IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: P. W. B. v. B. R. A. G.-B., 2004 NSSF 75

Date: 20040813
Docket: 1201 - 057345, SFH D-021326
Registry: Halifax

Between:

P. W. B.

Applicant

v.

B. R. A. G.-B.

Respondent

Judge: The Honourable Justice R. James Williams

Heard: June 7, 8 and 18, 2004, in Halifax, Nova Scotia

Written Decision: August 13, 2004

Counsel: Ritchie Wheeler, counsel for the Applicant
Karen MacDonald, counsel for the Respondent

[1] This is a divorce proceeding. Mr. P. W. B. and B. R.A. G.-B. were married August 31, 1985. They had cohabited since June of 1983. They have two children, A. C. B., born (...), 1995 and E. M. B., born (...), 1997. The couple separated in March, 2002. Mr. B. moved to Ontario at that time. Ms. G.-B. and the children remained in Nova Scotia.

[2] The couple have been unable to agree on aspects of (each of) the issues of custody / access, property division, child support and spousal support.

[3] In dealing with these issues, I have considered the evidence of the parties, their filings, and their collateral witnesses. I will refer to the evidence of the collateral witnesses separately, then consider that, the evidence of the parties, and the appropriate legislation on an issue by issue basis.

A. Collateral Witnesses

[4] Ruth Burton is a family therapist who has provided counselling to the B. children and Ms. G.-B.. She was qualified, by consent, as an expert witness, as a family therapist. Ms. Burton's testimony focused on these areas:

(a) Access visits being in Ontario. Ms. Burton was aware of the girls having had two visits to their father in Ontario (he has seen them regularly in Nova Scotia.) Ms. Burton could identify "no worries" that E. had regarding visits to her father in Ontario. A., she felt, worried about leaving her mother. A. also wondered who would be there (at the visit), whether Dad's promises would be kept, and how the visit would go. This said, Ms. Burton felt such visits (in Ontario) "were not a major concern", there was "nothing major about them." There was no fear of flying held by either of the children. Ms. Burton, who has some 15 years experience dealing with children of divorce / separation felt their reactions were "normal", "on target." Ms. Burton felt there should be structure and, as much certainty as possible, to the access regime.

(b) Ms. Burton felt that Ms. G.-B. had “made some attempt” to be supportive of the visitation, but that there was potential for alienation of the children from Mr. B., primarily, I would conclude from the anxieties Ms. G.-B. has about the children and access and access related issues.

(c) Ms. Burton felt there were serious communication problems between Ms. G.-B. and Mr. B.. I agree with this conclusion.

[5] Ms. Burton was clear in saying that she has not assessed the children, that she was providing supportive counselling in relation to separation / divorce. I have considered her evidence in this context. She did recommend a custody / access assessment re parenting arrangements. The parents agreed to some, most, custody / access issues - the issues in dispute relating to terms, conditions of access. The trial proceeded without a custody / access report. Given the issues in dispute, and the delay and uncertainty securing a report would occasion, I conclude that such a report is not, at this time, needed.

[6] T. H. is Mr. B.’s partner. They have lived together in Burlington, Ontario since January, 2003. She has three children by a previous relationship - K. (9), R. (6) and A. (3). Ms. H. works as an account manager for (...). She has an annual income (2003) of $89,000.

[7] Ms. H. speaks very positively of Mr. B.’s parenting skills. The B. children visited their home in Ontario for one week in April 2003, a week in the summer of 2003 and for part of the Christmas 2003 holidays. Ms. H. previously lived in Nova Scotia. A. and E. B. and R. and K. H. knew each other then and have reacquainted.

Paragraphs 10 - 12 of Ms. H.’s affidavit of June 2, 2004 read:

> “10. I have read the Affidavit of C. G. and in particular her statements concerning an incident where it is alleged that one of my children punched A. in the stomach. I was present for the entire event, I can provide personal knowledge of what transpired. K. and A. continuously asked me if they could take a shower together. On one occasion I gave in and said as long as I stay in the bathroom and they wear their bathing suits. I didn’t consider this would ever be a problem as the children shower at the pools in the same manner. When they were all lathered with soap they were playing patty cake and K. was teaching A. a new song. As they were

> soapy K.'s hand slipped and touched A.'s stomach. A. did not cry and the children continued to play in the shower. A. did not bring this up again and was very active the rest of the vacation. I personally bathed A. and E. before they left as well helped dress them the morning they departed for home and there were no markings such as redness or bruising on her body. Given that the shower event happened at least two days prior to their departure I would have seen such markings if they existed. K. did not punch A. this was an accident. There is no such hitting tolerated in our home.
>
> 11. During the Christmas Vacation 2003 when the children again visited our home in Burlington they again had a great time. P. taught E. to skate and improved A.'s skating abilities. We also attended the Ontario Museum and visited the Rain Forest Café. When they called B. I was present to hear A. and E. plead to stay longer and visit with us. After the phone call they proceeded to plead to stay longer with me when P. intervened and explained to A. and E. Mommy and himself had already made arrangements that could not be changed. They were visibly sad with his response and I was present when they continued to ask this question again several times.
>
> 12. During a recent visit in Halifax in April 2004 P. had planned for the children to stay at my sister's house; H. T.. This did not transpire. When P. was getting the children ready to take them home as per B.'s request both A. and E. did not want to go. They now wanted to sleep over. This delayed P. in getting the children home as it seemed to require a lengthy explanation. I asked A. why she told B. she wanted to go home and she said "because mommy said she would miss me."

[8] The evidence included the affidavit evidence of M. B. and T. C.. M. B. is Mr. B.'s mother, the children's paternal grandmother. She resides in Charlottetown, P.E.I. The children and Mr. B. have visited her often since the parties separation. She asserts that he is primarily responsible for parenting the children when he visits. There is no alcohol consumed, no tobacco used during these visits.

[9] T. C., also of Charlottetown is Mr. B.'s sister. Her evidence was consistent with, repeated that of M. B.'s.

[10] P. G. is Ms. G.-B.'s father, the paternal grandfather of the children. Mr. G. asserted that during the marriage Mr. B. was out drinking and had to be picked up

"several times" during the G.'s visits when he drank too much to drive. Mr. G. indicated that Mr. B. had encouraged Ms. G.-B. to leave the workforce and "stay home" with the children after A.'s birth

[11] Mr. G. and his wife, C. G., live in Georgetown, Ontario; not far from Mr. B.. The children visited the G.'s during their summer 2003 visit to their father. Mr. G. felt the children enjoyed visiting he and his wife. They would like similar contact in the future when the children are with their father in Ontario.

[12] On April 17, 2004, Mr. G. went with his daughter to drop the childen off for access. Mr. B. was to have the children overnight for the weekend. A. told her father she did not want to go for the weekend. Ms. G.-B. said "she was just trying to take the children's wishes into account" and that they weren't comfortable going to a strange place to sleep. Yelling, crying and an unfortunate scene evolved. Mr. G. felt Mr. B.'s behaviour was problematic - especially "the yelling." It probably was. That said, even Mr. G.'s evidence suggests that Ms. G.-B. chose to reinforce, not attempt to reassure any anxiety felt by the children. I can identify no reason why the overnight access should not have occurred. The evidence of Ms. H. concerning this April 17 visit (and the children later wanting to sleep over) demonstrates the fact that their "wishes" vary with their environment.

[13] In August, 2002, Mr. G. lent Ms. G.-B. $50,000 to buy a house. The house is in their joint names. His affidavit states "I told B. that she can pay the $50,000 back to me when she is in a position to do so." In May, 2004, he lent his daughter $25,000 to buy a 2003 Ford Windstar van.

[14] C. G. is Ms. G.-B.'s mother, the maternal grandmother of the children. She felt her daughter had helped Mr. B. with his work, especially administratively when he travelled. This evidence was not developed beyond this.

[15] Ms. G. indicated that in April, 2002, Mr. B. inappropriately confronted Ms. G.-B. in their home, yelling and grabbing her arm. He went out that night, returning smelling of alcohol and yelling (having set off the house alarm.)

Ms. G.'s affidavit (paragraph 8) states:

> "That after the children visited Ontario in July, 2003, A. stated to me during a telephone conversation that one of P.'s partner, T. H.'s children had punched her

> while they were in the shower together. She said that mommy had taken her to the doctor, she had a bruise on her chest and it was still hurting, and this was approximately a week after they returned from Ontario...A. said to me that she did not want to go back to Ontario because she did not want to be hurt again..."

I accept Ms. H.'s evidence of this "incident." I do not conclude that this "exchange" with Mrs. G. reflects A.'s wishes. I prefer and accept the independent evidence of Ms. B..

B. Custody / Access

[16] The issues between the parties with respect to custody / access have focused on access and to a lesser extent the language of the custody order. There has been no contest regarding the primary residence of the children. They will reside with Ms. G.-B. in Nova Scotia.

[17] The provisions of the Divorce Act that are relevant to the custody / access issues include:

> "16 (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
>
> 16 (4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.
>
> 16 (5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.
>
> 16 (6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it things fit and just.
>
> 16 (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

> 16 (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
>
> 16 (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact."

[18] I have considered each of these provisions, and particularly sections 16 (8) and 16 (10).

[19] Mr. B. and Ms. G.-B. started living together in June, 1983. They married on August 31, 1985. They have two children - A.. C. B. (born (...), 1995) and E. M. B. (born (...), 1997). Ms. G.-B. has been the primary caregiver to the children since their birth. She has not worked outside of the home since May, 1995, shortly before A..'s birth.

[20] The parties moved to Nova Scotia from Ontario in 1995 as Mr. B. "was originally from the East Coast and had most of his family here."

[21] They lived in Hammonds Plains from March 1999 until June 1999. They built a home in K., moving in in June 1999. They sold that in November, 2001 and moved to R. in Bedford where they lived when they separated. In August, 2002, with the help of her father, Ms. G.-B. bought a home back in the K. area, where she and the children now live.

[22] At or around the time of their separation Mr. B. was offered a job near the home of Ms. G.-B.'s parents. He took the job expecting, it appears, that Ms. G.-B. and the children would move back to Ontario too. Ms. G.-B. subsequently "realized" that she did not "have to" move and decided to stay in Nova Scotia with the children. Most of the outstanding access issues arise or are related to the geographic distance between the parties.

[23] On July 14, 2003, an Interim Hearing was held on access issues. Justice Dellapinna made an Order which provided:

“1. Beginning September 19, 2003, P. W. B. shall have access to the children of the marriage namely:

A.. C. B., born (...), 1995; and

E. M. B., born (...), 1997

every third weekend from Friday after school until Sunday evening, provided that if on any such access weekend a holiday or in service day falls immediately prior to or after the weekend such that the children have an extended weekend from school, P. W. B.’s access shall be from the childrens’ last day of school immediately prior to such access weekend until the evening before they are due to return to school, and provided further that such weekend access shall be exercised within the province of Nova Scotia.

2. P. W. B. shall have two one week non-consecutive blocks of summer access, which access for the summer of 2003 shall be exercised as follows:

(A) P. W. B. shall exercise access to the children in Ontario from the evening of Friday, July 25, 2003 until Saturday, August 2, 2003, provided that he must accompany the children to and from Ontario; that he is not to be working during this time; and that he is the care provider for the children in Ontario.

(B) P. W. B.’s second block of access shall be from Friday evening August 29, 2003 to and including Monday, September 1, 2003, provided that such access ahall be exercised in the province of Nova Scotia.

3. P. W. B. shall exercise access to the children in Nova Scotia or in Ontario, at his option, from December 26, 2003 until January 1, 2004, provided that if such access is exercised in Ontario he must accompany the children to and from Ontario; that he is not to be working during this time; and that he is the care provider for the children in Ontario.

4. P. W. B. and B. R. A. G.-B. shall equally share the children’s March Break in 2004, with B. R. A. G.-B. having the children for the second half of their break. Mr. B.’s access shall occur either in the province of Nova Scotia or the province of Prince Edward Island, at his option.

5. Neither party shall consumer alcohol while the children are in his / her care or allow the children to be exposed to third parties who are consuming or have consumed alcohol.

6. P. W. B. shall have reasonable telephone access to the children which shall be approximately once every third day. He shall also have reasonable e-mail access to the children.

7. Each party shall provide the other with seven days notice, where possible, in the event that he or she must cancel a scheduled access visit.

8. P. W. B. shall provide B. R. A. G.-B. with the address and telephone number of the location he intends to exercise access prior to such access taking place."

[24] Ms. G.-B. has expressed concern over Mr. B.'s volatility, especially when he is drinking. She has referred to events that predate the marriage - one an incident where he slapped her face. She has also referred to his having drank excessively in the latter part of the marriage - especially after the death of his father. She felt, especially near the end of the marriage, intimidated by him. It has not been suggested that his contact with the children should be supervised or restricted (beyond the suggestion that there be a clause providing that he not use alcohol when the children are in his care). The parties have different versions of most of these incidents. I would not conclude that post - separation Ms. G.-B. has been intimidated by Mr. B.. Her actions and positions regarding the children have not lacked in assertiveness. His actions financially have not been manipulative. Their behaviour together has at times, post separation, escalated to inappropriate exchanges as a result of their individual certainty - certainty that they are "right" with respect to a child or the children. They both have been self centered seeing it more important to assert their position with the other parent (even at the cost of escalating an argument) rather than "backing off" and avoiding an inappropriate exchange in front of the children.

[25] Prior to the separation of the parties a paternal cousin of the children, K., (whose age is near that of A..) sexually touched A.. and E. on two separate occasions, both during sleep-overs. K. is the daughter of Mr. B.'s sister, C.. C. resides in the Halifax area. All the children involved received counselling. All the adults appear to have responded appropriately. A.. and E. saw Carol Boyd,

M.S.W., of the IWK Health Centre for counselling. Her report of October 30, 2002 states that the girls contact with K. should be under strict adult supervision with an adult present at all times and that she would "not recommend sleepovers at all." There is no real evidence to contradict this. Mr. B., when the children are in his care, should follow these guidelines. Ms. Boyd, in her report, indicated a willingness to become re-involved with the girls. Should either parent wish to seek to review or re-visit the issue of overnight contact with K., I would expect them to, as a first step, seek Ms. Boyd's advice (and secure it either jointly or in writing.)

[26] Mr. B. also has a brother, M., who lives in the Halifax area. He smokes. He has some unspecified difficulties with alcohol. At one point, he (M.) apparently attended A.A. Some of the drinking Mr. B. did during his marriage was with M.. Not surprisingly, Ms. G.-B. is negative about M.'s drinking.

[27] These circumstances have resulted in Ms. G.-B. having heightened concerns over where the children over-night with Mr. B. during his access visits in Nova Scotia or the Maritimes. Appropriately, Ms. G.-B. has opposed overnights being at C.'s. She has opposed visits being at M.'s, unless there is no smoking or drinking in the presence of the children. She has been "ok" with them staying with extended family in P.E.I. or in a hotel in the Halifax area. This, it seems, has been a recurring issue.

[28] In April, 2004, Mr. B. came to Nova Scotia to visit the children. He had planned to stay with T. H.'s sister. Undoubtedly this was in part due to Ms. G.-B.'s concerns about M.'s home. The incident that followed was described by different witnesses. Ms. G.-B. said in her affidavit of June 2, 2004 (at paragraph 8 and 9):

> "I ask that any Court Order in respect to custody include a clause stating that in relation to decisions pertaining to access, both parties will take the children's wishes into consideration. I am requesting this provision as a result of an incident that occurred recently. On April 17, 2004, while my parents were visiting, I took the children to meet their father for access. My parents were in the car with us. At the time, my oldest daughter A.. advised that she did not want to go to an overnight visit with her father, and she was crying. That weekend, the children were to have overnight access at the home of T. H.'s sister, and this was someone whom the children had never met before. Both A.. and E. had advised me prior to the access that they did not wish to have an overnight visit with their father at the home of someone they did not know. I had explained this previously

to P. in an e-mail to him. After the children were in P.'s car, he asked me for their bag, and I advised him that I did not bring a bag, as the children did not want to have overnight access at a stranger's home. I attempted to speak calmly to P., explaining to him that I just wished to take the children's wishes into consieration and that perhaps he should listen to his children as well. I suggested that he take them for the day and let them come back to the home at night to sleep. Unfortunately, P. became very angry and began yelling at me. I asked him to stop yelling as the children were present and I did not want them to be frightened A.. then opened the door and stated that I was telling the truth and that she wanted to come back home to sleep. I tried to calm my daughter, but the Petitioner yelled at her to get back into the car. P. then continued to yell at me and advised that I would be hearing from his lawyer and that this was unacceptable. He told A.. to get back in the car but she clung to her grandfather and said she would not go. My father then took A.. to my car to see her grandmother and they tried to calm her down. However, P. continued to argue with me, until such time as he got into his car and left with E..

9. My parents and I then took A.. to the Halifax Shopping Center, where she calmed down. We met P. at the children's gymnastics an hour later where we talked and agreed that the incident should never have happened. P. then spoke to A.. and promised her he would bring her and E. back to our house to sleep that night, which he did. I believe it would be beneficial in preventing future disputes if we both considered the children's wishes in circumstances such as what occurred on April 17, 2004."

[29] The e-mail referred to by Ms. G.-B. is as follows:

"Thursday, April 15, 2004 To: P. B.

P., as I indicated last week, this is extremely busy time - I'm in the midst of exams. A.. and E. have watched me study continuously for the past week and half, and I have asked them not to disturb me when I'm studying, so A.. was doing what I asked her to do. Unfortunately, although you have been asked several times not to ask for me through your phone calls to the children, you continue to do so. Please respect this request (for the last time I hope) to stop asking the children to get me to talk to you during your calls to them. Your calls to them is just that, time for you to talk to them, not me. You can communicate with me via e-mail.

> As for this coming weekend, the girls have their activities (9-11 a.m. at (...). , 12 p.m. at (...)) and we can meet at St. Andrews center at 10 a.m. A.. and E. both say they do not know the sister and A.. and E. both said they want to come home at night since O.'s here. I also don't know this person, and I agree for this weekend day visits would be best. Please advise where you will be going for dinner. I will come to pick up the girls Saturday evening around 7 - 7:30 p.m. since I will be studying a the school / libarary most likely, or O. will be home earlier and you can bring the children home to her before 7 p.m. - just advise what is happening. Sunday morning we can meet you at Smitty's at 9 a.m. if that works for you and we can meet you at 2 p.m. at the Keshan - Goodman library, where we met before. I will be out for the next few days studying at school / library, but will check my e-mails at night. B.

[30] "O." refers to Ms. G.-B.'s mother. The e-mail to Mr. B. from Ms. G.-B. says (of his weekend access)

> "A.. and E. both say they do not know the sister and A.. and E. both said they want to come home at night since O.'s here. I also don't know this person, and I agree for this weekend day visits would be best."

[31] Ms. G.-B., <u>at the time of trial</u> was saying (of these events) - that since she and the girls had not met Ms. H.'s sister, there would be no overnight the April 17th weekend. The <u>e-mail</u>, however, said the girls wanted to be with their grandmother who was visiting from Ontario. I draw these conclusions from the events of this April 17th weekend:

1. Both Mr. B. and Ms. G.-B. over-reacted on April 17th.

2. Ms. G.-B. created, contributed to and/or reinforced any anxiety the girls might have had to overnighting somewhere new. She did not allay any concerns the children had.

3. Ms. G.-B. and her parents know the girls are attached to their maternal grandparents who live in Ontario. Ms. G.-B. knows the access schedule when Mr. B. is to have weekend access. Having the maternal grandparents visit when the girls are to have access to their father is either calculated to create conflict in what the girls will want to do or indifferent to creating a

situation where they will be torn between their father and maternal grandparents.

4. Ms. G.-B. appears to feel her perception of the children's wishes should trump the access arrangements (at least as they were in the Interim Order), (though mid-trial she withdrew her request that "the children's wishes be part of the access order.) The interim order did not give her this authority.

5. The children here are mirroring Ms. G.-B.'s own anxieties, concerns. She is, at times a source of such anxieties.

6. The children's wishes vary, as is seen from Ms. H.'s evidence of this day.

[32] Through this same time period Mr. B. was trying to secure Ms. G.-B.'s permission to take the children to Florida (in May, 2004.) He had raised this in January, 2004. She never agreed to it. It did not happen. In the Spring of 2003, the children missed 5 days of school when Ms. G.-B. and her parents took the children to Florida. Ms. G.-B. said she had learned since then that E. has "learning challenges" and shouldn't miss school. As a result she did not consent to Mr. B.'s Florida trip. The evidence of E.'s "learning difficulties" is less than specific. E. is 7 years old. I conclude that missing a week of school was not problematic for her in 2003, and would not have been in 2004.

[33] Ms. G.-B. seems to feel Mr. B. cannot be trusted as a parent. Their various disputes, his drinking (the last evidence of this is April 2002) and an incident involving his leaving the girls in a cottage for 10 minutes while we went to the road to use a phone are, substantially, her stated rationale. She is too often overly negative in her interpretation of Mr. B.'s actions. She is consistently restrictive in her positions on access issues.

[34] Ms. G.-B. is understandably concerned by the inappropriate touching of their girls by K.. Her affidavit details the first occasion this occurred (when Mr. B. stayed at his sisters with the girls) but not the second where she (Ms. G.-B.) played a role in the sleepover. Neither of these parents are responsible for these unfortunate events. Her detailing of Mr. B.'s role in the first sleepover and omission of her role in the second sleepover is an example of the negative interpretation she places on Mr. B.'s actions and various events. This pattern is, I

conclude what led Ms. Burton to express concern that Ms. G.-B. would alienate the children from their father. I share that concern.

[35] I conclude that, independently, both are good parents. I conclude that both are responsible parents. Whatever problems Mr. B. had in the past, they appear either controlled or resolved. He has supported his family over the last two years. He has travelled to Nova Scotia to exercise access more regularly than any parent this court has seen in similar circumstances.

[36] Some of the custody / access issues have been agreed to. It has been agreed, in broad strokes, that the children will be jointly cared for. Ms. G.-B. will have primary care, the parties will share information, Ms. G.-B. will be the final decision maker (after consultation) on matters relating to education, religion, counselling, etc. except insofar as such decisions may impact on the access schedule.

[37] Considering this, the legislation, the submissions of counsel and evidence the order will provide that:

1. The children will be co-parented and cared for.

2. Ms. G.-B. will have their primary care.

3. Ms. G.-B. will "discuss" (with Mr. B.) by phone, e-mail, or through mediation major issues concerning the children. In the event that a consensus is not reached Ms. G.-B. will be the decision - maker. Such issues shall include those relating to education, religion, non-emergency medical or dental treatment, and counselling; including the selection of professionals providing such services.

4. Ms. G.-B.'s decision making authority will not extend to making decisions that impede, restrict or alter access.

5. Ms. G.-B. will provide Mr. B. monthly a written summary of the activities, educational schedule, events, information and medical and dental care of the children. Mr. B. will provide such a report to her monthly of their activities while in his care.

6. Each parent, when the children are in his/her care shall have the authority to make day to day decisions including:

- consenting to emergency medical care, provided the other parent is notified as soon as practicable.
- having the authority to cross provincial and the U.S / Canada border with the children for vacation or activity purposes and the authority to grant such permission to others (for example, Mr. B. and the G.'s live relatively close to the U.S. border and he would like the authority to give them permission to take the children to the U.S. to holiday or briefly visit.)

7. Ms. G.-B. will ensure that school and medical authorities are provided with Mr. B.'s name and contact information and that they are advised of Mr. B.'s entitlement to make inquiries to and get information from them concerning the children.

8. Mr. B. will have the care of the children each third weekend from 5:00 p.m. Friday to 3:00 p.m. - 5:00 p.m. on Sunday. In the event his weekend falls on a holiday or inservice day, his weekend will be extended by the 24 / 48 hours.
9. When Mr. B. is exercising access in the Halifax area, he will make reasonable efforts to ensure they attend their regularly scheduled events or activities. Ms. G.-B. will keep him informed, on a timely basis, of their "schedules", events.

[38] There are a series of unresolved access issues, issues relating to when and where the children will be cared for by Mr. B..

1. Where Mr. B.'s overnight access may be exercised.

In the absence of the express approval of a counsellor (ideally Ms. Burton or Ms. Boyd) the overnights will not take place at Mr. B.'s sister, C.'s home. Apart from that, Mr. B. may exercise his access in Nova Scotia (P.E.I. or N.B.) where he chooses - whether that be a hotel, Mr. H.'s sister's, his brother's, his family in P.E.I., the children's godparents in New Brunswick, or where ever. Ms. G.-B. seems to

believe that she has the right to approve where he goes. She did not under the terms of the interim order. She does not now. Mr. B. shall provide her with a contact number and address where he and the children can be reached during his access at or before his pick-up.

2. When access may be exercised at Mr. B.'s home in Ontario.

Ms. G.-B. suggests such access only occur at Christmas and summer. Mr. B. suggests that

- for the fall of 2004 (September - December), spring 2005 and fall of 2005, spring 2006 he be able to have the children with him in Ontario one long weekend in the fall and one in the spring.
- for the two years following that (when the children are 11 and 9) he suggests two long weekends in the fall and two in the spring.
- after that he suggests it be at his discretion (presumably considering the circumstances of the children.)

I believe his request is reasonable with respect to the next four years. One of his weekends in the fall and one in the spring of each year will be extended by a minimum of one day.

If the parties cannot agree on a fall weekend, it will be the Thanksgiving weekend.

If the parties cannot agree on a January - June weekend, it shall be either the Easter weekend or May long weekend. (Mr. B.s choice in 2005; Ms. G.-B.'s in 2006.)

Mr. B.'s "every third weekend" access will be adjusted accordingly. These are not "additional access weekends."

3. Summer access.

Mr. B. asks for two weeks in the summer and that they be consecutive or separated, at his discretion. Ms. G.-B. says they should be separated so as to minimize interference with "summer activities" such as soccer and swimming. I do not understand how separating the two weeks makes a difference. Two weeks is

two weeks. Many, many children split entire summers between parents. Mr. B.'s request is, in my view, modest. He will have the children for two one - week periods each summer. They may be consecutive or separate. He will advise Ms. G.-B. by April 1st of each year of his weeks. One summer access week will be from a Friday at 5:00 p.m. until the 2nd following Sunday at 5 p.m. (unless the weeks are consecutive.) The summer block access may be exercised where Mr. B. choses.

4. Christmas.

Justice Dellapinna, in the Interim Order, ordered that Mr. B. have Christmas access from December 26th, 2003 to January 1st, 2004.

Ms. G.-B. submits that Mr. B. should have Christmas access from December 27th until a date which is ½ of the Christmas vacation period. She says getting the girls ready to go to Ontario on December 26th disrupts their Christmas.

Mr. B. does not ask for each second Christmas Eve / Day as many parents without primary care do. His view is that the girls should be in their "primary home" for Christmas Eve and Day. He suggests he have them the morning of December 26th until January 1st, and that this be fixed.

I believe his position is consistent with the interests of the children here as

- it provides certainty for the children (as recommended by their counsellor, Ms. Burton.)
- the past (for example his request to take the girls to Florida) has demonstrated that negotiation between the parties over such matters can be problematic.
- it provides certainty for both parties in terms of holiday and flight planning.
- some years the December 26th - Jan 1st access may be more than ½ the school break, some years less.

5. March Break.

Ms. G.-B. says the girls March Break should be split. She is in university. The grade school March Break (which the children have) is normally about one month before university exams. Ms. G.-B.'s e-mails to Mr. B. refer to how busy she is with school. Her university study break is in February - not March like the Grade School Break the girls have.

Mr. B. requests that the entire March Break be alternated.

So long as Ms. G.-B. is in University I see no reason why Mr. B. should not have each March Break. Once Ms. G.-B. completes university, March Breaks will be alternated. Mr. B. will advise her of the location of the March Break access one month ahead, with contact information being given seven days ahead.

The March Break will not "count" as Mr. B.'s spring "extended" weekend.

6. Travel outside Canada.

Mr. B. lives near the U.S. border. It is likely that, when the girls are with him, there will be occasions (shopping, events, parks, excursions) when he might want to take them to the U.S. Ms. G.-B. suggests that he get her permission to do so each time. This is in my view, impractical and unreasonable.

An order separate from the Corollary Relief Judgement will issue providing simply that

- the girls are in the joint care and custody of the parties.
- either parent may travel to the U.S. with the girls for vacation or other recreational or entertainment related reasons.
- either parent may authorize a third party (for example the maternal grandparents, or Ms. H.) to travel with the girls.

7. Other (non U.S.) travel outside Canada.

Either parent may travel with the children for holiday purposes outside Canada. On request, each will provide the appropriate consent to the other.

8. Unaccompanied Minors Program.

Mr. B. requests that the children be permitted to travel under the airlines Unaccompanied Minors Program, for visits with him in Ontario - if the flight is a direct flight to Toronto or Hamilton. He requests that Ms. G.-B. accompany the children to the Halifax airport and pick them up on their return in accordance with airline policy. He would be the person authorized to "pick them up" in Ontario.

Ms. G.-B. opposes this, feeling the children "are not ready".

The evidence as a whole - including that of Ms. G.-B., Ms. Burton, the report of Ms. Boyd, the evidence of Mr. B. (including that detailing the program which states tht some 45,000 children between 5 and 11 years of age use it annually), leads me to conclude that this is precisely the type of situation the unaccompanied minor program is for. The children would most often travel together - having each other as "additional support."

The children may travel in this fashion. Ms. G.-B. will facilitate such travel.

9. Timing of Flights.

Ms. G.-B. requests that the children's flights not be before 9:00 a.m. or after 5:00 p.m. This would make leaving Nova Scotia after school on a Friday difficult. The order contemplates them flying from Nova Scotia once or twice in the summer, once in the fall, once at Christmas, once or twice in the spring, ie: 4 - 6 times per year. The requested restrictions are not reasonable. At times bargain fares are available at non business hours. Apart from Boxing Day, the flights will depart between 8:00 a.m. and 9:00 p.m. On Boxing Day, the flight will not depart before 10:00 a.m.

10. Alcohol consumption and smoking.

The interim order provides:

> "5. Neither party shall consume alcohol while the children are in his/her care to allow the children to be exposed to third parties who are consuming or have consumed alcohol."

The literal effect of an order with this provision would prevent flying, going to restaurants, etc. I am not satisfied that the evidence demonstrates a need for such restrictions on either party. Mr. B. knows these are red flag issues for Ms. G.-B.. He should avoid exercising access in circumstances where either product is excessively consumed.

11. Birthdays, Father's Day, Mother's Day.

Ms. G.-B.'s birthday is sometimes close to, on Thanksgiving. A..'s birthday was, this year on Father's Day weekend, a weekend Mr. B. was to have access. Ms. G.- B. feels birthdays should be a priority. The effect of that position (for example on this past Father's Day weekend) is to disrupt Mr. B.'s access. Knowing it was his weekend Ms. G.-B. allowed a birthday sleep-over to be planned for A.. and a dinner with her parents. Either could have been planned so as to avoid the conflict with Mr. B.'s access.

Birthday's need not be celebrated on the birth day unless agreed ahead by the adults. Events should not be planned by Ms. G.-B. (or such plans made and discussed with the children) during Mr. B.'s time with the children - any more than he should plan events during her time. The maternal grandparents visits should attempt, at least, to avoid his access times - especially if these visits continue to put the children "between" their maternal grandparents and father.

Father's Day weekend and Mother's Day weekend will irrespective of the "each third weekend schedule" be with the appropriate parent. The schedule will "bump" to accommodate this.

12. Telephone Access / E-Mail.

Ms. G.-B. appears to have made Mr. B.'s telephone access difficult. At one point Ms. Burton suggested she (Ms. G.-B.) get an answering machine. Mr. B. bought her one. Ms. G.-B. states she hasn't used it as - she gets "calls from creditors" (though her debts seem in order) and doesn't want "negative" calls from Mr. B. heard by the children. Suggestions that she put the answering machine in her office or bedroom were resisted. I can make little sense of this. I can't identify the problem. It is evident that if Mr. B. left "negative" messages on an

answering machine tape they could be saved and used by Ms. G.-B. to argue that calls should be restricted.

Mr. B. asks that the girls be available to take calls from him Sundays from 8:30 a.m. - 9:30 am. AST and between 6:30 p.m.- 8:00 p.m. from Monday to Thursday. Ms. G.-B. says these times are acceptable.

If the children's activities encroach on these times they will be adjusted accordingly. Mr. B. should not call more than four times per week.

If they do not have one already, Ms. G.-B. should facilitate the children each having an e-mail or "hotmail" account on which they could communicate with either parent while in the care of the other. The evidence indicates that both parents have computer, e-mail access.

C. Property / Debt Division

[39] The matrimonial debt includes

Canadian Tire Credit Card	$ 700	(as of separation)
TD Visa Credit Card	$ 3000	
Sears Credit Card	$ 2000	
Home Depot	$ 1000	
N.S. Power Corporation	$ 110	
R. repairs (Mr. G.) $ 2000	(not receipted)	
Visa (Mr. B.)	$ 3500	

[40] The parties have agreed that the debts would be divided equally and that this would be achieved with Ms. G. assuming responsibility for all of the above debts save the Visa in Mr. B.'s name. Mr. B. will be responsible for that. Mr. B. will pay her a "debt equalization payment" of $2578.70.

[41] The parties have agreed they would effect an appropriate division of Air Miles by Mr. B. transferring 25,000 Air Miles to Ms. G.-B..

[42] Their CPP credits will be divided 50/50 (both ways) for the period of their co-habitation.

[43] The parties have agreed that their assets will be “equally divided”.

[44] The only dispute with respect to property relates to the valuing and actual division of RRSP’s and the proceeds from the sale of their home. These assets are:

Proceeds from sale of the matrimonial home	$91,038.76 (plus interest)
RRSP (Mr. B.) Manulife	$51,509.95
RRSP (Mr. B.) Merrill Lynch	$10,912.98
RRSP (spousal) Merrill Lynch	$45,712.40

[45] I have adopted the gross values used by counsel and contained in Mr. B.’s statement of property. No issue regarding the date of valuation was argued or put before the Court.

[46] Ms. G.-B. suggests that the RRSP’s be valued for distribution with a notional discount for tax of 30%, and a division that would give her more of the proceeds of the matrimonial home, Mr. B. more of the RRSP’s. Specifically, she proposes a division as follows:

Mr. B.

RRSP Manulife - $51,509.95 x .70 =	$36, 056.97
RRSP Merrill Lynch - $ 10,912.98 x .70 =	$ 7,639.09
Proceeds of home (share to equalize)=	$39,671.74
Total =	$83,367.80

Ms. G.-B.

RRSP (spousal - Merrill Lynch) - $45,712.40 x .70 =	$32,078.00
Proceeds from sale of home =	$51,367.02
Total =	$83,445.02

[47] Ms. G.-B. asserts that she can use cash now to help pay for her education.

[48] Mr. B. asserts that his tax rate is 40 - 46%, (not 30), that hers is 19 - 24%, (not 30). In consequence he says giving him more RRSP effects an unequal

division. In fact he asserts that even an equal monetary division of RRSP's favours Ms. G.-B. if one considers their current and potential marginal tax rates.

[49] Section 13 of the Matrimonial Property Act provides, in part:

> "13. Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:
>
> (b) the amount of debts and liabilities of each spouse and the circumstances in which they were incurred;
>
> (d) the length of time that the spouses have cohabited with each other during their marriage;
>
> (e) the date and manner of acquisition of the assets;
>
> (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;
>
> (g) the contribution by one spouse to the education or career potential of the other spouse;
>
> (h) the needs of a child who has not attained the age of majority;
>
> (I) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
>
> (j) whether the value of the assets substantially appreciated during the marriage;
>
> (m) all taxation consequences of the division of matrimonial assets. R.S., c. 275, s. 13; revision corrected."

[50] I have considered the provisions of the Matrimonial Property Act, and the parties agreement to effect an equal division of assets. I do not conclude that an equal division of their assets would be unfair or unconscionable.

[51] It appears that Ms. G.-B.s 2004 income tax circumstances (her only taxable income will be spousal support from the date of this order) will give her an opportunity to collapse RRSP's should she decide to do so at a relatively reduced marginal tax rate. (I am not suggesting she must do this, only that she could.) Also, she is in a position to claim educational expenses on her personal tax return. It appears that she allowed Mr. B. to claim these expenses in 2003, she having virtually no taxable income.

[52] I conclude that Mr. B.'s proposal effects a division that is "more" equal - and more consistent with the parties stated desire to effect an equal division.

[53] The proceeds from the sale of the home will be split - each party receiving approximately $45,519.38. Mr. B. will pay Ms. G.-B. the "debt equalization" payment of $2578.70 from his half of these proceeds.

[54] The RRSP's will be split evenly, using their gross value. Each party will receive approximately $54,067.67 in RRSP's.

D. Support Background

[55] Mr. B. has paid spousal and child support in the absence of an agreement or order since separation. This has been approximately $3000 - $3182 monthly. He has received no tax benefit for any portion of these payments; she has incurred no tax liability.

[56] In addition, after Ms. G.-B. moved (in August 2002) Mr. B. maintained their mortgage on the matrimonial home and line of credit - a total payment of $1478 per month until the sale of the matrimonial home in June 2003 - some 9 or 10 months. (To be fair, Ms. G.-B. paid all or some of the utilities during this time.)

[57] Finally, he provided air miles tickets to her and the children for an April, 2004 trip to Florida.

[58] No interim support application was made.

[59] Ms. G.-B. will pay tax on periodic spousal support ordered by this decision. Mr. B. will deduct these payments.

E. Child Support

1. Child Support Guideline - Table Amount

(a) Mr. B.'s current income appears to approximate $142,609.00. This would result in a Table Amount of support (Ontario) of $1684 per month. This amount will be payable commencing July 1, 2004, and the 1st day of each month thereafter.
(b) Mr. B. is apparently eligible for an annual bonus. He did not receive one in 2003. Commencing in 2005, by May 30th of each year, Mr. B. will provide Ms. G.-B. with a copy of his income tax return for the previous year. The Table Amount of support will be adjusted for the previous year to reflect his actual income (including the bonus, if received). Thus, if his 2004 line 150 income exceeds $142,609.00 as a result of the bonus, he will pay the difference between what was paid and what should have been paid for those months (in the case of 2004, July 1 - December 1) on or before June 30th, 2005.

(c) 2005 and later years. Mr. B. will provide Ms. G.-B. with copies of his first two pay statements of the year by January 30th of each year. He will estimate his income based on that and, pay the appropriate table amount.

2. Retroactive Child Support - Table Amount

[60] Mr. B. has paid support since the parties separated. There has been no order or formal agreement. He paid Ms. G.-B. $3683 per month initially, the amounts varied thereafter. They have been $3182 per month with rare exception since August 2002. Ms. G.-B. paid the mortgage on the matrimonial home from March 2002 to August 2002 out of these funds. At the end of August, 2002 she and her father purchased another home, that she and the children moved into. She could not maintain the payments on both. From the fall of 2002 until its sale in June, 2003, Mr. B. paid, or maintained (in addition to support of $3182 per month to Ms. G.-B.), the mortgage on the matrimonial home and their line of credit, a total of $1478 per month. I am not aware of any adjustments having been made for these payments.

[61] Ms. G.-B. seeks retroactive child support to January 1, 2003, stating his actual income for 2003 ($135,554.59) would yield a support (Table) payment of $1610 per month, not the notional $1500 attributed to the payments of $3182.

[62] Ms. G.-B. has indicated that she would accept this same adjustment for the first six months of 2004 - thus her claim is $1610 - 1500 = $110 per month x 18 months = $1980.00. I have considered Conrad v. Rafuse [2002] NSJ, No. 28, Carswell NS 181. Counsel for Ms. G.-B. submits that they were unable to confirm Mr. B.'s 2003 income until April 2004. While it is clear that Mr. B. has supported his family, and that no interim application for support was brought in the more than two years since separation, I conclude considering the principles outlined in Conrad v. Rafuse that it is appropriate to make the retroactive order. I fix the appropriate retroactive payment (to June 30, 2004) at $1980.00. This will be paid out of Mr. B.'s half of the proceeds from the sale of the matrimonial home.

3. Section 7 Expenses

[63] Ms. G.-B. makes the following claims for s. 7 expenses (per the Child Support Guidelines):

(a) Tutoring for E. (est. cost max. $260 per month during school year)
(b) Family Counselling (est. cost $20 per month)
©) Dental Costs (uncertain)
(d) Extracurricular Activities

-	Music / Piano	$190 / year + $100 for books
-	Dance / Art	$164 / year
-	Theatre	$ 46 / year
-	Swimming	$236 / year
-	Soccer	$100 / year
-	Soccer Camp	$250 / year
-	Girl Guides	$166 / year
-	Girl Guide Camp	$ 70 / year
-	Sunday School	$ 80 / year

[64] The tutoring and family counselling appear to be s. 7 expenses as contemplated by s. 7 (1) of the Child Support Guidelines. Ms. G.-B. seeks a contribution of ½ this amount. The cost of the tutoring is $30 per hour. E. has

been going once per week. There is some suggestion that E. should go twice per week. Mr. B. will pay ½ of the tutoring costs to a maximum of $120 per month. Ms. G.-B. will provide him with a phone number for the tutor and facilitate his having contact with her / him.

[65] The counselling is, according to the evidence all but over. Mr. B. will pay $60 as a s. 7 contribution to the completion of the counselling. Any future counselling of the children will be by Ms. Burton, Ms. Boyd or someone agreed to by both parents. The payment will be made out of Mr. B.'s half of the proceeds from the sale of the matrimonial home.

[66] The dental / orthodontic expenses are not before the court in a precise or specific fashion. They would appear to potentially be s. 7 expenses. At this time the amount involved is speculative. Mr. B. will contribute 50% to such expenses provided he agrees the work should be undertaken, the expense incurred and to the negotiation of a payment schedule. At the close of the trial his counsel indicated that Mr. B.s medical / dental plan may provide some discretionary monies. At least ½ of these should be available, if needed to the girls expenses. My views here are straight forward. The expenses and spectre of orthodontic work are not before the court with any precision. If undertaken, Mr. B. should have a chance to be part of the approval of the work and payment schedule - so that he can take advantage of his medical / dental plan to the greatest extent possible.

[67] The extra-curricular expenses are the sort of expenses seen by Raftus v. Raftus (1998) 166 NSR (2d) 179 (NSCA) as not being s. 7 expenses. They total approximately $1000 per year. Ms. G.-B. receives over $20,000 per year in child support. I would not conclude that they are s. 7 expenses as contemplated by Raftus. I do not conclude that their "totality" makes them "extraordinary."

[68] Ms. G.-B. has made no claim for child care expenses.

4. Spousal Support

[69] The Divorce Act states:

> "15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump

sum and periodic sums, as the court things reasonable for the support of the other spouse.

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court things reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

> (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time"

[70] Ms. G.-B. and Mr. B. cohabitated before marrying - from June 1983 to August 1985. They married on August 31, 1985 and separated on March 3, 2002. They were together just under 19 years, married for 16 ½ of them. Mr. B. was born in Newfoundland on (...), 1964. He is almost 40. Ms. G.-B. was born in Ontario on (...), 1962. She is nearing 42.

[71] They have two children, ages 9 and 7. The children are in Ms. G.-B.'s care.

[72] Mr. B.'s current annual income is $142,609.

[73] Ms. G.-B.'s education and employment background is set out at paragraphs 25 and 26 of her June 2, 2004, affidavit:

> 25. Following high school, I obtained a degree from Ryerson Polytechnic University in Toronto, in the study of Administration and Information Management, Faculty of Business. I attended Ryerson Polytechnic University from 1986 to 1990, and also worked during this period. My work history is as follows:

YEAR	EMPLOYER	POSITION	SALARY
1985 - 1987	(...)	Administrative Support	$23,000.00
1987 - 1989	(...)	Legal Administrative Assistant	$26,000.00
1989	(...)	Interim Sales and Marketing Coordinator	$32,000.00
1991	(...)	Project Analyst	$34,000.00
1991 - 1993	(...)	HRIS Coordinator	$36,000 - $38,000
1993	(...)	Legal Administrator	$39,000.00
1994	(...)	Finance Administrator	$41,000.00
1994 - 1995	(...)	Payroll Systems Analyst	$42,000.00 to $43,000.00

> 26. Around the time that P. and I began our family, I was working as a Payroll Systems Analyst at (...). As a Payroll Systems Analyst, my job was to administer, maintain and support the payroll system for both union and management employees, acting as a departmental liaison. My job involved a payroll system for over one thousand employees, and involved review and analysis of the daily / weekly / monthly reports, ensuring timeliness and accuracy, as well as preparing monthly, quarterly and annual reports. At the time I left work in May, 1995, while I was pregnant with A.., I was earning approximately $43,000.00 per year.

[74] Ms. G.-B. was out of the workforce from May, 1995 until the time of separation. Her "plan" regarding education and employment is set out at paragraphs 28 to 32 of her June 2, 2004 affidavit:

> 28. After P. and I separated in March, 2002, I recognized that I needed to do something in order to assist in the financial support of myself and our two children. As P. told me that I had to get a job, initially, I sent out approximately five resumes to classified ads in the career section of th newspaper, but I received no replies. I also asked a few friends if they would advise me of any opportunity at their offices. However, as it had been seven years since I had been in the workforce, I realized that I would have to do some form of retraining in order to earn an income that would be high enough to be self - sufficient. As I have been out of my field of employment for the past eight years and the business systems industry has changed dramatically during that time, it was clear that I would have had to upgrade all of my qualifications in order to re-enter this field of work. In 1996, while P. and I were still married, I had expressed an interest to P. in taking my Bachelor of Education degree. P. was aware that I had always had an interest in working with children, and when I initially had completed high school, I wanted to attend teachers college. However, I was unable to do so as I was advised at that time they were unfortunately closing the teachers college for a period of two years, due to an over-abundance of unemployed teachers in that area of Ontario, and no available jobs. As teaching was not an option available to me at the time, I went to the field of nursing to work with children, but due to medical circumstances was forced to withdraw from the program during the first semester of my second year. At that time, P. and I had just started living together, and he suggested that I go into business. Unfortunately, this was an area which was truly never of interest to me, but I completed my degree and worked in this field for ten years. I was very unhappy pursuing this field of work.
>
> 29. I received information in September, 1996, from Acadia University, regarding the enrollment in their two year Bachelor of Education program,

commencing September, 1997. I was interested in Acadia as I heard it had a very good education program. At the time I requested the application we only had A.. and my plan was to arrange day care during the days I was in the Valley with a woman in our neighbourhood who looked after several children. I was told I would only have to attend on campus two to three days a week. A copy of the information received from Acadia University, and the envelope in which it was contained, is attached hereto as Exhibit "B". However P. dissuaded me at that time from pursuing this interest, and preferred that I stay home and devote myself to our children. At the time we were trying for more children and I learned in mid October of 1996 that I was expecting E..

30. After P. and I separated in March, 2002, I decided to return to University. I am currently working towards obtaining either my Bachelor of Education degree or a degree in School Psychology, but before I can be accepted into either of these programs, it is necessary for me to update some of my older university credits and obtain additional new ones which are prerequisites for the programs I'm interested in. I enrolled at (...) University in July, 2002, and took Children's Literature, a course for one credit in the summer II session before beginning a full course load in September, 2002. From September to December of 2002, I completed Writing to Influence, a half credit course, Basic Intro to French I, a half credit course, and Shakespearean Literature, a full credit course. From January to April, 2003, I completed Maritime History, Post-Confederation, a half credit course, Basic Intro to French II, a half credit course and continued on with my Shakespearean Literature course from the previous term. From May to June of 2003, I completed Intro to Statistics I, for half a credit and Statistics II, another half credit course. I completed my Spring course on June 27, 2003 and was off for the remainder of the summer to take care of the children who were out of school, prior to returning to another full course load of three courses for the year beginning September, 2003. From September to December of 2003, I completed Child Developmental Psychology I (half credit), Research Methods (half credit) and Neuroscience (half credit). From January to April, 2004, I completed Child Developmental Psychology II (half credit), Maritime History, Pre-Confederation (half credit) and Introduction to Fine Art History, Post - Classicism (half credit). From May to June, 2004, I was registered for Fundamental Concepts of Math, but due to the pending Court appearances in May and June and the preparation for the same, I had to withdraw from these classes. I plan to return to classes as soon as the trial is over.

31. In total, I have completed eight full credits to date, or two full course load years of university. I believe it will take me two more years to complete the pre-requisites to apply to either the B. Ed. Or School Psychology programs. Either of these programs will likely take me between three to five years to complete, depending on how many courses I can manage per year, given my

> family commitments. I anticipate that as A.. and E. get a little older, I should be able to handle a greater course load. Currently, I try to arrange my school schedule such that I am home to take A.. and E. to their school bus every morning at approximately 8:30 a.m. and to pick them up in the afternoons from their bus. E. gets home at approximately 2:55 p.m. and A.. gets home at 3:25 p.m. Another requirement of the Education Program is volunteer work with children in schools. Therefore, I have volunteered for the past two years at (...). I attend classes and perform my volunteer work Monday through Friday. This schedule ensures that I am home to take care of my daughters both before and after school, and to take them to their various extracurricular activities such as swimming lessons, piano lessons, gymnastics and girl guides."
>
> 32. My plan is to apply for both programs in approximately one and a half years, provided I have completed all of the necessary pre-requisite courses. If I am accepted into both programs, I will decide at that time which program would be better for me to pursue. In making that determination, I will be looking not only at my interests, but which profession would provide me with a greater salary. It is my understanding that a teacher starting out may make less than $40,000.00 per year, but that a school psychologist could make significantly more. As well, I understand that in either profession, my income will increase each year, as I excel in my career."

[75] Ms. G.-B.'s oral evidence emphasized teaching as a goal, and made scant, if any mention of psychology.

[76] Mr. B.'s counsel has been critical of this re-education plan, asserting that Ms. G.-B.

- has taken only 3 of a possible 5 courses during the "regular" university years of September - April (2002, 2003, 2004)
- as a result is projecting 6 - 8 years of re-training, re-education (from separation date, ie: 4 - 6 years from now
- is, according to her affidavit and evidence, undertaking this to qualify for a job that may pay her less than what she earned in 1995 as a systems analyst. She feels her earnings in 4 - 6 years will start at less than $40,000 per year.

[77] To these concerns might be added

- her assertions that Mr. B. discouraged her from applying to Acadia University's education program in 1996 refer to her applying to a two year

program. There is no indication or explanation as to why this two year program was not pursued post - separation. The material filed by Ms. G.-B. suggests that the Acadia program was specialized and at least somewhat related to her Ryerson Polytechnic University degree.

- Teacher training in Ontario requires an undergraduate degree (Ms. G.-B. has an undergraduate degree from Ryerson Polytechnic University) and one year of teacher training. Nova Scotia universities require two years of teacher training.
- Ms. G.-B. has essentially restarted, from the beginning an undergraduate program. It is unclear whether this would have been necessary at Acadia or in Ontario.
- Her decision to remain in Nova Scotia despite the presence of her family and Mr. B. in Ontario appears to be a lifestyle decision that did not examine educational alternatives in any fashion. The decision triggered significant access expenses. It appears that she would have more family support and fewer educational years ahead of her were she in Ontario.
- Her current university course marks include some in the C+ and B- range. I have some question as to whether these will gain her entry to the education program she aspires to. Entry to it has been described by Ms. G.-B. as "competitive."

[78] Ms. G.-B. asserts that she did "not like" her former work. She says "I always wanted to work with children." She feels that by taking a spring (May - June) and/or summer course or ½ course (July or August) and taking three courses through the university year that she has more time for the children and, has time to volunteer at their school (which would enhance her application to the education program.) She has completed eight courses in the more than two years since separation.

[79] Further, Ms. G.-B. has not claimed university tuition as a budgeted expense apparently taking the view that she should finance that part of her education from her own funds.

[80] Ms. G.-B. purchased a new home with her father in August, 2002.

[81] The amount borrowed, interest rate and monthly payment on the matrimonial home (...) was $110,795.00, 5.45% and $1078.94 per month.

[82] The current home (on (...)) has a mortgage of $110,000, a current interest rate of 5.7% and monthly payments of $1103.66 (not including taxes). It is amortized over 13 years and 8 months.

[83] The monthly mortgage expense for the new home is more than that of the former matrimonial home. The monthly mortgage payment could be significantly reduced with a longer amortization period. The heating cost of the new home is apparently significantly less than the R. Drive home. The new home is jointly owned by Ms. G.-B. and her father (who contributed $50,000.00 to its purchase.)

[84] Sections 15 (4), (5) and (6) of the Divorce Act, 1985 all impact upon the primary issues facing a court upon application for spousal support:

1. Entitlement
2. Form of order
3. Duration
4. Quantum

[85] The objectives of a spousal support frame all of these issues. The statutory objectives are:

> 1. S. 15 (6) a. To recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown.

[86] Ms. G.-B. left the work force to have and look after the children, for family reasons. She has ongoing child care responsibilities that create some limits on her. Mr. B. (and the children) were and are advantaged by the division of roles withing the marriage.

> 2. S. 15 (6) b. To apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation for the support of any child of the marriage.

[87] Ms. G.-B. has the primary care of the children. This creates limitations on her education, employability, though both children are school age. I have limited evidence, save her views, of this. Block periods of access may alleviate such constraints for short periods.

3. S. 15 (6) c. To relieve any economic hardship of the spouses arising from the breakdown of the marriage.

[88] Here, the roles adopted in the marriage created (at the time of separation, and now) a dependency. Ms. G.-B. needs some time (post-separation) to get back into the workforce.

4. S. 15 (6) d. To in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[89] Here, Ms. G.-B.'s plan to seek a new undergraduate degree and then an education degree over a period of 6 - 8 years after separation means she may not re-enter the workforce until she is 46 - 48.

[90] All four objectives must be considered:

> "The judge must look at all the factors in light of the stipulated objectives of support, and exercise her or his discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown." (P. 436. Bracklow v. Bracklow (1999) 1 S.C.R. 420 (S.C.C.))

[91] This was a relationship of almost 19 years. Ms. G.-B. was out of the workforce almost 7 years prior to separation. There is no question that Ms. G.-B. is entitled to a support order. Arguably this entitlement can, to varying degrees, be based upon each of the three types of support referred to by the Supreme Court of Canada in Bracklow v. Bracklow (1999) 44 R.F.L. (4^{th}) 1:

1. compensatory support

- the basis of a compensatory support order here would not and was not argued to be calculable and specific, but rather is non-specific to address the economic advantages and disadvantages to the spouses flowing from the roles adopted in the marriage.

2. non - compensatory dependency based support

- to address disparity between the parties needs and means post-separation. She was out of the workforce and has had the care of the children.

3. contractual support

- reflecting any express or implied agreement between the parties. Here they agreed she would be home with the children. I do not conclude that there was an express or implied agreement that she would leave the workforce "forever." or until the children left home. Conversely there would be an expectation that she be supported in efforts to re-enter the workforce and to the degree necessary relating to limits on her as a result of her responsibilities to the children. He says he agreed to support her for four years while she attended university.

[92] The only Order sought is a periodic order of spousal support. There is no issue relating to the form of the Order.

[93] The duration of the Order is in issue. Ms. G.-B. seeks an indefinite term Order of $3500.00 per month. Mr. B. states he was prepared to support her for four years after separation, which would be two more years. He indicates he would be prepared to pay her $2500.00 per month spousal support for these two years.

[94] The duration of the Order should, it has been said, reflect the support objective the support Order is intended to address. This would be easier if an Order had but one objective. It doesn't. A support Order should address all four statutory objectives. Here, the order should address

- the length of and the roles adopted in the marriage; especially Ms. G.-B.'s having left the workforce to care for the children.
- apportion between the spouses any financial consequences arising from the care of the children; including I would find the Guideline expectation that both parents make efforts to contribute financially to the children's well being.
- relieve economic hardship arising from the breakdown of the marriage. This is a difficult consideration here. Ms. G.-B. has education and job experience in the business field. The evidence does not indicate that she has made decisions that "reasonably" facilitate her re-entry to the workforce. Her goal of "wanting to be a teacher" is not one arising from the marriage or its breakdown. The economic hardship created by her having been out of the workforce for seven years is not "reasonably addressed" with a re-entry plan of 6 - 8 years that will change her career for what seems likely to be less

remuneration than Ms. G.-B. was earning in 1995. Her "plan" means she will be out of the workforce some 13 - 15 years before re-entry.

- in so far as practicable promote the economic self sufficiency of each spouse within a reasonable period of time. No one but Ms. G.-B. can decide what she is going to do. That said, her economic plan is not one focused upon achieving economic self sufficiency within a reasonable period of time. It does focus on her own wishes, desires and career aspirations. This is not a situation where she made diligent but unsuccessful efforts to re-enter the workforce and abandoned those for more education as an alternative. I make these conclusions considering her "plan", personal history and ongoing child care responsibilities.

[95] I would conclude, considering the legislation and its goals, the length of this relationship, the roles within it (before and after separation) the means and circumstances of the parties and their proposals, "plans", and aspirations, that the order here should be time limited. Ms. G.-B. is not embracing a course of action that has the potential of her securing or moving towards self-sufficiency within a reasonable period of time. An Order of 6 years of support would mean that she had received, post - separation, support of some 8 years four months - more than half the length of the marriage, but less than half the length of their cohabitation. It would provide spousal support until the girls are approximately 15 and 13. It would make it clear that the spousal support obligation is not a pension. It would create clear expectations and certainty. It would allow her to be responsible for her own decisions.

[96] Mr. B. can now afford to pay spousal support. The quantum of spousal support to be ordered is complicated by Ms. G.-B.'s economic decisions. Her course of study and the amortization period of her mortgage exaggerate her need. The support of her family is laudable, but confounds to a degree, assessment of her needs within this process. I am not being critical. I am not saying they should not help her, simply that their support complicates the Courts assessment of her independent needs. Her decision to stay in Nova Scotia appears to have extended the time for her to re-enter the workforce and added to the access costs. Her budget includes debt payments that will presumably be retired upon the division of assets and car maintenance that is not now an expense. These items approach $1000 per month. Ms. G.-B. has not made a claim for child care expenses. Mr. B. has significant access expenses. He is cohabiting with a new partner.

[97] Mr. B. proposed that he pay $2500 per month in spousal support. Ignoring the educational deductions Ms. G.-B. is entitled to on her income tax and assuming a child support table amount payment of $1684 per month, this would (using Childview calculations) provide Ms. G.-B. with an after tax monthly cash flow of $4161 (or $49,932 net of tax annually) Mr. B. would have $4541 monthly. She would have 47.82% of their (effectively his) after tax income, he would have 52.18%. Including her educational expense deduction would bring the after tax income closer - almost splitting it.

[98] This, in my view, is an appropriate level of support for the next three years. The three years would mean Mr. B. had provided a substantial amount of spousal support for 5 plus years while Ms. G.-B. pursued her studies. Ths is one year longer than they discussed shortly after their separation.

[99] At the end of three years the spousal support will reduce to $1500 per month for three additional years. If Ms. G.-B. has independent taxable income of $20,000 annually during these years, (whether the source be employment, RRSP, whatever) her after tax income including child support, would approximate a monthly figure of $4400 (or more than $52,000). If her independent income is $40,000. During these years her net after tax income will be nearly $5300 per month of near $63,000 per year. At the end of six years the spousal support shall terminate.

[100] Should Ms. G.-B. have employment income of $40,000 in seven years, her monthly net would be $4425 (including the current table amount of child support) - again more than $52,000 annually.

[101] Balancing interests where a party is adopting a career path that reduces income or income potential in return for long term career satisfaction or income potential is difficult - particularly when part of the courts considerations or objectives relate to promoting self sufficiency and recognizing and apportioning joint obligations to the support, financial and otherwise of children. (See for example Montgomery v. Montgomery (2000), 3 R.F.L. (5th) 126 (N.S. C.A.)

[102] I am not imputing income to Ms. G.-B.. I am attempting to structure a support regime that considers the objectives of the Divorce Act, and respects and acknowledges her ability, and right, to make her own career decisions, but does not

unreasonably visit Mr. B. with the financial consequences of her decisions - decisions that appear lifestyle and interest based, rather than economically based.

5. Conclusion

[103] The Divorce and Corollary Relief Judgements will be granted upon these terms. In the event that either party is seeking costs a date will be set for oral submissions.

WILLIAMS, J.S.C. (F.D.)