

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** J.M. v. D.H., 2005 NSSF 14

**Date:** 20050216

**Docket:** SFHF 018494

**Registry:** Halifax

**Between:**

J.M.

Applicant

v.

D.H.

Respondent

**Judge:**

The Honourable Justice Moira C. Legere-Sers

**Heard:**

January 31, 2005, February 1, 2 & 3, 2005, in  
Halifax, Nova Scotia

**Final Written  
Submissions:**

February 8, 2005 - Respondent  
February 15, 2005 - Applicant

**Counsel:**

Susanne M. Litke, for the Applicant  
M. Jane McClure, for the Respondent

**By the Court:**

- [1] On August 9, 2002 J.M. made an application for sole custody of B.H. (D.O.B. May 17, 1999). She proposed specified access between the father, D.H. and his child. She asked the Court to order the father to attend counselling.
- [2] D.H. has made a counter application on November 4, 2002 for custody. He recognized the apparent irreconcilable conflict between the parties and requested the Court impose a parallel parenting arrangement.
- [3] Both parties are in receipt of social assistance. Child support at this time is not in issue although there is a need for ongoing exchange of both parties income tax returns yearly before May 15 of each year.
- [4] J.M. was born on January 26, 1979. She is currently 26 years old and is attending Nova Scotia Community College, enrolled in a two-year course, "Construction Administration Technology 1".
- [5] J.M. had difficulties in her mid teens. With strong intervention from her parents, she completed her high school with honours and commenced attending university. She moved out of her family home at 19 and entered into a relationship with D.H., the father of her child.
- [6] The Respondent was born on December 26, 1967 and is currently 37 years old. He began getting into difficulties when he was approximately 11 to 12

years old, became involved in criminal activity at 16. Between 16 and 19 he admits being involved with drugs including cocaine and has difficulty remembering some of the details of those early years. Between the ages of 16 and 19, with his mother's assistance, the Respondent sought the services of a psychiatrist to deal with the issues of loss in his early life.

- [7] He is currently in receipt of social assistance disability benefits as a result of injuries suffered in a car accident. He looks forward to a full recovery.
- [8] The parties first lived together in 1998 until January 2002. The Applicant worked outside the home after their child was born in the fall of 1999. While she worked and went to university, the Respondent looked after the child. The father had more limited educational background than the mother. Both agree that they had somewhat of a positive relationship for a few months after the birth of their child in May, 1999.
- [9] The mother's concerns historically relate to the relationship difficulties between she and the father rather than the way he looked after the child. The Applicant describes the Respondent as emotionally abusive. She presents a version of their relationship of isolation and estrangement from her family and anyone else outside their home. The Respondent denies these allegations.

- [10] Her parents were excluded from the Applicant's life while she lived with the Respondent. They sat in the sidelines, distraught about the nature of their relationship and its effect on her. When the relationship deteriorated, the Applicant contacted her father and involved him as a safety backup. She remained with the Respondent nonetheless.
- [11] The Applicant suggests that she attempted to leave on numerous occasions and did not feel able to do so. Although she indicates that he was very emotionally abusive, she admits in numerous places that he did not physically assault her except for her allegations that he slapped her face on September 1, 2003 when she refused to allow him to take their child on his regular scheduled access visit.
- [12] The Respondent admits he was involved with cocaine and criminal activity. The Applicant does not deny her own involvement with soft drugs.
- [13] The parties agree that they separated in January, 2002. Between January until May, 2002, the Applicant brought B.H. to Hubbards to see her father for visits which varied from 24 to 36 hours. Access continued, with some interruptions.

- [14] The relationship between the parties had not been resolved and the access schedule was adversely affected. Throughout that period of time, B.H. spent a good deal of time with her father.
- [15] In June, 2003 the mother wanted a schedule and drafted one for July and August 2003. It contemplated unsupervised overnight contact. The parties had an altercation about possessions resulting in further conflict. The Applicant terminated the Respondent's access between August 10 and December 18, 2002 when the court reinstated his unsupervised access.
- [16] The parties agreed to consolidate the interim access hearing and the contempt hearing. On November 13, 2002, the father agreed to supervised access through V[...] House. After a three-day hearing, he was successful in regaining access to his child and proving the contempt application (Order dated December 18, 2002).
- [17] By Consent Order dated August 21, 2002, in order to preserve contact between himself and his daughter, the Respondent reluctantly agreed to supervised access with his Aunt M.A. two days per week. The mother refused to abide by the interim order and indicated she had no intent to do so. The father was granted leave to apply for contempt by Order dated September 20, 2002.

- [18] The parties agreed to an assessment by order dated February 21, 2003.
- [19] The mother was found in contempt and fined; in the alternative sentenced to incarceration. By Order dated February 12, 2003, the sentence was suspended by the Learned Trial Judge conditional on her abiding by the terms of access absolutely. The Learned Judge granted liberal, unsupervised access between father and child. If the mother abided by the access order, the contempt order would be stayed permanently.
- [20] On April 22, 2003 the mother applied to vary the contempt order. Her application was dismissed on July 22, 2003. On September 24, 2003 a variation was granted allowing the grandmother to pick up the child (due to the allegations of assault the Respondent was required to enter into a recognizance with conditions). On March 22, 2004 the court varied the payment schedule for the payment of costs ordered against the mother.

*The assessment* was completed by report April, 2003.

- [21] There are some current frailties with the assessment. It is seriously outdated. The assessor testified at the final hearing and admitted the report was out-of-date and noted she was unable to make any recommendations at this time as she had no contact with the child since then.

- [22] Some of her concerns (e.g., isolation) may not be current because the child is now verbal and attending school where third parties can observe her circumstances.
- [23] The Respondent was concerned that some of his collateral sources were not contacted. Nonetheless, the assessor noted the positive relationship between the Respondent and his child.
- [24] She testified before me that her recommendations were misunderstood. She acknowledged that her intent may not have been clearly articulated.
- [25] Perhaps because of some disclosures from the Respondent; including the fact that the Respondent was the victim of a fight in which he suffered serious injury resulting in a temporary loss of speech and loss of memory regarding the incident; possibly due to his former drug addiction and his previous life of criminal activity, coupled with the fact that when he was much younger he was provided psychiatric therapy; led the assessor to ask the Respondent to participate in a psychiatric examination to assess whether a problem existed or continued to exist. He agreed to cooperate. I note no psychiatric assessment was completed or tendered, nor was one requested.
- [26] The assessor believed that while he was undergoing this assessment for that brief period of time (possibly two to three weeks), visits with his child should

be supervised due to the possibility that an assessment might cause some changes in behaviour or might escalate the problems/conflict. The assessor testified it was never her intention to recommend long-term supervision.

- [27] The parties clearly misunderstood her recommendation. The Applicant began to insist on a long-term program of supervised access.
- [28] The assessor at the April, 2003 date and the witnesses for the Applicant confirmed at this final hearing that the Applicant provides a positive and healthy environment for the child. There appears to be no contrary evidence on this point.
- [29] The assessor spoke with the access supervisor at V[...] House. The supervisor had supervised three visits on November 15, December 9 and December 16, 2002. The mother cancelled the Monday visits because she indicated the child was ill. They reported that the child appeared eager to see her father and was reassured appropriately by him about the visit. The father was noted to initiate appropriate activities and interact appropriately with the child.
- [30] The assessor reported that the father and daughter appeared to enjoy each other's company and played together. The child appeared happy to see her father and the assessor noted there appeared to be a strong bond between the



father and child. She reported no problems with the access and noted positive interaction between the two.

[31] The assessor noted that both parents encouraged creativity with their child and were patient and interactive with their child upon observation.

[32] As of April, 2003, the assessor noted that the child was a child who easily engaged without hesitation both with her mother and her father, was outgoing, spontaneous, friendly and affectionate with both parents. She was at that time "quite advanced in her articulation with the capacity to relate stories and explanations. She demonstrated very good skills with some learning computer games. Her vocabulary is quite advance for her years."

[33] In April the assessor noted no difficulty in the transition from Dad to Mom. The assessor noted that the child demonstrated appropriate attachment with her mother. The assessor concluded that this was a well developed, bright, articulate, well-adjusted, adaptable child, attached to both parents.

[34] The assessor noted the total lack of trust between both partners, together with unresolved anger and resentment over allegations and counter allegations with no firm validation or conclusion about some of these issues. This comment is consistent with my observations on the totality of the evidence.

- [35] As of April, 2003, after her investigation, the assessor found that both parents were engaged, playful, affectionate and attentive to their daughter's needs. They both spoke positively about their daughter's skills, accomplishments and encouraged her development. She concluded that historically both parents have shared equally in their childcare of B.H. and she noted the specific skills each parent displayed with strength.
- [36] She noted that the Applicant suggested that she knew the father loved the child and would never do anything to harm her, although she was concerned that because her relationship was not positive that the relationship between the father and the child would likewise be as controlling as she felt he was with her.
- [37] There are consistent reports that this is a bright, happy, healthy, intelligent young child currently enrolled in primary. In the home visits, the assessor noted that the child played spontaneously with both parents.
- [38] Likewise, the mother impressed the assessor with her commitment to maintain a relationship for her daughter with the father. She has recognized some of the father's positive contributions, in spite of the conflicts between the mother and the father and has obviously been praised for her own ability to take care of the child's needs and raise the child appropriately.

[39] The assessor noted that the mother did not come to her situation without herself having been involved in a lifestyle which included criminal behaviour and drug abuse. While there is a significant criminal history with respect to the father, the mother comes to this having admitted that she too is capable of misleading authorities as noted earlier. She has housed the Respondent and harboured him while he was unlawfully at large for a period of two years.

[40] For the purposes of this proceeding, the parties have had access to both parents' police records and child protection records.

[41] The mother originally brought her application for sole custody and supervised access claiming the following:

1. The Respondent had a criminal record;
2. His life was threatened when she lived with him and she was afraid of the possible risk to the child if this risk continued;
3. She was concerned about sending the child with him due to his verbal threats to her and her father (August 7, 2002). Including, among other threats that during the separation, the parties became involved in a dispute about their car; she asked for the car and she indicates he threatened to blow it up or hide it.

***The Respondent's Criminal Record***

- [42] The Respondent admits his record and his past drug addiction. He testified that his criminal record primarily consists of offences between 1984 to 1996, relating to property and drug related offences.
- [43] He was released on mandatory supervision from Renous Federal Penitentiary in the summer of 1998. He failed to report as required and was "on the run" for two years during which time he was harboured by the Applicant. He became involved in a property damage offence, he says, in an attempt to protect the Applicant. He was located by police and brought back into the Federal system until the parole board hearing. The Applicant and others testified on his behalf at that hearing and he was subsequently released.
- [44] The Respondent's affidavit contained his record. As of November 25, 2002 his HRM Regional Police record shows that between 1994 and 1996 he was sentenced for two theft under charges and one break and enter. These sentences included provincial time. In March, 2001 he was sentenced for a mischief charge and received 12 months probation. From 1984 to 1993 he was sentenced for possession for the purposes of trafficking, simple possession and driving while over .08; six break and enters and one breach. He received short provincial time and fines.

- [45] His affidavit discloses a further break and enter in Truro with conviction date February, 1996 for which he was sentenced to 30 months. He testified that while in federal prison he took drug rehabilitation courses and has not, he says, used illegal drugs since the birth of his daughter. There is no evidence to contradict this other than the testimony of the mother that she thinks he was impaired in late August, 2003, one week before the alleged assault.
- [46] Aside from the recent allegations made by the Applicant, none of the evidence regarding his offences relate to violence against the person.
- [47] His prison record existed when he lived with the Applicant, when he was released and on mandatory supervision in 1998 and hiding out in the Applicant's apartment, and after separation when she transported the baby to him for frequent overnight access visits. The Applicant admits harbouring him and admits he was returned to Springhill after committing a property offence while "protecting her"; an offence for which he was not charged.
- [48] The Applicant admits speaking at his parole board hearing in his favour assisting him in obtaining a release. He has not returned to prison since then.
- [49] The mother introduced testimony from Ms. M.1, the Respondent's former partner, to prove her allegations that the Respondent engaged in criminal behaviour, was abusive to this partner and was addicted to drugs.

- [50] They met when he was 23 and she 15 prior to the two-year sentence in Springhill Penitentiary. The Respondent had a relationship with Ms. M.1 when he was 25 and she 17.
- [51] The Respondent admits this was a time when he was involved in criminal activity and he was heavily involved in drugs, especially cocaine.
- [52] The two had a son, Dillon, born October 17, 1994. When the child was born the Respondent was in the correctional centre. He was released in December, 1994. This witness advised that prior to the birth of her son there was no physical violence. The threatening behaviour and physical violence began when she was trying to extricate herself from the relationship. She obtained a peace bond. The Respondent was subsequently admitted to the Nova Scotia Hospital. She was granted custody on June 14, 1996 and he was granted access at his mother's home on December 4, 1996. He was incarcerated again.
- [53] The Respondent has not seen this 10 year old child since 1999.
- [54] Although the access order was never altered, due to his own circumstances, he was not in contact with his child again. His mother continued to see this child until D.H.'s release from jail in 1998. This witness had become

involved with another and was given permission to move to Ontario. This witness and the Respondent eventually went their separate ways.

[55] The Respondent does not deny his drug use and criminal activity at the time he was involved with Ms. M.1. He maintains that he has been free from drugs for a considerable period of time and crime-free as well.

[56] The Respondent had a stable period of time between 1985 and 1990, returned to cocaine use and criminal activities and ultimately spent two years in the Springhill Federal Institution.

[57] He met the Applicant between 1996 and 1998 after his discharge from the institution. He confirms that he has not used cocaine since 1996.

[58] He was briefly hospitalized in 1994, 1995 in the Nova Scotia Hospital for five days after being badly beaten by three bouncers at a Dartmouth Bar. He informed the assessor he received head injuries and was transferred from the Dartmouth General to the Nova Scotia Hospital to recover. He lost his speech for a short period of time and was released from the hospital subsequently.

[59] J.M. refers to more recent cocaine use by the Respondent in March and May, 2001 and in the summer, 2001. The Respondent denies this use.

- [60] Throughout this hearing there have been allegations and testimony respecting the domestic abuse and the drug usage that occurred during the relationship between the Applicant and the Respondent. The Applicant complains that she was isolated by the Respondent and estranged from her parents while she maintained a relationship with the Respondent. There is some evidence to support this isolation that occurred while the two lived together.
- [61] There is not a positive relationship between the Applicant's parents and family and the Respondent. There has been mutual allegations made in the course of the history of the relationship. Currently, the Respondent has been charged with assault and uttering threats by the Applicant and her father arising out of a September 1, 2003 incident. That matter stands to be resolved by a trial subsequent to this hearing.
- [62] At the interim hearing the Respondent denied he was at risk from any known or unknown source and that since leaving the institution he has not been harmed by anyone. There was no evidence of risk to the Respondent before Justice Tidman and there is no evidence of a threat against the Respondent at this final hearing.
- [63] If there was a threat, a foreseeable possibility, it may have existed when he was engaged in drugs and criminal activity. There is no evidence to suggest



there have been any attempts or that a threat exists today. The Respondent lives openly in his community. There was no police testimony or objective evidence of any sort that would substantiate this allegation other than the obvious criminal lifestyle and drug addiction that involves one with others who are engaged in criminal activity, leading up to the federal sentence in 1996.

[64] At the interim hearing, the Court considered the mother's concerns and noted there was no evidence of a continued use of illegal/non prescription drugs, no evidence of continued criminal involvement and no evidence of anyone who intended to harm the Respondent. The father gave evidence of the drug programs he took during his incarceration.

***Interim Order - December, 2002***

[65] The Learned Trial Justice noted that all of the concerns voiced by the mother existed at the time of the child's birth. There was no evidence of new concerns or concerns that had not been addressed. The judge heard the evidence of the positive bond between father and child. He noted that early in the child's life the father had a significant role in caring for the child. He concluded that it was in the best interests of the child to continue this

relationship and he was unconvinced by the evidence that the child's safety would be jeopardized by unsupervised access. He ordered the previously unsupervised access schedule to continue pending a full hearing.

- [66] The Applicant maintains that she feels threatened and intimidated by the Respondent and acknowledges as well that he has never been physical with her up to this alleged assault in September, 2003.
- [67] The Applicant indicates that when they lived together they had to move to Hubbards as a result of the Respondent's concern that people from prison might harm him. Between the year 2000 and 2002 their relationship deteriorated and, ultimately, in January, 2002 there was a separation between the two. The Applicant alleges that the Respondent was verbally abusive to her, calling her names. She indicates that the drug abuse ultimately created financial havoc for the parties.
- [68] The Applicant moved to Dartmouth closer to her parents in January, 2002 and the Respondent remained in Hubbards in the former mutual residence until October, 2003 when he moved first to a cottage, then to a bigger cottage and now to a suitable apartment in the HRM area.

- [69] There is no doubt that there are serious and ongoing conflicts in this relationship and their ability to communicate. There is also consistent in the reports a positive relationship between the child and the father.
- [70] The Applicant has been the primary caretaker since the separation. This is in part due to the fact that the mother has adopted a position that the father requires supervision during visitation. She has been responsible for addressing most of the medical issues and educational issues. Contrary to the father's wishes the child has now been enrolled and attending school in the mother's area.
- [71] There has been no evidence to substantiate a concern about the care of B.H. in her father's presence.
- [72] The mother has lately exhibited some intent and effort to communicate with the father and to keep the father informed of the child's progress. The father has been unable to respond in the same way. Part of the difficulty is that he has been under a restraining order pending trial and he is unable to communicate directly or indirectly with the mother.
- [73] The form of communication established by the mother is not appropriate to the terms of the restraining order. The mother has agreed to some variation in the restraining order at different periods of time and rejected the change at

other times. The father has, with cause, on the advice of his counsel, refrained from any direct or indirect contact with the mother.

- [74] More critically to the evaluation of custody issue, the child has been in the father's care since the child commenced elementary school for Monday, Tuesday and half of Wednesday each week.
- [75] The mother has not accepted this is an appropriate arrangement for the child. The mother indicates that the father has not provided her with copies of relevant and important documentation from the school to continue to keep the mother informed about events such as a notification regarding head lice, notification for the child to be enrolled in the milk program, notification of parent/teacher curriculum nights and parent/teacher nights and the school security problem.
- [76] The paternal grandmother testified that she assisted the Dad in packaging most of the school reports and delivered them herself to the mother. I have no reason to doubt her testimony. The father communicates daily with the school through a book designed to go between school and home.
- [77] The mother has lately set up an arrangement with the school to ensure that both parents are notified in the future. I believe that the father and the grandmother have provided the relevant information. There may be some of

the notices that have gone astray but I do not attribute that to an intentional act by the father. It is appropriate and more efficient in this situation for each parent to receive separate notices.

[78] The doctor reported earlier that the child has no particular medical concerns; that the mother has brought the child for the required appointments and the family doctor does not know the father. That is notable. However, the father has taken the child to a doctor in his area for minor complaints. He has not informed the mother about this.

[79] The father started this practice because he was afraid of accusations about his parenting made by the Applicant or her father.

[80] It is more appropriate that the parents share this information between themselves to avoid one doctor not having relevant information about the child's needs. If the parents keep each other informed that would avoid difficulty.

[81] Complaints have been made to child protection services by J.M. and her parents. In April, 2003 the assessor spoke to the child protection authorities at the Dartmouth Child Protection Services. As of April 4, 2003, they confirmed that they had met with the Applicant; that she appeared to be genuine about her concern about her daughter's safety. They indicated that

they could not substantiate any evidence that would cause them to become involved. They confirmed that if she wanted to have some intervention she would have to make the application to the court.

- [82] J.M. contacted them again on December 19, 2002 concerned about her child's safety and her frustration with the court system. She had not been successful in convincing the court that the Respondent's access should be supervised. Again, child protection services noted that they were unable to assist her to substantiate her concerns and she needed to proceed through the court again.
- [83] As of April, 2003, S.A., the **maternal** grandmother told the assessor that she had observed both parents over the years encourage and enjoy their child and had no concerns about parenting by either D.H. or J.M..
- [84] The maternal grandmother was not as concerned about the child not speaking about her time with her father. This was confirmed in evidence lately by the former babysitter and friend of the Applicant who confirmed that she was able to speak to the child about what was going on in Dad's place.
- [85] The paternal aunt, M.A. had not had regular contact at the time the assessor spoke with her. However, she had an opportunity to see the Respondent and the Applicant parent the child and had seen the Respondent with other children. She had no concerns.

[86] This child is reported to be adjusting well in school. Her report card reflects that.

[87] The Applicant was also concerned about the safety of the child with the father, given his past criminal involvement and use of cocaine. She was concerned about isolation in that she was not aware of the circumstances of the child when the child was with the father, and the father's social calendar is not perhaps as extensive as the mother's. Both parents complained about concern for the child's nutrition and general care and there was found to be no evidence to this concern. The family doctor, daycare operation and other family members observed a well cared for and healthy child.

[88] This assessor was impressed with the Respondent's capacity to provide consistent and appropriate care for his daughter on a daily basis and impressed with his genuine enjoyment of his daughter encouraging spontaneity, creativity and intellectual stimulation. She noted that he had been "consistently committed to maintaining contact with his daughter during the difficult periods of limited access and maintains a strong conviction to have his daughter in his life."

*September 1, 2003 assault allegations*

[89] On September 1, 2003, another incident occurred. The Respondent had moved from their former premises to an area known to the mother. She did not have his phone number or exact civic address. Communications between the two were strained at best.

[90] Counsel for both exchanged letters: hers requesting the address; his giving the address. The mother denied access on the Monday following the request as she had not received correspondence from her counsel that his address had been provided. It had been provided on the Friday as requested. There was no prior conduct that would indicate that the father intended to abscond with the child. The mother, knowing there would be a problem when she intended to deny access, called her father and friend for support to be a witness to his reaction when she refused him his hard-won access. This step to cancel access was premature and arbitrary in light of the past history.

[91] In her statement to the police, the Applicant refers to another reason to stop the Respondent from exercising access. In court her reasoning related to not knowing the Respondent's new address. In her statement to the police she suggests that she spoke to the Respondent on the previous Monday morning before he was to take the child with him, in accordance with the court ordered schedule, and told him she knew he continued to use drugs. She suggested



he could barely speak to her. I heard almost no evidence of the concern about continued drug use as a reason to deny access.

[92] The Applicant and her father alleges the Respondent slapped her face. The Respondent denies this.

[93] Mr. M., the Applicant's father did not testify before me. Immediately after the Applicant refused the Respondent's access, the Respondent went directly to the police station to obtain their assistance to obtain access. Instead he was met there with an allegation that he assaulted the mother.

[94] I am unable to draw any conclusions about the allegations of assault. The father is highly sensitive to the possibility of allegations by the mother and the trouble they could cause him. As a result he has been on strict conditions to avoid direct and indirect contact between the mother and her father.

[95] The Applicant has given her father strict instructions to stop his pursuit of the father and stop his involvement between the herself and the Respondent. He did not testify before me. The Applicant's father has reported the father to child protection on more than one occasion. It was he who informed social services that the father was in receipt of social assistance.

[96] This ultimately exposed not only the Respondent but his daughter to a reassessment which resulted in the assessment of a significant overpayment

for both the mother and the father. She admits she represented to social assistance authorities that she was living alone as a single mother with a child; she specifically undertook that she was not living with the Respondent father when she was. She left the relationship with in excess of \$17,000 overpayment to social assistance.

[97] I am satisfied, on the balance of probabilities, that she did know that while he was living with her he was also in receipt of social assistance and she assisted in facilitating that conclusion to the Department of Social Services. I do not believe her evidence that she was unaware that he was in receipt of social assistance. As a result she has been assessed with an overpayment in excess of \$17,000 and he has been assessed with an overpayment in excess of \$16,000. I am more inclined to believe the father's evidence on this point that she assisted him in providing receipts to the department purporting to show that he was renting elsewhere.

[98] While I understand that a parent might be extremely concerned and supportive in advancing a plan to assist and sustain one's child as they extract themselves from a relationship full of conflict, the evidence before me (albeit limited) supports the notion that this maternal grandfather has been zealous in pursuit of the Respondent, protecting his daughter at any cost.

[99] Both the Applicant and the Respondent rely on the strong support of their respective families.

[100] The maternal and paternal grandmothers testified. They were forthright in their testimony, supportive of their children and focussed on their grandchild's best interests and the need to maintain a peaceful connection. They were more realistic in their view of the other's child and more forgiving in order to facilitate access. They are strongly and appropriately supportive of the Applicant and Respondent. I was impressed with their testimony.

[101] The Applicant met and lived with the Respondent, allowing him liberal responsibility and contact with their child well after the events which she uses to support her concern and request for supervised access. In her April, 2003 report the assessor drew her conclusion about the relationship with the child well after the events described by the Applicant occurred. The father has had significant positive contact with B.H.. This is a case that differs greatly from the Respondent's first child, Dillon.

***Other Witnesses***

[102] Mr. C., a friend of the Applicant knew both parents and used to take the Respondent's mother to Springhill on occasion to visit the Respondent. He

advises that he became reacquainted with the parents in April, 2002. He testified he witnessed the Respondent verbally abuse the Applicant in 2000 and 2001 and it was his belief that the Respondent was still using drugs. He lost contact with them in May, 2001. The Applicant reconnected with him in April, 2002. In June, 2002 this witness believed that the Respondent tried to drive his car into Mr. C.'s car, presumably to intimidate him. He believes that the Respondent threatened to harm him because he would not testify for the Respondent.

[103] M.L. spoke in favour of the Applicant as a parent. She observed the interactions between D.H. and the Applicant in 1998 and confirmed that he was verbally abusive and threatening to the Applicant.

[104] She observed one occasion in April, 2003, after a court appearance when the Respondent and the Applicant got into a screaming match while moving the child from one parent to the other. She observed the effect of this behaviour on the child. She described the child as screaming and inconsolable.

[105] Ms. M.2 had occasion to observe the interactions between the paternal grandmother and the mother and noted they were positive and child-focussed.

[106] Ms. S. is a friend of the Respondent's and an acquaintance of both parents.

She testified that the child is well care for in the father's presence. She also

testified that she has seen the Applicant drink to excess while in a public bar. She has also seen the Applicant verbally aggressive. She advises that the Applicant's father, Mr. M., followed her in his car on occasion and she was intimidated by this behaviour. She has seen them both parent and believes they are both capable of parenting this child.

[107] C.K. lived with the Applicant from July to October, 2003. She spoke well of the Applicant's parenting with minor criticisms. C.K. believes she heard the Applicant indicate that it was her father who hit her in the face. She also admits that when she lived with the Applicant in 2003 they often smoked marijuana together. She spoke of the hostility between Mr. M. and D.H. and overheard conversations wherein Mr. M. admitted trying to get some information on D.H. for use in court proceedings.

[108] S.A., the paternal grandmother testified. She has maintained contact with her grandchild throughout and facilitates the transportation between households. She appears to be a positive influence in the child's life and also appears to attempt to stay out of the fray between the parents. This grandmother has helped out both parties in the past by advancing money for groceries, transportation, et cetera. This witness was not alone in testifying to the father's skill at cooking. He enjoys cooking and provides good meals

for his household, according to those who testified on his behalf. There is no evidence to support anything to the contrary.

***In the affidavits of the Applicant:***

[109] In the August 9, 2002 affidavit in support of her emergency application there is no mention of current drug usage. In the October 28th affidavit she mentions the drug problem and his criminal associates. The parenting plan put forward August 13, 2003 suggests overnights and every second weekend. This plan, submitted with the assistance of her former counsel, is inconsistent with the view that the Respondent is a danger to the child.

[110] In her affidavit dated May 28, 2004 she advises that, although she continues to be concerned about his past lifestyle involving drug use and criminal activity, a review of his police records causes her to conclude that there may be a reduction of his criminal activity. She proposes an access schedule that would put the child in the father's care for one week uninterrupted, twice during the summer of 2005. She confirms that she wants the child to have a relationship with her father. She also indicated in her oral testimony that she wants to be able to communicate directly with the father about their child's

needs. At the same time she indicates she is concerned that he may still be doing drugs due to his demeanour at one of the pickups.

[111] There is ongoing animosity between the parties. This had resulted in poor to no communication. The Respondent has been slow to advise of his actual address. This *timely* provision of a current address would assist to alleviate some of the fears as to where the child is when not home with her mother or in daycare. **It must be clear to both parties that each parent is absolutely entitled to know the permanent address for each parent at all times while the child is still a dependant and being transported back and forth between parents. They must also have each other's telephone numbers or, if no telephone for an interim period during a move, a firm method of contacting each parent. The child must be able to call either parent while in the home of the other. Any interference with this can jeopardize further access.**

***Conclusion:***

[112] Both parents love and provide well for their child while she is in their presence. There is no contrary evidence before me.

[113] Both have been associated with or involved in criminal activity in the past.

Both have used illegal drugs and there is some suggestion that each may continue to use soft drugs although I could not definitely conclude this is the case. D.H.'s prior cocaine addiction was a serious problem in his life. The evidence discloses that J.M. may still smoke marijuana and drink occasionally to excess.

[114] Both have lied to social services to obtain money and both have been reassessed for a significant overpayment as a result of their misrepresentations. Both continue to be supported by social assistance; D.H. because of a temporary disability and J.M. because she is in the process of retraining to obtain long-term employment.

[115] Both have strong family support that has sustained them through difficult times.

[116] Neither is the perfect parent and their past lifestyle is cause to be concerned about their ability to make a permanent lifestyle commitment to drug-free and crime-free behaviour.

[117] There is more evidence to support D.H.'s verbal aggression although there is some evidence of J.M.'s verbal aggression. There is sufficient evidence of D.H.'s threatening behaviour towards witnesses to cause me to doubt the



possibility of peaceful, conflict-free interaction between the parents on child related issues.

[118] D.H. attempts to separate himself from J.M. and her father's interference in his relationship with his daughter. J.M. essentially can and has sabotaged D.H.'s access when there is disagreement on property or money matters.

[119] J.M. expresses a desire to begin to speak peaceably about the child and has shown some ability to take the first step by creating an environment of peace between herself and the paternal grandmother. She has also insisted that her father cease his aggressive involvement in the interactions between she and the Respondent. I can appreciate it is difficult for the maternal grandfather to respond appropriately to the calls for help and then the orders to cease his involvement in his daughter's life. This is far from a perfect situation.

[120] The Respondent wants a parallel parenting arrangement; an arrangement that allows for little interaction between two warring parties. In this situation I doubt whether that will work. The father has not provided information as to how this will work, in light of the ongoing difficulties between the parents. There are legitimate concerns about the father's past life. Indeed, there are concerns about both parent's lifestyle choices. The child will bear the brunt of trying to live within these two realities.

[121] However, each loves and can care for their child.

[122] The father's contact, while he is crime-free and drug-free, is a positive aspect of this child's life. There are no concerns about his parenting approach, his ability to provide for his child, feed her, encourage her and care for her on a day-by-day basis.

[123] The father has a legitimate concern that the mother has in past sabotaged his access for matters unrelated to the care of the child. They have both had to have the Children's Aid Society and the police intervene to keep the peace.

[124] In spite of all the above, the child has survived and appears to thrive on her contact with her mother, father and extended family. The status quo as it relates to the child works. The parents will simply have to bear the burden of their conflict and keep their child out of the middle of this. For me to tinker with the current schedule may result in a significant change in the child's life which has not been supported in the evidence.

[125] In conclusion, on the totality of the evidence, I order the following:

1. That the Applicant, J.M., shall have the day-to-day care and control of the child. The child's primary residence shall be with the mother. She shall be responsible for the day-to-day decisions for the child when the child is in her care.

2. That the Applicant shall consult the Respondent on all major decisions regarding the health and welfare of his child. In the event of a dispute, the Applicant shall have the final decision.
3. That while an undertaking/recognizance exists between the parties, the father shall arrange to have his mother or such other person known to the parties pick up and deliver the child to his residence. When an undertaking does not exist he shall be free to pick up and deliver the child himself.
4. That the parties may agree on another place to effect the transfer. Failing agreement in advance, in writing, the exchange shall occur at the child's place of residence.
5. That the Respondent shall have liberal access to the child including the following:
  - (a) The child shall be in the father's care from Monday after school to Wednesday morning when the child shall be delivered to the school;
  - (b) That the child shall be with the mother from Wednesday after school until Monday after school, continuing in the same manner from September to June each year;
  - (c) If school is cancelled on Monday or Wednesday for in service, holidays, snowstorms or such other reason excepting a statutory long weekend, the child shall be in the father's care from 8:00 a.m. Monday and Wednesday until 3:00 p.m. when the father shall return the child to her mother;
  - (d) Every second Sunday commencing at 11:00 a.m. or upon such other time as agreed upon by the parties in advance in writing, the child shall be with the father overnight with a return Wednesday morning to school in accordance with the usual schedule.

6. That in the event either parent is involved in criminal activity in the criminal justice system, this schedule may be reviewed on application by either party.
7. That the parents shall keep each other notified in writing of any change in school schedule or storm days (subject only to an undertaking of the court barring such communication). In that event the parties shall communicate through the maternal and paternal grandmothers as agreed upon by the grandmothers.
8. That commencing 2005 and all odd-numbered years, the father shall have first choice of one week in July and one week in August for summer access. He shall notify the mother in writing on or before May 15th of each year. The child shall have telephone contact with the mother during this time. The father shall advise the mother in writing as to his plans for the week, his location and his phone number.
9. That in the year 2006 and all even-numbered years thereafter the mother shall have her choice of weeks in July and August for vacation with the child. She shall notify the father in writing on or before May 15th of each year. In like manner, the child shall have contact with her father by phone.
10. That excepting only the entitlement of each parent to two weeks of block summer time the regular schedule shall continue.
11. That with respect to Christmas access, on odd-numbered years the mother shall have the child at Christmas from December 23rd at 6:00 p.m. to December 25th at 2:00 p.m.. The father shall then have the child from 2:00 p.m. on the 25th to noon on the 27th. Thereafter the parties will revert to their ordinary schedule.
12. That on even-numbered years the father shall have the child from December 23rd at 6:00 p.m. to December 25th at 2:00 p.m., with the mother from 2:00 p.m. on the 25th to noon on the 27th returning in like manner to their ordinary schedule, alternating each year as noted.

13. That on odd-numbered years the father shall have the child for Easter Eve at noon and Easter morning until noon and on even-numbered years the mother shall have the child from Easter Eve to Easter Sunday at noon.
14. That there shall be no variation in the March break schedule unless the parties agree in advance in writing.
15. That as the child's age and stage of development grows, the child will be able to expand the block summer access. The week time period is simply to recognize that a young child needs to maintain contact frequently with both significant care givers.
16. That the mother and father shall provide each other in writing the civic address and telephone number of their residence. Before either mother or father change their residence, they shall provide two weeks in advance the updated address and telephone number.
17. That in the event either parent intends to move their residence within the HRM area they shall provide one month's notice in writing to the other.
18. That neither parent shall move from the HRM area without providing in advance 90 days of intent to relocate. They shall also provide the civic address and contact person together with information setting out the reason for the move and the intended term of the move. Failing consent, the parties may make application to the court to have their custody access agreement varied accordingly.
19. That this order shall be sufficient authority to any third party service providers, medical personnel, educational personnel to provide full disclosure concerning the child, B.H., to either J.M. or D.H..
20. That the father and mother shall keep each other informed of any medical attention the child receives while in the care of the father and mother and shall provide the child's doctor with the mother and the father the name and phone number of the other doctor. This shall be sufficient authority for the

medical service providers to obtain information regarding the child from the other treating physician.

21. That the child will be provided with the phone number of both parents and shall have unrestricted telephone contact with the other parent.
22. That both parents shall be entitled to attend parent teacher meetings, school concerts, etc., providing they abide by the expectations and directions of school authorities as to maintaining civility while participating in school related activities.
23. That the father shall be responsible for all transportation until such time as he is contributing by way of money to the maintenance of his child while in the care of the mother. At that time the matter of child support and the cost of transportation may be reviewed.
24. That there shall be no corporal punishment administered by either the mother or father or caregivers to the child.
25. That the parties shall provide each other with a copy of his/her income tax return, completed and with all attachments, along with notices of assessment and reassessment, by May 15th of each year.
26. That should the parties wish to effect any change to this order amongst themselves they must do so in writing in advance.
27. That this order contemplates a review to resolve issues of scheduling conflicts or variation while the level of conflict between the parties continues.

### **Enforcement**

All sheriffs, deputy sheriffs, constables and peace officers shall do all such acts as may be necessary to enforce this order and for such purposes they, and each of

them, are hereby given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this order.

**J.**