

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

**Citation:** *R.A v. M.P.B.*, 2021 NSSC 102

**Date:** 20210322

**Docket:** 1206-6751

**Registry:** Sydney, NS

**Between:**

R. A

Applicant

v.

M. P. B

Respondent

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice Pamela A. Marche

**Heard:** January 25, 26, 27, 28, 29, 2021 in Sydney, Nova Scotia

**Final Written** February 5, 2021 – Applicant Counsel

**Submissions:** February 17, 2021 – Respondent Counsel

**Written Decision:** March 23, 2021

**Subject:** Family Law; Variation of Parenting Arrangements; High Conflict Parenting; Therapeutic Interventions

**Summary:** The parents have been embroiled in high conflict. Each party sought to vary the existing shared parenting arrangement. The children, aged 12 and 14, have refused parenting time with RA for nearly three years. MPB sought primary care with parenting time to RA at the children's discretion. RA sought primary care with an extended period of no parenting time for MPB.

**Issues:**

- (1) Has there been a change in circumstance?
- (2) What parenting arrangement is in the best interests of the children?

**Result:** RA and MPB each contributed to the high conflict. The dynamic of high conflict within the family has created and continued the issue of child refusal. The level of conflict between RA and MPB have prevented the needs of the children from being effectively addressed.

Neither parenting plan put forth by RA and MPB is in the best interests of the children. The children's needs are best met by a therapeutic response. A final decision on parenting arrangements was adjourned to allow for an interim order for family reunification therapy to issue.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

---

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

**Citation:** *R.A v. M.P.B.*, 2021 NSSC 102

**Date:** 20210323

**Docket:** 1206-6751

**Registry:** Sydney, NS

**Between:**

R.A.

Applicant

v.

M. P. B

Respondent

**Judge:** The Honourable Justice Pamela A. Marche

**Heard:** January 25, 26, 27, 28, 29, 2021, in Sydney, Nova Scotia

**Written Release:** March 23, 2021

Counsel:

David MacIsaac for the Applicant  
Gordon Gear for the Respondent

## **By the Court:**

### **Overview**

[1] The parents in this case, father RA, and mother MPB, have two boys: R, born December \*, 2006, age 14 and B, born Jan \*, 2009, age 12. The parties negotiated a shared parenting arrangement, with approximately equal parenting time, as part of their Consent Corollary Relief Judgment which was granted in 2016.

[2] The children have not seen their father since the beginning of June 2018. Each party has applied to vary the Corollary Relief Judgment so that their children are in their primary care.

[3] MPB says she has fully encouraged the children to have a relationship with their father but they simply refuse contact. She feels the children's rejection of their father stems from RA's actions. MPB is seeking to vary the existing order so she is the primary care parent and RA has parenting time with the children at the children's discretion.

[4] RA says MPB has contributed to and perpetuated a dynamic of child refusal. RA is seeking a reversal of primary care so the children are with him exclusively for an extended period of time to allow for an uninterrupted phase of reunification, after which there can be a gradual return to a shared parenting regime.

[5] The parties have agreed to defer the matter of child support until after the parenting issues have been resolved.

### **Procedural History**

[6] The Divorce Petition was filed in October 2014 and the first court appearance in January 2015 was, unfortunately, a harbinger of things to come. Counsel for MPB advised the parties were negotiating an access schedule but the youngest child B, then only six, was refusing access. The Court responded that B was too young to make such a decision and encouraged the parties to consider a parenting assessment and therapeutic services for the children.

[7] A Settlement Conference held March 2015 did not result in agreement. The Court again recommended a parenting assessment and suggested the parties engage in counselling to address their parenting issues.

[8] At a conference held in April 2015, counsel for RA advised the parties had agreed to participate in counselling to improve communication and parenting. The Court was also told the children were on a wait list for therapy through Child and Adolescent Services. Hearing dates were set.

[9] At a second settlement conference in July 2015 the parties agreed upon shared custody with equal parenting time and shared decision making. Given the parenting time arrangement, child support was determined accordingly. A Corollary Relief Order was issued on April 5, 2016. Child support issues were the basis of several court appearances in 2017.

[10] In July 2018, RA filed a Variation Application and Motion for Interim Relief asking the Court to enforce the shared parenting arrangement. In August 2018, MPB filed a Variation Application seeking “full custody with boys living with me – visitation at the boy’s discretion and on the advice of Children’s Aid, counselling and physician.” Her proposal for parenting time for RA was: “n/a – sole custody with Mother until boys feel safe going with Father.”

[11] The parties appeared for a conference in August 2018. Counsel for RA suggested co-parent counselling but counsel for MPB reported past counselling had been ineffective. MPB reported that R was seeing a social worker and MPB was opposed to a new counsellor. MPB asked for a Voice of the Child Report to be prepared.

[12] A Settlement Conference was held in November 2018 but no agreement was reached. The Court ordered a Parenting Capacity Assessment / Voice of the Child Report and made a referral to the Supervised Access and Exchange Program to support RA’s parenting time.

[13] In March 2019, the Court was advised the supervised access referral was terminated because the boys had refused to participate in the program. In June 2019, a five-day hearing was scheduled for November 2019 to deal with parenting issues.

[14] At a case management conference in September 2019 the Court reviewed the Parental Capacity Assessment completed by Dr. Landry and inquired again about counselling. Counsel for MPB advised that all parties were now agreeable to attending with Ms. Karen Shea for high conflict and family reunification counselling. The Court directed the parties to consider using Our Family Wizard for communication.

[15] An Interim Consent Order was issued in October 2019. The parties agreed Ms. Shea would provide counselling for the family and MPB would make best efforts for the children to attend counselling and have parenting time with RA. The hearing dates in November 2019 were removed and a settlement conference was scheduled for February 2020.

[16] At a conference held in November 2019, counsel for RA reported concern over the frequency of the counselling but all parties agreed to continue. The Court endorsed this plan, noting counselling was clearly needed. Not long thereafter, however, the settlement conference scheduled for February 2020 was removed from the docket because the parties were too far from agreement. Hearing dates were scheduled for January 2021.

[17] A case management conference was held in September 2020. Counsel for RA filed an interim motion for an updated report from Dr. Landry. MPB objected and argued further counselling would do more harm than good for the children. The Court opined an updated assessment would be beneficial but declined to so order given MPB's opposition. A hearing scheduled for October 2020 to address the issue did not proceed, however, as MPB eventually consented to the motion.

[18] At a conference held in December 2020 counsel for RA advised that Dr. Landry could not have an updated report prepared in advance of the January 2021 hearing. Counsel for MPB suggested either an adjournment or an alternate assessor. RA did not want to adjourn because, by that time, he had not seen the children in over two and a half years. It was determined the matter would proceed as scheduled.

[19] The Court heard from fifteen witnesses over five days in January 2021. MPB testified as did her mother, VB and her partner, JS. RA testified as did his former girlfriend, AM, and his two sisters, KH and DM. The Court heard from several professionals: Dr. Reg Landry, Psychologist; Ms. Karen Shea, Social Worker; Ms. Leah Gouthro, Counselling Therapist; Dr. Katherine Kelloch, Pediatrician; Ms. Evelyne MacArthur, Therapist at Family Services of Eastern Nova Scotia; Ms. Shannon Fuller, Social Worker and (then) Supervised Access and Exchange Coordinator at the Cape Breton YMCA; and Ms. Jillian Delorey (née MacPhee), Social Worker and former Intake and Investigator with Children and Family Services, Department of Community Services.

## **Position of the Parties**

*MPB*

[20] MPB says the children do not want to see their father. She says RA has yelled at the children, called them foul names, is overly controlling, and has used excessive physical discipline. She believes the behaviours of RA are the primary reason why the children have refused any contact with him. MPB claims RA is too demanding and describes his behaviours as bullying and harassing.

[21] MPB claims the children are highly anxious about contact with RB, at one point withdrawing from sporting and community events to avoid him. The children have also refused contact with RA's extended family. She says the eldest child, R, has threatened to harm himself if he is forced to have contact with his father.

[22] MPB claims she has done everything she can do to encourage the children to have contact with their father. She says she has engaged fully in therapeutic responses as recommended by professionals but the children continue to refuse contact with their father and there is nothing further she can do.

[23] MPB says the children do not want to have a relationship with their father and their wishes should be respected. MPB claims a reversal of primary care, as requested by RA, would not be in the children's best interests. MPB is seeking an order of primary care with RA having parenting time at the children's discretion.

#### *RA*

[24] RA denies calling his children foul names. RA is concerned that MPB is too lenient and permissive in terms of discipline and has generally displayed avoidant behaviours in dealing with issues involving the children. RA claims this is detrimental to the children's well-being.

[25] RA admits to using physical force to transport his children on occasion. RA expresses regret about these interactions but feels such an incident involving R has been greatly exaggerated by R.

[26] Furthermore, RA believes MPB is the cause of R's embellishment and is asking the Court to infer that MPB "prepared" or "directed" R to overstate the incident to invoke safety concerns to, in turn, prompt a child protection investigation. RA is asking the Court to infer that R's report to his family doctor was orchestrated by MPB to strengthen MPB's legal position. RA is asking the Court to make a similar inference about MPB regarding the letters the children wrote to explain their refusal to engage in the Supervised Access and Exchange Program.

[27] RA further argues that MPB intentionally misled professionals and the Court regarding threats of self harm made by R. RA claims MPB knew that R's risk of harm had been assessed as low. RA claims MPB misrepresented the risk to bolster her position that the children ought not to be forced to have contact with their father.

[28] RA alleges that MPB has over-stated engagement in counselling services by herself and the children. RA argues that MPB has resisted a therapeutic response to the issue of child refusal as a means of continuing the status quo.

[29] RA refutes MPB's claim that she has done her utmost to encourage the children to have contact with him. RA argues that the modelling behaviour of MPB has effectively communicated to the children an acceptance that RA should not have a place in their lives. RA reported to Dr. Landry that "parental alienation fits MPB to a T." While RA has moved away from an allegation of alienation, he continues to argue that MPB can help address the children's refusal but has simply refused to do so.

[30] RA feels it is in the best interests of the children to have maximum contact with both parents. He cites Dr. Landry's report as supporting this principle within the factual situation of this family. He argues that an award of primary care to MPB will condone her wrongful behaviour and would effectively end his relationship with his children, during their childhood.

[31] RA submits it is in the best interests of the children to be placed in his primary care with no physical parenting time for MPB for an extended time. RA acknowledges this may cause short term duress for the children but claims there is no evidence of negative psychological effects of such an arrangement. RA argues any risk associated with his proposed arrangement is outweighed by the long-term negative consequences of the children growing up without their father.

## **Issues**

Issue One: Has there been a change in circumstances to warrant the variation?

Issue Two: What parenting arrangement is in the best interests of the children?

## **Legislation and Law**

This proceeding was started prior to the coming into force of the new *Divorce Act* [R.S.C., 1985, c. 3 (2nd Supp.)] on March 1, 2021. Section 35.5 of the new Act provides that proceedings started under the old Divorce Act will continue under the new Act.

*Issue One: Change in Circumstances*

[32] Section 17 of the Act provides that the Court may make an order varying, rescinding, or suspending a parenting order if satisfied that there has been a change in circumstances of the child since the making of the order.

[33] Clearly there has been a material changes in circumstances. The children have refused contact with their father since May/June 2018.

*Issue Two: What Parenting arrangement is in the best interests of the children?*

[34] Section 16(1) of the Act provides that I must consider only the best interests of the children when deciding a parenting issue and s. 16(7) confirms a parenting order includes a variation order. Section 16(3) outlines a non-exhaustive list of best interest factors to be considered:

16(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including:

- (a) The child's needs, given the child's age and stage of development, such as the child's need for stability;
- (b) The nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- (c) Each spouse's willingness to support the development and maintenance of the child's relationship with the other;
- (d) The history of care of the child;
- (e) The child's view and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) The child's cultural, linguistic, religious, and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

- (g) Any plans for the child's care;
- (h) The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) The ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) Any family violence and its impact on, among other things:
  - (i) The ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child; and
  - (ii) The appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well being of the child.

[35] When considering best interests factors, I must give primary consideration to the child's physical, emotional, and psychological safety, security, and well-being (s.16(2)). Section 16(5) provides that past conduct of a person can only be considered to the extent that it is relevant to parenting. There is no presumption of equal parenting time. When allocating parenting time, I must do so in a manner that is consistent with the best interests of the child (s. 16(6)).

[36] The list is non-exhaustive but largely codifies the body of case law analyzing factors to be considered when determining what is in a child's best interest. The weight to be attached to any particular factor varies from case to case, as each factor must be considered in relation to all the other factors that are relevant in any particular case: *Foley v. Foley*, (1993) 124 NSR (2d) 198.

[37] In *Burgoyne v. Kenny*, 2009 NSCA 34, Justice Bateman said this about the list of factors enumerated in *Foley*, supra at para 25:

[25] The list does not purport to be exhaustive nor will all the factors be relevant in every case. Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors.

[38] The best interests test is the only test and parental preferences and rights play no role in the determination of a child's best interests: *Young v. Young*, [1993] S.C.J. No. 112, para. 202.

[39] I have considered the case law as put forth by counsel, particularly, *Howe v. Whiteway*, 2015 SKCA 72; *J.W. v. D.W.*, 2005 NSSF 2, upheld on appeal in *D.L.W. v. J.J.M.W.*, 2005 NSCA 102; *R.M.B. v. D.T.B.*, 2019 ABCA 487 upholding *R.M.B. v. D.T.B.*, 2019 ABQB 826; and *Jachimowicz v. Jachimowicz*, 2006 NSSC 82.

## Findings of Fact

[40] Having carefully considered the evidence in this matter, I make several findings of fact:

### *1. The parties are embroiled in high conflict.*

[41] While that would appear to be obvious, I think the concept merits some consideration because it is the conceptual framework within which each parent views the other and, most importantly, it is the world view of R and B, about whose interests the law requires me to be most concerned.

[42] As discussed in Dr. Landry's report, high conflict is conflict that has escalated beyond issues to become personal and ego based. There is a high degree of emotional reactivity and blaming or demonizing of the other parent who is often viewed as the agent of the conflict. High conflict is chronic, intense and has a negative impact on others. Alliances or "tribal warfare" often develops such that third parties, often extended family members, become overly involved in the conflict. High conflict creates an unstable emotional environment that is hostile and insecure, particularly for children who often find themselves in a loyalty bind. High conflict need not be overt; the lack of communication or "freezing out" of the other parent can be the most corrosive form of conflict.

[43] The evidence painted a dismal picture of high conflict within this family, some examples of which include:

- MPB and her family would attend at the boys' sporting events with a complete lack of acknowledgement RA's presence.
- Pick up and drop-off of the children was relegated to the street curb. Parenting exchanges were a flash point between the parties.

- Text messages, Facebook pages and phone calls were blocked as part of a communication ‘freeze out’.
- MPB’s new partner, JS, and MPB’s mother, VB, were openly hostile towards RA.
- Police and children and family services were pulled into the conflict between RA and MPB on several occasions.
- The parties and the children have become entrenched in their beliefs and emotions.

*2. The conflict has caused a toxic environment that has had a negative impact on R and B.*

[44] The children, unfortunately, have been firsthand witnesses to much of the conflict between their parents. The boys are very much aware that issues related to them and their care have been the center of much of the fracas and the children have become enmeshed in the conflict. As described by Dr. Landry, the children were left to negotiate very “adult” conflict. The evidence supports a finding that the parents have directly involved children in their disputes:

- Ms. Leah Gouthro testified that she asked R what RA would need to do to make things better and, in response, R said RA needed to stop blaming mom for things he did. Ms. Gouthro recognized these words as not emanating from R directly and spoke to MPB about refraining from having adult conversations with R.
- It is clear from the testimony of Ms. Shea that MPB had involved the boys in her reaction to the texts received from RA during December 2019. MPB reported to Ms. Shea that the contact with RA was greatly upsetting to her and to the boys.

[45] I am satisfied that the children are suffering emotional harm because of the level of conflict between their parents.

- The children have been anxious and upset to the point of withdrawing from extracurricular and community events.
- The children have reported being fearful of their father saying they do not feel safe around him.
- The children reported feeling that their father preferred other children over them.

- The eldest child is reported to have said he would rather die than have contact with his father. R's therapist recognized this comment as descriptive of how unhappy R was as opposed to an actual risk of self-harm.
- When asked what they would like to say to their father, B reported "die in a hole" and R reported "fuck off." R referred to his father as a "bitch."
- The youngest child, when prompted to recall something positive about his father, could not elicit a single happy memory.
- The level of anger and intense emotion expressed by the children to mental health professionals is not proportionate, according to those professionals, to the incidents generating the response. This extreme reaction, as reported by Dr. Landry, is more often specific to high conflict as opposed to maltreatment.
- The children's sense of identify has been affected to the degree that they no longer wish to have any contact with RA's extended family or to carry RA's last name.
- The children no longer have contact with their wide group of paternal cousins, aunts, and uncles with whom they once regularly shared holidays and special occasions.
- When told their paternal grandmother had died, they were unsympathetic.
- R was recently reduced to tears when the topic of family was introduced in school.

[46] Dr. Landry confirmed fostering a positive relationship between the children and RA would be very beneficial for R and B's future outcomes. He noted that while a child may demonstrate anxiety and anger at a rejected parent, children always have deep feelings of attachment and love for that parent and, consequently, the permanent loss of that relationship can have far reaching impact on a child's sense of well-being.

[47] Emotional harm negatively impacts mental health. RA and MPB must realize that failure to attend to the emotional and mental health needs of their children will negatively impact the boys just as surely as a neglected physical wound will fester.

*3. Each parent has contributed to the conflict and the conflict has created the issue of child refusal.*

[48] Typical of a high conflict dynamic, each parent would like me to place blame for the situation squarely on the other parent. The reality is that both parents have contributed to the conflict and it is the conflict between the parties that has cultivated the child refusal.

[49] To clarify, my assessment of this issue is not about determining wrongdoing as a function of determining parenting arrangements. My primary consideration must be the best interests of the children. I am reporting my findings of fact in relation to the child refusal with the hope that this will be helpful to the parties moving forward.

[50] Both Dr. Landry and Karen Shea testified about the conflict between the parties. Their evaluation of the situation aligns with other evidence offered and provides helpful context to the dynamic between the parties that led to the child refusal.

[51] Dr. Landry confirmed that it is RA's nature to have high standards, consistent with his conscientious orientation. Given the more rigid organization of RA's personality, Dr. Landry found RA would have difficulty with situations that challenge his values as RA has a high need for order and predictability.

[52] Dr. Landry described MPB as having difficulty with interpersonal conflict. As a result of her personality type, MPB would find self-assertion difficult and would have trouble facing the anger of others due to her own emotional sensitivities. MPB, given her nature, is likely to experience RA's assertiveness as bullying or harassing behaviour.

[53] The parenting assessment prepared by Dr. Landry confirms that RA and MPB have conflicting personalities and incongruent parenting styles. Before separation, this created tension around issues such as bedtimes and screen times. RA felt MPB was too permissive, that MPB's family was overly involved and that he did not have a voice. MPB felt RA was too rigid and controlling; RA felt MPB undermined his parental authority.

[54] Ms. Shea's assessment of the family dynamic aligns with Dr. Landry's observations. From her perspective, once the parties separated, RA felt able to enforce parenting rules which differed significantly from MPB's parenting style. Friction over phone time, screen time, bedtime did not end upon separation; it increased. This, along with all the other changes associated with the family breakdown, created significant adjustment challenges for the children. RA had a new

partner, AM, and AM's children spent a great deal of time with the boys during parenting time with their father. MPB also had a new partner that resulted in a new stepsibling for the boys. The demand to adjust to this significant upheaval was experienced by the children within their world of high conflict.

[55] The children began demonstrating resistance to spending time with their father and parenting exchanges were often a flashpoint of conflict between the parties. The incident with then 10-year-old B at a hockey rink is a good example. B did not want to leave the rink for parenting time with his father. MPB did nothing to encourage B to comply with RA's direction to leave, RA physically plucked B from his mother's legs and carried B out of the arena in full public display. MPB called the police to attend.

[56] This was the context in the spring of 2018 when two things happened that have been presented as the basis for the child refusal. I find that the actual reason for child refusal is the high conflict between the parties and that these incidents reflect a culmination of that conflict up to that point.

[57] The first incident involved R and RA while the boys were in RA's care. R was refusing to comply with RA's direction to leave the house to attend a sporting event. In response, RA testified that he picked R up under the arms and physically took R down the stairs. R made several disclosures of this incident to various professionals and R's description of what happened often differed slightly. At times, R's version of events aligned with the description put forth by RA but, at other times, R said he was pushed or thrown down the stairs by his father.

[58] RA says R was fine after the incident and parenting time continued for several months thereafter. RA argues that MPB encouraged R to embellish or exaggerate the incident to third party professionals as a means of cementing safety concerns as the reason why the children should not be forced to see their father. RA claims MPB orchestrated R's disclosure to Dr. Kellogg with the intent of eliciting a child protection referral as means of buttressing her legal position.

[59] On a balance of probabilities, I find it more likely than not that the occurrence transpired just as RA described. The confrontation happened when R was 12 years old, within the context of significant change in his life and high conflict between his parents. I have no doubt the incident as described by RA would have been a serious affront to R's personal autonomy. I expect that R's characterization of the incident to third parties more likely reflects R's expression of indignity to his person, and his resentment of RA's power assertion, than MPB's coaching or manipulation.

[60] I also expect that R's reports of being fearful of his father would have aligned with MPB's perception of RA and R would be cognizant that MPB would be supportive of R not having contact with his father. R's hurt feelings had a place to flourish in his mother, MPB's, resentment of RA.

[61] R's feelings were further hurt when RA brought his girlfriend, AM, and AM's daughter, G, on a trip to Montreal for a hockey tournament, without telling R in advance. This decision would have a direct impact on R who would have been expecting to spend the weekend with his father without AM and G being present. Engaging adolescents in age-appropriate conversations about what to expect in the world that surrounds them demonstrates a necessary respect for their growing autonomy. RA's decision making about the trip to Montreal was somewhat insensitive to R's emotional needs. But for R, it was confirmation of his insecurities that RA favoured G. It was only after the Montreal trip that R reported that RA took R and B to the bathroom to yell and curse at them and that RA had thrown R down the stairs.

[62] I do not accept the physical safety of the children was ever a real concern. MPB acknowledged to Dr. Landry that RA had never used foul language or been rough with the children before. MPB admitted to Dr. Landry that there are different notions of what the word "grabbed" could mean. During cross-examination, when questioned why her comments to Dr. Landry differed from her affidavit content, MPB testified that she only recalled incidents of RA being foul and mean to the children subsequent to her interview with Dr. Landry upon reflection and review of her journals. I do not find this element of MPB's testimony to be credible. At any rate, any safety concern ought to have been set aside upon the completion of the child protection investigation during the summer of 2018.

[63] However, I also find that RA failed to appreciate that using power assertive strategies, such as physically forcing his sons to comply with his will, had a negative impact on their relationship. RA was also insensitive to how R was adjusting to sharing his father with AM and her children. RA's difficulty in navigating R's nascent independence into adolescence is not an uncommon parental struggle. Unfortunately, within the context high conflict to which RA contributed, these issues grew in epic proportions culminating in child refusal.

[64] R's complaints about RA were well received by MPB as affirmation of her perspective that RA was a bully. MPB failed to appreciate her role in creating the high conflict and contributing to the child refusal. Consistent with her avoidant

personality, MPB's response was essentially a non-response. RA's persistence in asking for MPB's help in addressing the issue was perceived by MPB as harassment and casting of blame. MPB's answer was that RA needed to take responsibility for creating the problem and RA needed to fix the issue. Neither party demonstrated any real realization that the issue to be addressed was the emotional harm being experienced by the children as opposed to RA's right to parenting time.

[65] MPB abdicated her parental responsibility. She allowed her children, then 12 and 10, to carry the weight of a decision to sever contact with their father. She failed to recognize how harmful it would be for her children to have the power to unilaterally end that parental connection. What a terrible burden it must be for a child to live in a world where such an important relationship is so disposable.

[66] MPB delegated the burden of addressing the fallout from this destructive decision to third party professionals. In her Application to Vary, MPB asked that "visitation at the boy's discretion and on the advice of Children's Aid, counselling and physician." MPB essentially shrugged her shoulders and threw her hands up in the air at a time when she needed to be rolling up her sleeves to dig into an admittedly tough parenting issue. MPB either could not or did not effectively attend to the emotional needs of her children and the children have suffered accordingly.

[67] I also do not accept that there was ever any real risk of R self-harming. In June 2018, MPB reported to Ms. Leah Gouthro, that R had said "I'm tired of living." R was also reported to make a comment along the lines of "I will die if I have to go back (to see his father)." Ms. Gouthro testified that she understood R's comments to be a vocalization of his anger and anxiety as opposed to a literal threat to self-harm. It was R's way of emphasizing the point. Ms. Gouthro assessed R for risk of self-harm routinely at each visit and the risk always presented as low.

[68] I accept that MPB continued the hyperbolic narrative that R was at risk of self-harm with third party professionals and with the Court when MPB knew, or ought to have known, that this was not, in fact, a serious risk. This is highly problematic. RA needs to appreciate, however, the depth of feeling R must be experiencing for R to make such statements. RA must realize that R's feelings are an important consideration in navigating forward.

[69] It must have been difficult for RA to read the letters his children wrote to the Supervised Access and Exchange Program confirming their refusal to have contact with their father. RA is asking the Court to infer that MPB coached the content of those letters. Only through the skewed lens of high conflict could this be a logical

conclusion. I find it more plausible that the children wrote the letters of their own accord having reached the place of refusal within the context of high conflict created by both parents.

- 4. The level of conflict between these parents has prevented them from effectively addressing the needs of their children.*

[70] In actuality, the children have received very little counselling:

- R had seven one-hour individual counselling sessions with Ms. Leah Gouthro, Registered Counselling Therapist, on the following dates in 2018: June 4, June 27, August 15 (abbreviated session of 20 minutes), September 19, October 10, November 7 and December 19. I am satisfied, based on the evidence of Ms. Gouthro, that R was engaged during these sessions and some progress was made. Ms. Gouthro testified that the purpose of the therapy was for R to gain a voice to deal with issues he was having with his parents and to develop methods to deal with his anxiety. R's sessions with Ms. Gouthro were discontinued when she took parental leave.
- Ms. Gouthro did have a session with both R and B in June 2019. This was her first and only session with B. Ms. Gouthro testified the session did not go well because the boys were not focused or engaged and were generally carrying on.
- Ms. Karen Shea, MSW, agreed to provide family therapy in the fall of 2019. Ms. Shea's plan was to begin with individual counselling and transition into family counselling. Ms. Shea met with R once, briefly, on September 10, 2019. Ms. Shea testified that R reacted in an intense manner to the stated goal of the therapy sessions (ie family reunification). R refused to talk about RA and left the session abruptly. Ms. Shea noted R to be extremely angry and highly recommended to MPB that R be provided with individual counselling.
- Ms. Shea met with B three times. Ms. Shea testified that B was generally open and cooperative during the first session in September 2019 but became distraught at the mention of his father. Ms. Shea reported that the second and third sessions with B in October and November 2019 did not go well. B reacted intensely with crying and scratching at his eczema, saying

emphatically that he did not want to have anything to do with his father. Ms. Shea tried to read a letter written by RA to his children but B refused to listen.

- After counseling with Ms. Shea failed, R had five scheduled counselling sessions with Ms. Emily MacArthur, Therapist at Family Services of Eastern Nova Scotia on the following dates in 2019: September 24, October 15, November 5, December 3, and December 17. Ms. MacArthur testified that none of these sessions lasted the full hour, during the second session R lay face down on the couch and would not speak and R did not engage at all for the December 3 and 17 sessions. Ms. MacArthur suspended the sessions for a month to determine whether R was willing to engage going forward. In January 2020, MPB advised R would not be attending further sessions.

[71] R had approximately six sessions of productive individual counselling in 2018. Subsequent counselling sessions scheduled for R and B essentially did not happen as the children were not engaged. There has been no counselling provided to this family to deal specifically with high conflict and reunification.

[72] I recognize that the children have been resistant to therapy. Given the situation, it was largely up to MPB to make counselling happen for the children and she has not done so. Her efforts have been feeble at best. There are several indicators that MPB has been resistant to therapeutic interventions:

- In October 2018, MPB refused to engage in family counselling with Family Services of Eastern Nova Scotia citing a preference that R remain with his existing counsellor, Ms. Gouthro, even though Ms. Gouthro's focus was limited to individual counselling and MPB knew Ms. Gouthro was about to embark on parental leave.
- MPB refused to sign releases for family counselling saying she wanted the courts to address that issue.
- In response to concerns raised by the children, Dr. Kelloch made a referral to Strongest Families at the IWK. MPB testified that when Strongest Families intake contacted her in December 2018, intake told her R did not need to participate in the program because he was seeing Ms. Gouthro. MPB would have known at that time that R had already ended his engagement with Ms. Gouthro due to her parental leave.
- Although MPB testified that she completed the co-parenting course as directed following the child protection investigation, evidence offered by

Ms. Laura Young, coordinator for the parenting program made it clear MPB did not attend all the necessary sessions.

- Only in December 2019, did MPB agree to begin to consider participating in family counselling with RA. After she said she would think about the possibility of engaging in family counselling in the new year, MPB was quick to characterize texts from RA about the possibility of such counselling as aggressive and harassing. In response to MPB's complaints, Ms. Shea suggested MPB consult with her lawyer and get back to Ms. Shea about how to move forward. MPB took Ms. Shea's response as confirmation that family counselling would not be productive and that Ms. Shea was terminating the counselling. Ms. Shea testified that the situation was extremely difficult but she would have been prepared to continue working with the family had she been requested to do so.
- In January 2020, MPB was evasive about the fact that counselling had ended for the children.
- In February 2020, MPB objected to an updated assessment being prepared. The basis for her objection was that the children had tried counselling and it had done them more harm than good. MPB testified that she took this position based on the advice of mental health professionals, presumably Ms. Shea. I do not find MPB's position in relation to this issue to be reasonable. Furthermore, MPB's stance did not change until October 2020 when there was then insufficient time to have the assessment completed unless the pending court dates were adjourned.

[73] I am satisfied that MPB has not done her utmost to facilitate RA's parenting time with the children:

- Ms. Gouthro testified that she discussed with MPB and R in the fall of 2018 that "blocking" RA was not a healthy response or reasonable approach yet this practice by MPB continued. MPB's testimony that she told the children to unblock their father rings hollow when MPB herself demonstrated an ongoing unwillingness to do so.
- MPB did little to nothing to implement the recommendations from Dr. Landry in his report released in June 2019. Even the relatively minor suggestions that Dr. Landry put forth as a bridging solution were not

followed. For example, MPB failed to tell RA about R's participation on a rep team thereby preventing RA from attending games.

- MPB's testimony around her failure to use Our Family Wizard made it clear that she had no intention of utilizing that parenting app in any meaningful manner. MPB was evasive during cross-examination and her explanations about why she did not use the app are rejected.
- MPB testified about letting the children know RA and his extended family had written them letters. She said the children refused to entertain the correspondence and that she put the letters in the cupboard above the fridge for the children to review when they felt like it. In every house I have ever known, the cupboard above the fridge is too high to reach and is where you put things you know are never going to be needed.
- MPB failed to meaningfully comply with Ms. Shea's recommendations to set the groundwork for reunification. RA had been asking for pictures and updates on the boys since 2018. MPB was quick to blame previous counsel for her failure to comply with this reasonable request, testifying "he told me I didn't have to." MPB response to Ms. Shea's suggestion, nearly two years later, to provide photos of the children was miserly at best with very few photos of limited quality being provided.

[74] Overall, my finding is that the therapeutic needs of these children have not been met. Just as a parent would be expected to attend to a bleeding cut, when the emotional well-being a child is at issue, is it incumbent upon the parents to attend to the issue. To do otherwise is a form of neglect.

[75] It is not uncommon for parents to find themselves in a situation where they are at a legitimate loss of what best to do to meet the needs of their children. This is not the case here:

- From the very first time these parents appeared in court in 2015 they were advised to consider having an assessment prepared and to seek out counselling services for their children. Time and time again, at multiple court appearances, the Court made inquiries in this regard.
- Child Protection worker Jillian Delorey referred the parties to family counselling along with a Co-Parenting Course in August 2018. MPB did not complete the Co-Parenting Course.

- In concluding her services in June 2019, Ms. Gouthro recommended individual counselling for both R and B with a new therapist with the goal of evolving to family counselling.
- In Dr. Landry's report dated June 5, 2019, he recommended that R and B see a therapist, particularly in relation to access refusal and anger. Dr. Landry specified that an explicit goal of the therapy should be reunification. Dr. Landry further recommended that RA and MPB engage in individual counselling. He recommended joint or separate sessions for RA and MPB to learn to communicate more effectively for the sake of their children.
- Ms. Shea testified that she explained to the parties how important it was to reduce the conflict so that the children could benefit from having both parents in their lives. Ms. Shea advised the parties they had a parental responsibility to do this for their children.

## **Decision**

[76] I have carefully considered what parenting arrangement would be in the best interests of R and B. My primary consideration must be the boys' physical, emotional, and psychological safety, security, and well-being. Neither of the plans put forth by RA or MPB meets the best interests of the children.

[77] I am not satisfied that the boys' emotional or psychological needs are currently being met. MPB has not done enough to address the issue of child refusal and the children have been harmed as a result. The burden that has been placed on R and B is too much. They should no longer be expected to bear the weight of their parents' conflict or the yoke of a discretionary parental relationship.

[78] However, I am also not satisfied that RA's suggested response, at this point in time, would meet the boys' best interests either. RA's proposal denies the reality of the boys' lived experience. RA acknowledges that a switch in primary care would cause the boys distress but argues the long-term benefit of ensuring RA's relationship with the children outweighs any short-term concern. To order that MPB should have primary care, RA argues, would be to condone the wrongful behaviour of MPB.

[79] The fallacy of RA's argument is his continued assumption that he can bend the children's wishes to his will. Dr. Landry reported doubt that the children would be cooperative if access were ordered. RA seems to overestimate the ability of a court order to adjust the attitude of his children towards him by compelling a change

in the primary caregiver. RA continues to lack insight that he has contributed to the conflict and the conflict frames the children's refusal. Unfortunately, the solution to the problem is not as simple as removing MPB from the picture.

[80] I am unprepared, at this juncture, to add further chaos and upheaval to the lives of these children by reversing their primary care. Nor am I prepared, at this time, to grant the relief sought by MPB. I am adjourning my decision how best to vary the existing Corollary Relief Judgement as it relates to parenting issues to make an Interim Order. In the interim I am ordering that RA and MPB along with R and B participate in reunification therapy and any other ancillary counselling or programming as may be recommended by a mental health professional as beneficial to supporting family reunification.

[81] Section 32E(1) of the *Judicature Act*, RSNS 1989, c. 240, provides that a judge, on her own motion, may adjourn a proceeding brought in the Supreme Court (Family Division) where the judge considers that any party to the proceeding or any child affected by the proceeding would benefit by counselling or mediation or professional services. Section 32E(2) allows the judge to order a party to pay for all or a portion of the fees and expenses of the services ordered.

[82] Section 32F of the *Judicature Act*, *supra*, permits a judge, on her own motion, to direct a family counsellor, social worker, probation officer or other person to make a report concerning any matter that, in the opinion of the judge, is a subject of a proceeding. A person directed to make a report must file a copy of the written report with the Court and each party and the Court may, subject to the Regulations, specify the amount of any charge for the report that each party is required to pay.

[83] The following is ordered on an interim basis:

- RA and MPB shall participate and facilitate the participation of R and B in family reunification therapy and counselling, the objective of which will be to re-establish a healthy and meaningful relationship between the children and their father.
- On or before May 15, 2021, RA shall provide to MPB, and the Court Administrator of the Sydney Justice Centre, Ms. Nancy Orkish, the qualifications, rates and details as to the availability of the three mental health professionals proposed by him and with an indication of his preferred choice. The suggested mental health professionals may or may

not be on the “assessor roster” as compiled by the Court Services Division of the Nova Scotia Department of Justice.

- MPB shall have seven days from her receipt of RA’s information to consider whether she agrees with his preferred choice or one of the other two proposed professionals. If MPB fails to respond, then RA’s choice shall prevail. If MPB disagrees with RA’s preferred choice and the parents cannot agree on either of the two other suggested mental health professionals by the deadline for MPB’s response, then I shall select the mental health professional.
- MPB and RA shall sign the mental health professional’s agreement of services within seven days of being presented with the agreement and shall adhere and abide with all the conditions in the agreement, including frequency of sessions.
- MPB and RA shall each provide documents confirming their 2020 income to Ms. Nancy Orkish on or before May 15, 2021. Should either party fail to provide confirmation of their 2020 income, I may impute income to that person for the purposes of the sharing of costs.
- Ms. Orkish shall obtain a cost estimate from the mental health professional selected to provide services to this family. Court Services shall contribute to the cost of the services in accordance with their assessment policy and the regulations of the *Cost and Fees Act*, RSNS, 1989, c. 104. There is no expectation that Court Services contribute to the cost beyond their existing policy of total approved hours and hourly rate.
- Each party shall pay fifty per cent (50%) of any cost exceeding those fees covered by the Court Services Division of the Nova Scotia Department within two weeks of the date of request for payment from the mental health professional.
- In the event that RA or MPB fails to pay his or her cost owed to the mental health professional, the other parent may make that payment on their behalf, which payment shall be fully recoverable when the costs of these proceedings are finally determined.
- The mental health professional shall file a signed copy of the service agreement with the Court.
- Both RA and MPB shall participate in all other services or programs as may be recommended by the mental health professional as being beneficial to supporting the reunification therapy, including but not limited to individual counselling, high conflict counselling, parenting or other education courses about children and the harmful effect of conflict upon children, etc. The

parties may be directed to contribute to the costs of any such service or program upon further Order of this Court.

- The mental health professional may recommend additional professionals or services as he or she deems necessary to assist in this process including recommending other persons to facilitate and assist in implementing a working parenting plan for the children, including the mediation of any dispute or the facilitation of communication between the parties. The parties may be directed to contribute to the costs of these services upon further Order of this Court.
- MPB shall be responsible for transporting the children to and from their appointments with the mental health professional.
- The therapy process shall be fully open in that the mental health professional shall send monthly reports to the Court on the last day of each month until therapy has concluded or further Order of the court. In the event that therapy is delayed for any reason not related to the mental health professional's schedule or other professional commitments or in the event that any of the terms of this Order are breached, the mental health professional shall forthwith report the breach or breaches to the Court and a copy of the report will be provided to both RA and MPB.
- Any breach reported to the Court may be addressed by the Court in a manner deemed appropriate including but limited to penalties, adjustment of parenting arrangements, costs, or contempt.
- The involvement of the mental health professional shall continue until further Order or until the mental health professional deems that it is not in the best interests of either child, or both children, to continue with the process in which event the mental health professional shall immediately report to this Court.
- The mental health professional may interview other professionals or persons deemed necessary to assist the parties and the children in the therapeutic goals set out by the mental health professional. RA and MPB shall sign any releases that may be requested by the mental health professional within three days of the request being made whether the request is made in writing or otherwise.
- The mental health professional shall have the authority to determine and recommend to the parents a timeline for access by either or both of R and B with their father, including telephone and other electronic contact. If the parents are unable to agree with the recommendations made, then the

mental health professional shall report to this Court the recommendations and the reasons for them and the matter will then be reviewed by the Court.

- MPB shall refrain from scheduling any activities or lessons for R and B which would interfere with the mental health professional's scheduled times with either child. It is understood that in order to facilitate the mental health professional's schedule, either child may have to miss school or other organized activity to attend reunification therapy.
- Neither parent shall discuss any aspect of the reunification therapy process with either of the children unless first discussed with and approved by, or directed to do so by, the mental health professional. Without limiting its generality, such information should be restricted to the purpose of the therapy, the therapeutic process, confidentiality, and the role of the mental health professional.
- Neither MPB or RA nor any other person who participates in the therapeutic reintegration process shall record any aspect of the reunification therapy unless that has been specifically agreed in writing, and in advance, by the mental health professional.
- In the event of any disagreement or confusion with respect to this decision or the terms of the Order, RA or MPB may seek further directions or clarification from the Court,
- This matter will be reviewed in four (4) month intervals, or earlier at the request of either party with leave of the Court. At each review, the matter of finalizing the interim order will be addressed.

[84] The Court Order that will issue from this decision is not a suggestion. Non-compliance with the Court Order will not be tolerated.

[85] I am satisfied that this Interim Order aligns with and supports the recommendations of Dr. Landry in the Psychological Assessment of Custody and Access and Child's Wishes Assessment prepared on June 5, 2019.

[86] The parties had deferred a determination of child support pending a resolution of parenting issues. Either party may bring forth a motion to have child support issues addressed.

[87] The Court will not accept the excuse that services are not available. Covid19 has taught us that there are innovative ways in which to access services. RA and MPB regularly managed to transport these children fair distances for hockey and other sporting events. I am certain they would find a way to seek treatment if either

of the children were diagnosed with a serious physical ailment. The children's mental health is equally important. RA and MPB are expected to rise to the same challenge in addressing the emotional harm R and B have suffered.

### **Conclusion**

[88] The Court provides legal responses, not therapeutic solutions. These children and this family needs therapy. I have to believe that these parents can do better and will do better by their children. The consequences, otherwise, are unconscionable. In her testimony, Karen Shea said: "Parents are responsible to work really, really hard and put in a lot of effort to get it right." That pretty much sums it up.

Pamela A., J.