which results in difficulties dealing with emotionally provocative events. In addition, there are indications that Ms. N.M.M. can become distressed and, at times, extremely angry as witnessed by Constable Sophocleous and reported elsewhere. Difficulties which anger are readily explained by features of her personality as presented above. In addition, Ms. N.M.M. experienced Mr. B.L.R.'s behaviour as abusive. It is beyond the scope of the present assessment to determine the particular nature of their interaction, however, it appears as though Ms. N.M.M. would have also perceived herself to be in a vulnerable position because she entrusted Mr. B.L.R. with

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countless intimacies relating to her own past and mental health difficulties. This would have undoubtedly contributed to Ms. N.M.M.'s felt hostility toward Mr. B.L.R..

Mr. B.L.R. does not manifest any symptoms consistent with a mental illness presently. As indicated above, Mr. B.L.R. was on a mood stabilizer medication for a short time and then stopped taking the medication. There were no reported changes in his behaviour after he stopped taking the medication and Mr. B.L.R.'s mood remained stable. There are no indications that Mr. B.L.R. is abusive to A or that A is afraid of his father. As mentioned above, Mr. B.L.R. himself reports that he has no ability to play. But he is comfortable in his role as A's father, enjoys spending time with A and his open to assistance from others in ways to improve his parental skills.

[12] In his conclusion, Dr. Landry believes that both parents can parent but it is necessary that their interpersonal conflict cease. And this is on page 24.

In conclusion, given there appear to be few factors that would prevent Ms. N.M.M. from assuming her care-giving role with the following cautions expressed. First, as noted above, A is developmentally vulnerable for a variety of reasons described above. Ms. N.M.M. has significant mental health needs that will require on-going support from trained professionals. Secondly, while A

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may benefit from living with his mother, he will also need to have the space to develop a loving relationship with his father who appears to be motivated to care for A and to nurture a relationship with him. Ms. N.M.M. and Mr. B.L.R. must minimize the degree of A's exposure to the vagaries of their own highly conflictual relationship including exposing A to accusations or insinuations about the other parent. A will likely require on-going assessment and support for his psychological difficulties and it is important that both parents to be part of the process if they are to continue to develop relationships with A and foster his socio-emotional development.

[12] Dr. Landry's recommendations are contained on page 25 of one through to five, which were referred to on numerous occasions.

1. It is recommended that Ms. N.M.M. has sufficient ability to be the primary residential parent for A. If the change in residence is to occur, it may be best done in a gradual fashion to ensure that A has less difficulty making the transition. Despite the fact that A may look forward to living with his mother, it may also be difficult emotionally for A to leave his father's care and the change may be overwhelming for him if the change takes place too quickly. It is recommended that overnight access occur at the home of Ms. N.M.M. and, then, be extended to weekends before a more complete change in residence.

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In addition, A should remain at this current school until the end of the current academic year to reduce the number of changes with which he must cope.

2. A reasonable schedule for access should ensure generous contact between Mr. B.L.R. and A. The following plan for access may be appropriate given the extensive contact that A has had with his father. A could spend every second weekend with overnight access with his father, although Mr. B.L.R. would be encouraged to arrange some visitation every weekend. The first weekend would see A staying with his father for Friday and Saturday nights while the second weekend of the month, A should stay for Friday to Sunday nights respectively. Recommendations for summer access should be negotiated after a period of observation and evaluation of how A is coping with frequent changes in his life.

3. It is recommended that Ms. N.M.M. continue to access mental health services for her difficulties and to continue to develop positive coping strategies.

4. It is also recommended that Mr. B.L.R. access some supportive services to help him deal with his recent marital separation and the impact the continued conflict may be having on him.

5. Finally, it is recommended that A continue to be followed by a child psychologist for several reasons; First, A would benefit from a re-assessment of his emotional and behavioural issues once his living situation

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stabilizes. Second, given the risk of emerging learning disabilities, A would benefit from a more thorough assessment of his learning profile. Third, Ms. N.M.M. and Mr. B.L.R. may benefit from guidance on strategies to manage his behaviour and to facilitate his socio-emotional development and coping.

[13] On cross examination Dr. Landry advised that Ms. N.M.M. has a range of mental health difficulties as he referred to in his report and Mr. B.L.R. does not have mental health difficulties, at least not at the time of the assessment. He advised Ms. N.M.M.'s health problems can at times make parenting "challenging". He understands Ms. N.M.M. at one time continued to talk A on the phone until A became physically ill and vomited. He understands that Ms. N.M.M. had been physically inappropriate with A but Mr. B.L.R. had not.

[14] He indicated that change at this time, would be disruptive to A who wants to be with both parents. The doctor endorsed no contact between the parents during the access time because of their unfriendly relationship.

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[15] Dr. Landry advised that Ms. N.M.M. is hyper-vigilant, which means she worries more than most parents. She has made a number of reports against Mr. B.L.R. to the Children's Aid Society which have been reviewed and found to be without substance. Although Mr. B.L.R. agreed he needed some guidance in improving his parenting skills and the ability to play. He has taken training in these areas. Mr. Landry believes that Ms. N.M.M.'s emotional and mental health has improved over all since 1995 and from 1997 to present. In effect, she has been on the road to improvement since 1995.

[16] The Court heard Ms. N.M.M., she advised that she was in the Military and in the RCMP. She received a medical discharge from the RCMP due to Post Traumatic Stress Disorder relating to a very stressing situation she experienced in trying to subdue a perpetrator. She had a medical discharge from the RCMP in March 2001. She decided to move to Nova Scotia to make a new start. She and Mr. B.L.R. became joint owners of the property because he loaned her the twenty thousand (\$20,000.00) dollars necessary to finance the purchase. She never intended to live with him but was simply waiting for her property in Quebec to be

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sold so that she could finance the Nova Scotia property on her own. When she came to Nova Scotia her property was not habitable. Mr. B.L.R. arrived in Nova Scotia and took both Ms. N.M.M. and A to his house until her house could be made habitable. All three moved back to her house where they lived for approximately two to three months before they separated for the last time.

[17] Ms. N.M.M. admitted to a mild form of corporal correction when A was two and a half years old. She has not used physical punishment since then. She advised Mr. B.L.R. does physically punish A and that this happens often. She indicated that on July 25, 2001, she became ill. Her illness was emotional, caused by Mr. B.L.R.. He drove her to the Cape Breton Hospital and cared for A when she was in the hospital. She attributed that last upset to the volume of the radio that Mr. B.L.R. used when he was working outside in the garage. She indicated that a certain tone of the radio caused her to have flashbacks. Her attempts to change the tone of the radio or the volume level was not successful, as Mr. B.L.R. would not cooperate. She also indicated at this time, she was upset because of Mr. B.L.R. threatening to hit A.

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[18] She advised that through their time together she was always the primary care giver. Even when Mr. B.L.R. was at home and she was at work the child was in daycare.

[19] She saw a number of therapists in British Columbia and these records have been tendered to the Court. And in Nova Scotia she saw Dr. John Gainer, Dr. Malik, Dr. Ali and was assessed by Dr. Landry. After her discharge from the Cape Breton Healthcare Complex in July or early August, she went to Transition House where she was advised to work on her own self esteem.

[20] The parties experienced a time of shared parenting. Mr. B.L.R. was in his own apartment in Glace Bay, but was working on the garage on her property. She was in school, A was in school or in the care of one parent or the other. They worked through, finally an arrangement as to how to share the property,(tab 33 of exhibit number 6). This is relevant because it happened on October the 6th, 2001, shortly after the traumatic events of September 30th.

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[21] On September 30th, 2001 an incident gave rise to this agreement. Ms. N.M.M. described the incident, where Constable Sophocleous came to her house at her request to enforce her Peace Bond. Mr. B.L.R. was working in the garage and she wanted him off the property. The Constable would not help her as the deed was joint and the peace bond was against her and not against Mr. B.L.R.. However seven days later they were able to work through a form of an agreement (tab 33, of exhibit 6).

[22] On another occasion she asked the RCMP to return A to his father. A had gone to her for a visit and she was very ill with a high temperature. She called the RCMP and asked them to return A and she believed that they made this drive in the police car an adventure for A. She did not ask Mr. B.L.R. to pick up A at that time because she as terrified of him.

[23] She indicated that she had planned to leave Mr. B.L.R. years ago, but when she became pregnant she decided to stay. Yet in her therapists recordings she, Ms. N.M.M., is reported to have indicated the early years of the union were smooth.

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[24] On cross examination Ms. N.M.M. agrees that she is hyper-vigilant and has gone into disassociated states which she attributes to living with Mr. B.L.R. and to the post traumatic stress disorder she suffers. She indicates that she had hallucinated in the past, but only in therapy and that it was part of the therapy she undertook in British Columbia. She was, in July 2002, taking a prescribed anti-depressant but she advised in her evidence in September, 2002 that this was no longer necessary. Ms. N.M.M. while giving evidence, described to the Court that she, at that time of giving evidence went into a disassociated state which she believed helped her cope.

[25] Ms. N.M.M. admitted to several professional personal conflicts with people, none of which she believed to be her fault or partly her fault. On the trip to Nova Scotia she lost sight of Mr. B.L.R. and A although they had planned to come Nova Scotia at that time. She believed that Mr. B.L.R. took a different route and so she drove until she found him. She believing that he was kidnapping A, she stopped his vehicle in a manner resembling police efforts in a speed chase, A was in the car at that time. On rebuttal evidence she said that it was not like a high speed chase but

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rather it was done slowly and smoothly. She drove beside his vehicle, proceeded in front of his vehicle and then reduced the speed of her vehicle requiring him to do the same. Mr. B.L.R. has a different version of that incident. Three weeks later Mr. B.L.R. moved to Nova Scotia. She moved into his house, until her house was fixed and then all three moved into her house. They all moved into her home because in her words, "he was nice", during this time period.

[26] Ms. N.M.M. advised that she had assisted Mr. B.L.R. in obtaining criminal pardons. When confronted with the fact that she met Mr. B.L.R. after he had already received these pardons, she advised the Court that she had been fooled. She became very upset when she learned she had not helped Mr. B.L.R. obtain the criminal pardons.

[27] She agreed during one conversation with A, on the phone, that he became physically ill when she advised him that she missed him. Her son, A had counselling with Dr. Betsy Marcin, for self-destructive behaviours. While in therapy A heard his mother discuss her abuse at the hands of Mr. B.L.R. and he

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became very upset. Ms. N.M.M. volunteered to the Court that during one of these sessions A said to her, “my father didn’t hit me, you hit me, you’re a bad woman”. Ms. N.M.M. believes that A was referring to an incident when she used light corporal punishment when he was two and a half years of age.

[28] In response to questions from the Court, Ms. N.M.M. advised:

Q: Do you have any idea why your son would act out to you and not act out to the father?

A: Because he’s very safe with me. A was safe with me, he cannot...he can tell me he hates me. He can tell me he’s going to kill me. He can punch me. He can get very angry with me and he knows I will always love him and I will never, never hurt him either emotionally or physically.

[29] The Court heard from Constable Sophocleous. He was with the police force for thirteen (13) years and he answered Ms. N.M.M.’s call for assistance on September 30th, 2001 at 11:04 a.m. He spoke to Mr. B.L.R. who was in the garage

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loading tools and Mr. B.L.R. showed him a peace bond. He went into the house to speak to Ms. N.M.M. and she said she also had a peace bond and showed him a peace bond application. He explained the difference between an application and an order. He was under the impression the property was in joint tenancy. He spoke to his Sergeant to seek advice and was advised that it would be best to ask Mr. B.L.R. to leave the property to maintain peace.

[30] Before Cst. Sophocleous could ask Mr. B.L.R. to leave, Ms. N.M.M. told him, "to get the F---- out of the house". She had earlier told the officer that she could get very violent and that Mr. B.L.R. knew how to set her off. He left the house and went back to speak to Mr. B.L.R. at the garage. Ms. N.M.M. came out and ordered the Peace Officer off her property and told Mr. B.L.R. that he could stay on the property until 6 p.m.. She pulled A by the arm in a rough manner, according to the Constable and drove off. The Police reported the incident to the Children's Aid Society because they were concerned about the manner of pulling A by the arm into the car.

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[31] The Police received a call from Transition House complaining that Cst. Sophocleous had not done his job by not removing Mr. B.L.R. according to the Peace Bond. The Police Officer explained the situation, re the Peace Bond and what the Peace Bond meant verses the Peace Bond Application. The notes made by the Constable at the time were admitted , (exhibit number12). The RCMP records attached were not admitted.

[32] The Court heard from Mairi MacLean, who was the second witness called by the Respondent. She is a supervisor at Children's Aid and was aware of various complaints her office received, by Ms. N.M.M., regarding Mr. B.L.R. between January 4th, 2002 and January 10th, 2002. The Children's Aid Society found that Mr. B.L.R. would benefit from Parent Education regarding discipline which he received. At the time his file was closed.

[33] Ms. N.M.M. was on medication and doing well and so her CAS file was also closed.

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[34] Both C.A.S. files were closed and the steps were taken to help Mr. B.L.R. with A's nightmares. The advice he was given by the Agency seemed to work. Two schools advised Children's Aid Society staff that A was very clean when he attended school. At the end of the Children's Aid Society's involvements Ms. N.M.M.'s various complaints were not substantiated, but Mr. B.L.R. did accept the advice given on how to discipline A and to help reduce A's acting out behaviours.

[35] The Court heard from Mr. B.L.R. on September 3rd., 2002. He advised that A had turned six a few days previous.

[36] Mr. B.L.R. was a machinist who was injured in 1992. He had taken a number of courses and had a number of trades and for short periods of time after his injury appeared to have some good jobs. He did set up a business that failed and he went through periods of unemployment, at which time Ms. N.M.M. was the sole provider.

[37] He is now enrolled in AVTC and has no income except his savings. He rents a four bedroom house or apartment, for a thousand (\$1000.00) dollars per year and

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utilities. The rent is so low because he has the job of improving the accommodations. He believes that he can make money when he starts up his own repair shop although his counsel indicated that B.L.R.'s focus would be more on his courses and A. The impression from Mr. B.L.R.'s evidence was that he felt he could make money with his repair shop. It was unclear if he's making money now in the shop or whether this is the plan when he finishes his courses.

[38] He describes his domestic problems as starting in 1998. Before that he indicated that Ms. N.M.M. would have "tantrums", to use his word. But the tantrums always related to people outside the family, either work or neighbours. After 1998 the tantrums were directed more at home. He indicated that Ms. N.M.M. became violent and broke things. She used the RCMP-C.P.I.C. to check up on her neighbours and on his friends.

[39] He indicated that all the therapists they saw recommended parent counselling but she would not go and he did not go. He advised that he and she have very different parenting styles. When she is, as he quotes, "stable", she is a very good

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mother. When she goes into one of her rages, she is not a good mother. He describes his time with A since A has been in his custody. He advised access with Ms. N.M.M. as improving and that A has gained weight and no longer has nightmares. He believes that Dr. Landry's advice has been helpful. Neither he nor Ms. N.M.M. are able to discuss access by phone or by email.

[40] Access when Ms. N.M.M. had *defacto custody* of A was difficult because Ms. N.M.M. told him Children's Aid had required supervised access, which was not true. His recollection of this time period is a direct variance with hers as she felt this time went reasonably smoothly. He advised when Ms. N.M.M. had *defacto custody* he had four or five visits during that time, between the time the parties separated in July and the September 30th incident with the police, he had only four or five visits with A.. He advised that on September 30th when Ms. N.M.M. called the police and CST. Sophocleous arrived that Mr. B.L.R. believed that A was present during the scene with CST. Sophocleous outside the home.

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[41] Mr. B.L.R. said that access went well in October, November, and into December. However on December 26th, A exhibited fear of the prospect of returning home to his mother after Christmas dinner.

[42] The tests for reliability and necessity were satisfied and the Court heard that A stated to his father in an unprompted manner, “Daddy don’t take me home, I’m scared.” This was said as they approached Ms. N.M.M.’s home.

[43] Mr. B.L.R. went to Children’s Aid at that time and for some reason, which is unclear to this Court, Children’s Aid did not investigate, but rather advised him to make an application pursuant to *Civil Procedure Rule 70.12* for an emergency hearing, which he did on January 1st. An Ex-parte Order was granted on January 2nd. Mr. B.L.R. attended parenting counselling. He indicated he learned a great deal from this course and wished he had taken it years ago. It was apparent from the cross examination that he never really sought parenting courses prior to the intervention of the Children’s Aid Society.

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[44] Since in his care, A stopped having nightmares and had gained 12 pounds. The Court was not advised if this weight gain was a plus or a minus but Mr. B.L.R. seems to imply that it was a positive. Although after that time period A began to eat too much. Mr. B.L.R. advised access is much improved since Dr. Landry's involvement. [45] In the past Mr. B.L.R. was open to Ms. N.M.M. resuming custody if she was emotionally stable, but now he believes that he must retain custody until she completes a full assessment. He later agreed that the Landry report was a complete assessment. It is his belief that Ms. N.M.M. has never been honest with any of her therapists and, for example, she has one degree and not three degrees that she reported to one of the therapists. Dr. Ali's report was admitted into evidence in part, but not the unfavourable portions relating to Mr. B.L.R. because Mr. B.L.R. indicated that he was never assessed by Dr. Ali.

[46] Mr. B.L.R., nowhere in his evidence, explained his very hurtful letter to his former partner, (page 20, tab 37 of exhibit six). It was never explained why he would communicate in this manner. The point in time is important because Ms. N.M.M. had been to three Courts and had not been successful in securing custody.

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She was going through an emotionally tough time and she was missing her son.

Both parties have counsel at this time and they had gone through the Parent Information Coarse. Mr. B.L.R. wrote to Ms. N.M.M.:

After your "fit of rage" episode in March 2001, you calmed down and realized that I was not trying to control the Cape Breton property and your life, you then decided we should continue our relationship or lose the property, remember?

After your "full blown" Psychotic episode in April 2001, you calmed down and realized that I was not going to kidnap A, we talked about this when you moved into my house in May, remember. After your fit of rage episode in 2001 you calmed down and realized I was not going to tear down your house and we agreed to build a house together, we talked about this, remember?

After your "full blown Psychotic" episode in July 2001, you did not calm down and managed to convince yourself that I was Charles Manson, remember?

After your "probable" Psychotic episode in October 2001, you calmed down and realized that I was not Charles Manson and we talked about it and I agreed to be patient with you, remember?

After your "God Only Knows What" episode' in January 2002 and the too paranoid delusional sworn affidavits you filed against me. I'm not sure what to say beyond.....

Nicole calm down..... somewhere under the Psychosis you know I am not Charles Manson. You just have over 90

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days to get your head screwed on straight. Damn It Girl, if you go to Court and attempt to prove the allegations made against me, you will prove my case for emotional instability without my help.

I will offer any help I can to you. A couple of hundred years from now I may not even be mad at you anymore.

[47] The Court was concerned given the type of letter. It was addressed on cross examination by Mr. Lorway, but no explanation was given.

[48] The Court heard rebuttal evidence from Ms. N.M.M. who denied having temper tantrums and said that in order to speak to Mr. B.L.R. she had to, to use her term, "turn french", which means raising her voice really loud. She indicated that's all he could understand. She justified or attempted to justify the use of the " F" word to Constable Sophocleous, but finally agreed she knew it was not an appropriate word. It took quite a bit of questioning for her to make that admission. Initially she indicated use of the F-word was part of her upbringing and she originally didn't know it was wrong, but finally admitted she did know it was wrong to use that type of language. She disagreed that her police stop in Toronto was

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reckless, rather it was slowly done and no one was in jeopardy. She indicated that she would not drive dangerously as it would put Mr. B.L.R. and A in jeopardy.

[49] Ms. N.M.M. indicated that she and Dr. John Gainer did not get along because in her mind he favoured Mr. B.L.R..

[50] She indicated she had problems with her time in the army because there were no civil rights at that time and civil rights existed only after she left the army.

[51] She indicated that she had problems with the RCMP due to Post Traumatic Stress Disorder and one supervisor's managerial practices.

[52] When she was asked why did she discuss Court with A after being advised by the court to the contrary. She explained to A that she would not see him for a while because her pension had been reduced and she could not afford an access supervisor, and that a 'lady Judge' thought that she was a 'bad mommy' and so A could no longer live with her.

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[53] Ms. N.M.M. indicated she did not threaten to kill Mr. B.L.R. in the summer of 2001, and that Dr. Ali misunderstood her comments. She said she told Dr. Ali she had concerns that Mr. B.L.R. would not get out of her house and if he abused her she may get stressed . She had a gun and the only way out might be to shoot him. But she did not interpret the statement as threatening.

[54] She indicated as of September, 2002 she was no longer on any medication and she no longer suffered from Post Traumatic Stress Disorder.

[55] Neither party has an extended family in the area or family that they are close to. Ms. N.M.M. indicated that she has made many friends here that can substitute a the extended family. She plans to work and has job offers. She plans to take three courses towards a diploma at UCCB. She indicates the difference in her mental state between July and September is that Mr. B.L.R. does not bother her anymore. She could e-mail him about problems they were having regarding access. She does not see a psychiatrist anymore, but she continues to see Donald MacKeigan for counselling.

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DECISION

[56] The law on this matter is set out in the Maintenance and Custody Act, Section 18(5), which indicates, in paraphrase, that in all decisions of custody and access the interests of the child are paramount. This means the interests of the child are paramount and take precedent over the rights of the parent. This is firmly entrenched in case law by the case of **King v. Lowe** S.C.C. (1985), 44 R.F.L. 113, at page 126 where Justice MacIntyre said:

I would therefore hold that in the case at bar, the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the questions of custody will be determined by weighing the economic circumstances of the contending party. The matter will not be determined solely on the basis of physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factor including the general, psychological, spiritual and emotional welfare of the child. It must be the aim of the court when resolving disputes between rival claimants for custody of a child to choose a coarse which will best provide for the healthy growth development and education of the child. So that he will be equipped to face the

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problems of life as a mature adult. Parental claims must not be lightly set aside and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside, (they being parental rights).

[57] The ruling in **King v. Lowe** has been enhanced by the decision of Justice Goodfellow in **Foley v. Foley** (1993), 124 N.S.R. 198 where he outlines a number of factors the court can use as a checklist to objectively determine the best interests of the child. The weight given to the sixteen factors will vary depending on the age and needs of the child.

[58] The court considered the Decision of Associate Chief Justice J. Michael MacDonald and the decision of **Godfrey- Smith v. Godfrey- Smith** (1997), 165 N.S.R. (2d) 245 (S.C.), paragraphs 13 to 22, where he refers to the ability of the parties to work together as opposed to their willingness to work together.

Paragraph 13 provides:

[13] The parties agree that the children should remain in the day to day care of their mother. They also agree that Mr. Godfrey Smith shall continue to have liberal access. I have been asked to make some adjustments in this regard and I will do so later in this judgment.

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[14] There remains however one very contentious issue. It involves the struggle for control over all major decisions effecting the children. The parties have become very entrenched in their respective positions in this regard.

[15] For her most part, Ms. Godfrey Smith seeks to secure sole custody. While acknowledging an obligation to consult, she wishes the final say in the event of a deadlock. Ms. Godfrey Smith states historically she has always been the primary care giver and as such she has always made such decisions. She views her husband's attempt to deny her sole custody as an unwarranted interference designed solely to control her life and meddle with her privacy. She feels that they have little or no ability to cooperate. As such, she feels any attempt at joint custody would be futile.

[16] For his part Mr. Godfrey-Smith states he is motivated solely by his love and concern for his children. He wants an equal say on all issues involving his children. He feels that his wife is being totally obstinate on this issue because of her acknowledged lack of cooperation. He wants joint custody which would force the parties to negotiate on an equal footing. "Deadlock" he feels should be resolved on a case-by-case basis whether by him (as he views himself as being the more reasonable of the two), or alternatively by the court. To award Ms. Godfrey-Smith sole custody he feels would only perpetuate the conflict.

[17] It is painfully obvious to me that these parties in recent months have demonstrated a depressing lack of cooperation. This has resulted in the vitiation of virtually all direct communication between them. They do not

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meet face to face. They do not talk on the phone. Their e-mails are curt at best. They use their children as messengers and then wonder why things get lost in the translation.

[18] This situation has been very stressful not only upon the parties, but certainly upon the children. It has reached the point now that their unwillingness to communicate has overshadowed all other issues in this trial. In fact had these parties only communicated, I am convince that this matter would never have come to court. It is sad to see two intelligent, capable and loving parents become so caught up in their own discord. Ironically all this may appear to support Mrs. Godfrey-Smith's submission for sole custody; with cooperation being perceived as a necessary ingredient of joint custody. I refer specifically to the judgment of the late Chief Justice MacKeigan in Zwicker v. Morine(1980), N.S.R. (2d) 236; 69 A.P.R. 236(C.A.).

[59] Associate Chief Justice MacDonald concluded that the pivotal feature to examine in making an award is whether or not the parties are able to work through custodial arrangements. He indicates there is a great difference between being unwilling and being unable.

[60] The late Dr. Paul D. Steinhauer, (1993, The Least Detrimental Alternative, University of Toronto Press), writing on children in need of protection indicated

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one of the strongest indica of how parents will parent in the future is how they parented in the past, unless they are self critical and make concerted efforts to change.

[61] Recent studies indicate adult children of separated parents, when interviewed later in life commented the one feature they would change, if they we able to turn back the hands of time, was that they did not have sufficient time with the non-custodial parents. Custodial parents who frustrate access end up with loss of emotional attachment from the child they raised and by their actions have caused the child to be estranged from the non-custodial parent. The result being that these children have no close association with either parent.

[62] I refer to an article in **Family and Conciliation, Court Review**, October 2000, volume 28. The summary indicates there is increased consensus that the perceptions of children have to be taken into account in divorcing or separating parents and that young adults who have lived through their parents divorces are an important source of information. In the study referred to, the authors assessed the perceptions of 820 college students from separated families on the issue of the

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children's living arrangements after separation of their parents. The children wanted to spend more time with their non-custodial parent, and the living arrangements they believed to be best, was close to equal time with each parent. The living arrangements they had as children generally did not give sufficient time with the non-custodial parents. The students reported the non-custodial parent wanted to spend more time with them but was blocked by the custodial parent.

[63] There's a follow up study on the same issue, which was broken down into many interesting questions on the views of grown children from every socio-economic class. This study was conducted by the same author. It is still under peer review and has not been circulated, it will be published in the Family and Conciliation Court Review next year. I have had an opportunity to hear the presenters when I was in the United States taking a course on this issue last Spring. Psychologists interviewed over 1200 college students with a double control group. These students were selected based on their grades only (A and B students); regardless of culture, social or religious background. The students indicated that as children who were refused time with the non custodial parent became detached

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from the custodial parent as grown adults and ended up with no strong attachment to either parent. The reverse was true. If the custodial parent encouraged access with the non custodial parent, the children developed with a strong bond demonstrating an attachment to both parents as well as a resilience which helped them develop as healthy young adults.

[64] Case law is clear that children are to spend as much time as possible with both parents as is in the child's best interests. So what we have here today are two educated, articulate parents. They are both mature in years. They are the parents of a six year old boy. Both have had past mental health problems. Both have had past addiction problems and both are estranged from their families of origin and are newly settled in Nova Scotia. Both are students, Ms. N.M.M. has a pension, Mr. B.L.R. has no income but his savings.

[65] I am concerned that Ms. N.M.M. takes no ownership for the undisputed fact that she and Mr. B.L.R. have lived in domestic disharmony of a frightening scale since 1998 if not earlier. Nor that A has been affected by this environment. The

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problems that she has had and the problems that A has had, in her mind, are one hundred (100%) percent attributable to Mr. B.L.R.. Mr. B.L.R. takes some responsibility in that he indicated he should have been kinder and more patient and there may have been few fights. I find he has understated his problem areas when one refers to the cruel letter I read from him to her. I accept that Mr. B.L.R. knew what “buttons to press” to annoy Ms. N.M.M. and that he did so on occasion. She reciprocated by over-reacting as was seen by the alleged kidnapping and the confrontation with Cst. Sophocleous.

[66] B.L.R. has problems relating interpersonally, as evidenced by his cruel and self serving letter to Ms. N.M.M. post separation and his odd and cruel letter written to his estranged adult daughter.

[67] Dr. Landry in his assessment appears to favour Ms. N.M.M. as a custodial parent. However in my view there are parts of Dr. Landry’s assessment that do not withstand cross examination. Also the ultimate issue as to who will have custody is

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an issue for the Court to decide. The Court concludes, based on the evidence and the report, that with help either party could effectively parent A.

[68] Using the Foley Checklist, I find the major needs of A are items three, four, five, eleven and fourteen.

- (3) Discipline
- (4) Role model
- (5) Wishes of the child
- (11) Emotional support
- (14) Willingness to facilitate access

[69] On discipline, the parties disagree on discipline. Mr. B.L.R. has admitted to slapping A in the past as has Ms. N.M.M.. Both agree that this is not appropriate. Mr. B.L.R. has structure and Ms. N.M.M. has spontaneity. The result is A has some behaviour problems partly attributable to the different parenting styles. Behavioural problems were no doubt greatly enhanced by watching his parents argue for most of his life.

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[70] The next issue is role model and emotional support. These features are interconnected, the Court finds that Ms. N.M.M. is still very emotionally unstable. Her triggers are numerous and unpredictable as seen by her interaction with Cst. Sophocleous and her roughness with A on September 30, 2001. The evidence is riddled with examples of her temper and mood changes. Mr. B.L.R. is smooth in his approach to the Court, however he does over emphasise his good points, as Dr. Landry found in his assessment.

[71] B.L.R. had no problem verbally stick-handling with the Court. There is no question he was mentally abusive to Ms. N.M.M. as seen by his letter to her. I accept she was also verbally abusive to him during her various temper tantrums. I accept Mr. B.L.R. was manipulative as seen by his comments relating to the assessment. In that I'm referring to he advised Dr. Landry and others that if Ms. N.M.M. passed the assessment, he would be happy to relinquish custody to her. He finally admitted after a number of questions that he said this because he never thought she was going to pass the assessment I find his approach to be underhanded and manipulative.

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[72] However Mr. B.L.R., despite the fact that he was a poor husband, is more emotionally stable as a father than Ms. N.M.M.. He has acquired some ability to reflect on his wrong doings and limitations through parent counselling. His son has reportedly thrived in his care. This is clear from all the evidence, except Ms. N.M.M., who's complaints to the Children's Aid Society about the father were never substantiated. There is independent evidence of A's positive health and behaviours from his teacher and the Children's Aid Society workers.

[73] I accept that Ms. N.M.M. has made inappropriate comments to A in therapy and on the phone when she knew these comments were unwise. She knew he was a disturbed child when she raised painful topics in front of his therapist. Her comments made to A about the court just last month illustrates she has no ability to reflect on her errors. I believe she has little chance to correct them. At no time did the Court indicate that she was a bad woman or a bad mother. This is a very painful thing to tell a five year old child.

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[74] The reports to professionals do not address her unacceptable rages and the effect such behaviour has on A. It is well known that children gravitate to tranquillity and stability. She can provide neither at the present time. If she was not emotionally unstable, as related by the evidence, and if I did accept that she is now perfectly emotionally healthy, then she fails to explain the inappropriate behaviours regarding her roughness with A, the trigger points, such as the volume of a radio, her inappropriate comments to Dr. Betsy Marcin, to A regarding the Court and to Cst. Sophocleous, to name a few. These behaviours were left unexplained so either she is emotionally unstable giving rise to these behaviours, or she's emotionally stable and behaved in a most inappropriate manner without explanation.

[75] Ms. N.M.M. seems not to be aware that she should have attempted to explain these behaviours or at least to provide some reassurance they will not be repeated. All she has done in her evidence is to blame others for all and any hardship she has experienced, including her own acting out. Admittably, if her past records are true, she's had an abysmal upbringing and no support from her family, but there is evidence, direct evidence of her conduct before this Court which is inexplicable for

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her as a mother, a grown up, an educated woman and a former peace officer. There is no doubt she would frustrate contact with the father. I accept the father will not frustrate access to her. He has been willing to accept advice on access.

[76] As indicated there is evidence that Mr. B.L.R. was a poor husband and a poor friend to Ms. N.M.M.. However he is a better than adequate father and he is receptive to child rearing advice.

[77] Based on Ms. N.M.M.'s evidence, her emotional state is weak. Her emotional state will effect A adversely.

[78] Ms. N.M.M. believes she puts A's needs first, but she does not, and it appears difficult for her to do so. I accept A was afraid to return to her house at Christmas. Why, was never explained. As well I accept that A lashed out at her in therapy and indicated that his father had not abused him.

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[79] As stated already, A has thrived in his fathers' care for the past ten months. His behaviour and sleep have improved. For all of these reasons I find it is in A's best interest to order sole custody of A to Mr. B.L.R. with access to Ms. N.M.M..

[80] Ms. N.M.M. is to have access:

1. Every second weekend, from 5:00 p.m. on Friday to 6:00 p.m., on Sunday. If it's a long weekend, she will have the long weekend as well, so if there's a Monday or a holiday, the Sunday will be extended to that time.
2. She will have A every Wednesday after school until 8:00 p.m. She'll be responsible for homework and supper.
3. She will have access on two weeks this summer, in July, and one week in August. This is to expand as her health improves and depends on how A is progressing.
4. She will have access Christmas Eve, from 12:00 p.m. until 5:00 p.m. on Christmas Day from 4:00 p.m. until December 27th at 6:00 p.m..

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5. Easter Eve she will have access from 12:00 noon until 5:00 p.m..
Easter Sunday 4:00 p.m. to Easter Monday at 6:00 p.m..

6. She will have access for half of March Break if she so chooses. She
may be working and it may not be possible for her, however the opportunity
is there.

7. She is to have nightly phone access as long as her comments are
appropriate. If she makes inappropriate comments the Court will
reduce or possibly remove this form of access.

[81] Mr. B.L.R. is going to have to learn to communicate properly himself and I
write **POLITE** in large letters, since it's recommended these parties not
communicate directly for now. In any event the parties are going to communicate
through e-mail with each other for now. They can keep copies. Hopefully that
will not be necessary.

[82] Courts are not allowed to experiment with children, we are to make
decisions in their best interest and that's what I tried to do in this case. However,

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the dislike and distrust of these rather mature adults causes me concern. I use mature in terms of age. I have been involved with Family Law since 1977, and this is probably the third worse case of parental communication I've seen in a quarter of a century. So if that doesn't strike home with the parents now then there is a truly serious problem.

[83] Both parents are to re-take the Parenting Information Course as well as parental counselling to enhance their prioritization skills. They are to learn to follow one style of discipline. The mother can still be very creative and the father can still be an effective disciplinarian. Their parenting styles do not have to be identical, obviously no two parents are, but the parenting styles should at least be compatible. If parenting styles become compatible then A will have stability and security in both homes.

[84] I find Ms. N.M.M. has talents to offer A. She loves him very much. If her mental and emotional health was stronger, she would perhaps be able to reflect on her errors and a different decision may have been appropriate. However this is simply not the situation before the Court.

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[85] As well I order Ms. N.M.M. may make inquiries, appropriate inquiries of A's teachers and doctors. She is to be given information as to the health, education and welfare of A. Mr. B.L.R. is to keep her advised of all A's school, medical and social involvements in a timely manner.

[86] No medical reports of Ms. N.M.M. or this decision are not to be circulated, to anyone in A's environment. Mr. B.L.R. has circulated medicals in the past. His counsel requested the decision be released to school officials. No basis in evidence has been given for this unusual request. A has a counsellor, schools have counsellors and other measures. To grant counsel's request for circulation will only damage the parental relationship. It could also negatively impact on Ms. N.M.M. recovery and as such not be in A's best interest.

[87] Mr. Lorway's request for non circulation of the decision is granted.

[88] There is no order for cost.

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[89] The Court will prepare the Order

Justice M. Clare MacLellan