IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *H.D.M. v.W.N.B.M., 2005 NSSC 275*

Date: 20051013
Docket: 1206-03775
Registry: Sydney

Between:

H. D. M.

Applicant

v.

W. N. B. M.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge:	The Honourable Justice Walter R.E. Goodfellow
Heard:	At Sydney, Nova Scotia September 26, 27, 28, 29, 30 and October 4, 2005
Counsel:	David L. Parsons, Q.C., counsel for H. D. M. Danielle Morrison-MacNeil, co-counsel for D. M. David J. Iannetti, counsel for W. N. B. M.

By the Court:

[1] H. D. M. and W. N. B. M., both now 42 years of age were married on September 20, 1997. Their marriage was blessed with a daughter, Da. Ma. M., born March [...], 1997, now eight years of age. D. M. was previously married to a Mr. R., which marriage lasted approximately two and one-half years. D. M. entered cohabitation prior to the marriage with B. M. with her two sons, S. W. M., born October [...], 1983 and C. B. M., born April [...], 1987. Justice Claire MacLellan in her extensive and thorough decision of April 8, 2002 concluded that S. and C. were not B. M.'s children of the marriage as defined in s. 2(2) of the *Divorce Act*. Justice MacLellan in her April 8, 2002 decision concluded that this was D. M.'s second abusive relationship.

[2] The date of their cohabitation is one of the issues to be determined, however, they separated March 26th, 2000.

DIVORCE ACT, R.S. 1985, c.3

16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

Application by other Person

(3) A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.

Joint Custody or Access

(4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.

Access

(5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

Terms and Conditions

(6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

Factors

(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

Past Conduct

(9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

Maximum Contact

(10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

DIVORCE

[3] I concluded there is no possibility of reconciliation and further that all the jurisdictional requirements of the *Divorce Act* of Canada have been met and therefore on the basis of a permanent breakdown of this marriage a Divorce Judgment will be issued on the Petition and Counter-Petition.

PREVIOUS PROCEEDINGS - COURT ORDERS

[4] The Petition for Divorce was issued May 31, 2000 and the issue of the child's entitlement to access to her father has never been resolved - a period now in excess of five years.

[5] Justice MacLellan in her decision of April 8, 2002 recites the procedural steps taken by both parties. That decision was followed by the first interim order dated the 4th of June, 2002. The order recites that Justice MacLellan heard evidence on February 9th, 2001, February 28th, 2001, January 31st, 2002, February 20th, 2002, February 21st, 2002 and March 20th, 2002. This order suspended access between the child and her father pending: a) W. N. B. M. is to undergo a parental capacity assessment by a qualified psychologist; b) W. N. B. M. is to partake in and complete an anger management course. Then paragraph 6, if W. N. B. M.

does not comply to the above conditions expeditiously, access to the child Da. Ma. E. M. will be terminated.

[6] The order went on to provide for the filing of the parental capacity assessment with the court and then the scheduling of a review date to determine further the issue of access.

[7] Justice MacLellan issued an order the 29th of July, 2003 that provided:

> 1) W. N. B. M. shall have access to the child, Da. Ma. E. M., born on March [...], 1997, in accordance with the following terms and conditions;
>
> (a) Four, one to two hour sessions of access to be supervised by psychologist, Dr. Reginald Landry; and
>
> (b) Twelve sessions of supervised access through the YMCA program in Sydney, Nova Scotia.

2) A report prepared by Dr. Reginald Landry and the YMCA Access facility shall be filed with the court after six supervised access sessions with the YMCA program. A final report shall be filed at the completion of the YMCA Access Program. After these reports are received by the court the matter shall be brought back for a review and determination whether access should be terminated or the supervision requirement for access should be lifted.

3) The above access exercised by W. N. B. M. is contingent upon Mr. M. remaining in psychotherapy until further order of this court.

4) H. D. M. and W. N. B. M. shall obtain and read the materials explaining the affects of parental alienation on children.

[8] This order while initially successful was far from fully complied with.

[9] The parties, by their present counsel, laboured mightily and after an extensive review and lengthy settlement conference with the former Associate Chief Justice J. Michael MacDonald, a comprehensive order was granted

December 9, 2004. The stated goal of both parties was to encourage, foster and develop the relationship between the father and daughter.

[10] The order went on to set out various incremental steps to achieving this goal, including the engagement of Paula Hines, Psychologist. The order was detailed, setting up of various meetings between Ms. Hines, the parties, and the child and supervised access. The previous order of the 29th of July, 2003 provided that supervised access was very specific but was not carried out necessitating the commitment by the settlement process to the stated goal.

[11] Unfortunately, although the first visit apparently went well, the situation deteriorated and the next three visits were far less than successful and culminated in a report, September 17, 2005 by Paula Hines.

[12] The matter before me began as yet a further application to deal with access and I directed that it be the divorce hearing so that all matters between these parties could be finalized.

EXPERTS' REPORTS/EVIDENCE

Dr. Reginald Landry, Ph.D

[13] Justice MacLellan in her decision of April 8, 2002 states in para. 98:

> After careful and lengthy considerations, I order that Mr. M.'s access will be suspended. It is suspended until he undergoes a Parental Capacity Assessment by a qualified psychologist to determine if he can learn to parent together with D. M.. Does he have the cognitive ability to learn to reflect and put Da. first? Can he learn to respect D. M. as the mother of his child who is the custodial parent? It is necessary to see if changes can be made to his parenting skills, his communication skills and his anger.

[14] The Parental Capacity Assessment was conducted by Dr. Landry. His report is dated January 20, 2003. Dr. Landry gave evidence before me and overall I was impressed with his professionalism. The report goes in some detail to outline the background information and his clinical evaluation is both interview observations and the conducting of the various psychological tests.

[15] Dr. Landry also identified the child Da.'s needs and in his interview of her he avoided direct questions about her relationship with her father. His report recites:

> In the context of the interview, Da. noted that her parents no longer lived together and it made her "sad". Memories of their time together were solicited in the context of stories and drawings and Da. had difficulty recalling specific episodes. She noted that she would like to see Mr. M. and denied feeling afraid of Mr. M. when asked about a variety of possible feelings.
>
> It is important to note that Da. was not observed in the presence of Mr. M. and her verbal responses may differ from her reactions.

[16] Dr. Landry indicated his conclusions and recommendations. He noted that if B. M. is granted access with Da. that this access would undoubtedly create some anxiety for the child and her mother and further that the behaviour of both B. M. and D. M. will influence process.

[17] He stated that individual therapy for each may create an opportunity for each to deal with their feelings and instead focus on Da.'s welfare. He noted that this would be especially challenging for D. M. due to her significant concerns with respect to the process and effects the visitation may have on Da. and Dr. Landry recognized that all parties will need considerable assistance to implement a process of visitation by Da. to her father.

[18] Dr. Landry, in his evidence before me, confirmed that the tools used by psychologists would indicate probable truthfulness on the part of B. M. and with respect to the Child Abuse Inventory, a screening tool, it concluded that child abuse by B. M. wasn't likely. He confirmed that when he spoke to Da. she had no fear or anxiety at that time in seeing her father and when he spoke to D. M. she was quite reluctant to see Da. with access to her father and related her concerns in that regard.

[19] Dr. Landry confirmed that on the first visit between Da. and her father that it lasted approximately one hour and from all outward appearance went well. By that time she had not seen her father for three years and she warmed up to him and began before the hour was out to interact with him.

[20] The second visit, approximately a week later, Da. was quite happy, received presents and after this meeting D. M. indicated a request for no more gifts and B. M. complied. D. M. reported the physical symptoms she recited over and over again in her evidence of Da. developing headaches, nausea, etc., and all Dr. Landry could say that they were not exhibited during the first two access visits which, as noted, took place after an absence of any relationship between the

daughter and father for over three years. On the first visit both B. and D. M. played with Da. and when D. M. left the room made no note of it and continued to play with her father and Dr. Landry did not sense any fear of Da. of her father. The third visit did not go well. D. M. attended and said that Da. was not well and did not want to go in, that Da. would not come out of her car. Dr. Landry mentioned on one occasion that Da., completely out of the blue, said spontaneously, "my mom is a coo coo nuthead". Dr. Landry found the situation very challenging and quite rightly assessed his role as to break or melt the ice and his recommendation was for the child to have access with her father.

[21] Dr. Landry was vigorously cross-examined and acknowledged the various problems with B. M. but indicated that, for example, with respect to his rigidity, he had made progress. He noted that B. M. made no effort to physically remove Da. from the motor vehicle on the third visit and indicated he did not want to put through that kind of exercise. He acknowledged various conduct in the past on the part of B. M. was not conducive to a good relationship between Da. and her father. From the court's perspective it is important to recognize what transpired but again the real importance at this stage is that unfortunately the parents, in particular D. M. cannot look forward and leave the past behind them. A good example is

putting to Dr. Landry that it would not be conducive to allege a parent committed fraud when it was not proven and that seems to me to be obvious. The reality, when you get to the evidence of D. M., B. M. inappropriately pursued the matter by fraud complaint however D. M. acknowledges that she used the maternal grandmother's credit card inappropriately, was sued and has a judgment against her for somewhere in the vicinity of $2,100 for her unauthorized use of the paternal grandmother's credit card.

[22] Overall I was impressed with the manner in which Dr. Landry addressed the challenging situation and I am hopeful in my conclusions to impose upon him for assistance.

Michael Bryson, MA, Clinical Psychologist

[23] Mr. Bryson conducted a Parental Capacity and Psychological Assessment of D. M. who questioned why such an assessment was taking place, "just because of Da.'s father is still looking for access with her". His report is comprehensive.

[24] I want to address, at the outset, the serious error made by Mr. Bryson. Mr. Bryson received information from a family doctor which included the patient having referred to the mental health unit at a local hospital. This information was transcribed by Mr. Bryson into D. M.'s assessment file and only after production of the first report in March 2004 was it realized that this information was not pertaining to D. M.. Mr. Bryson relates the error to have taken place in relation to posting M. information to the wrong M. file. D. M. called the doctor's secretary, who without disclosing for valid privacy reasons the name of the patient, indicated that the information came from a patient who did not have the surname M.. Whether or not the mix-up is related to a maiden name, surname, second name or whatever, the important consideration for the court is to whether or not it played any part in the conclusions reached by Mr. Bryson. After careful reflection I am satisfied that it did not. Mr. Bryson's report is also criticized on the basis that he did not have information from the family doctor and that he could have benefited from such. Some effort was made to secure this information of the family doctor but, in any event, there is nothing in the subsequent letter from the family doctor or in the evidence that indicates that it would have had any impact on the thoroughness and conclusions reached by Mr. Bryson. Mr. Bryson's report noted the fact that B. M. was convicted of assault on D. M. and on her son, S., but

confirmed that no medical attention was required and the evidence indicates that B. M. received an absolute discharge. D. M. agreed with Mr. Bryson that she strongly dislikes B. M. but denies that Da. was aware of her dislike and he quotes at the bottom of page 7 of his report, “I don’t speak about my feelings to him. She’s glad he’s gone. She’s never wanted to see him. Never wanted to go to him. Anytime I asked her if she wanted to go to see him, she said no. Said she didn’t want him to come. home. Didn’t want him hurting us any more”.

[25] In describing the office visit of February 18, 2004, Mr. Bryson indicated Da. and her mother arrived together and D. M. didn’t want the child to be interviewed alone and indicated the child was traumatized in the interviews she had with Dr. Landry and that this discussion took place in the presence of the child. There was also some comment about the child being fearful of contact with her father and Mr. Bryson recites that D. M. turned to Da. and said, “Tell him you don’t want to see your dad, tell him you don’t want this interview”.

[26] D. M. referred to the earlier supervised visits between Da. and her father in June of 2003 and alleged that Da. refused to attend any further visits and the experience resulted in difficulties for Da. in sleeping, waking up in the middle of

the night, wet herself while sitting on a couch, complaining of cramps, headaches and decreased appetite and the following day didn't want to go to school. This recital by D. M. is in stark contrast to what Dr. Landry says occurred at least during the early supervised access of the child with her father.

[27] Unfortunately, D. M.'s bitterness knows no boundaries and she expressed to Mr. Bryson her anger for Da.'s grandfather S. M. supporting his son, B., and she repeated this attitude in her evidence before me as justification for not allowing the continuation of a healthy, close relationship that previously existed between Da. and her paternal grandfather. D. M. has resisted any attempts at reestablishing the relationship between Da. and her grandfather and this is not to her credit.

[28] Mr. Bryson in his report recognized and referred to Da.'s capacity to manipulate her mother and I see no reason to recite the details set out in his report. Mr. Bryson's interview of Da., February 18, 2004, produced an expression of positive feelings by Da. to her mother, however, when asked what her mother says about her dad she replied, "he is bad and I think he is bad", and she went on to express further negative feelings against her father.

[29] Mr. Bryson conducted a number of psychological tests. One test the Paulhus Deception Scales. Her high scores suggested to Mr. Bryson that she is in a category that tends to be restrained when she has problems she lacks insight to deal with them and appears rigid. She may also appear sanctimonious about others' problems. On a further test she fell under a category that was likely to be overly dramatic.

[30] One of the most telling and I think accurate remarks made by Mr. Bryson was when he said, "verbally she gives one message, while behaviourally she gives the opposite message". Certainly, this is the conclusion that I readily reached from my observations of her while she was giving her testimony.

[31] In his summary, sadly Mr. Bryson concludes that Da. has learned to fear or act as if she fears her father and does not want contact with him. Da. is intuitively aware her mother doesn't want her to have contact with her father and I have to agree with Mr. Bryson that to reintroduce visits with Da. and her father would be like walking through a field of landmines.

[32] Mr. Bryson essentially states one of the recommendations of Dr. Landry that there is a need for a psychologist or social worker or third party to work with the parents.

[33] Mr. Bryson does recommend that Da. remain in the sole custody of D. but that supervised visits with Da. and B. M. and also S. M. occur. He suggested that Da. would need to be working concurrently with her therapist and D. M. would need to be a part of that therapy.

Paula Hines, MSW

[34] Ms. Hines, a qualified and experienced social worker who met D. M. around the time she was seeing Dr. Landry. My notes indicate that Ms. Hines provided some counselling to D. M. but the time frame is not too clear however, as I said to Ms. Hines during the course of her evidence, I conclude that she became a little too close to the client.

[35] Ms. Hines has met Da. and at the outset apparently recommended supervised access as being in the best interests of Da.. Ms. Hines was not

promoting business for herself but did indicate her experience in supervising access and Ms. Hines wrote a letter in favour of supervised access.

[36] Ms. Hines saw B. M. on August 4, 2004 and there was some discussion with respect to remuneration because B. M. had an employee plan which would help reduce the costs but she acknowledges that B. M. indicated the costs should be split between the parents and subsequently when there appeared to be delay he was prepared to attend to the full cost to expedite the matter. On a previous occasion Ms. Hines had met Da. and she recalls that she brought her dog to D. M.'s home and that Da. played with the dog and that Da. was a great little girl, playful, fun to with.

[37] Ms. Hines said she left it up to D. M. to convince Da. to go to supervised access with her father and D. M. reported to her that Da. was adamant in her refusal to see her father and expressed that view to Ms. Hines. Ms. Hines professionally accepts the view stated in her report of September 17, 2005 that a parent who is unable to have unsupervised access can have supervised access. Ms. Hines undertook to do so. History repeated itself in that the first visit to her office went well and Ms. Hines reports, "the first thirty minutes were tentative but in the

second half hour Da. M. and her father did communicate. For a first visit it was a good one. I had hoped the others would improve". The report goes on to indicate that the subsequent three visits were not successful and Da., on the second visit, clung to her mother for the entire hour and at the request of B. M., Ms. Hines approached D. M. asking her to nominate a third person to bring Da. to the supervised access. Ultimately this was her brother, B. M., and an alternate venue, [...] was elected as most children and parents enjoy going into that park to feed the ducks, etc. Unfortunately, on this occasion, Da. clung to her uncle and appeared to Ms. Hines to be more afraid than she had been when she was with her mother.

[38] At a later date and after discussions with another judge and the lawyer there was another visit attempted and it was unsuccessful. Ms. Hines expresses the view that it must be emotionally very difficult for B. M. and D. M. but, in her view, the parents' distress is secondary to the distress of the child and she fears a reaction to further visits and recommends against any access.

ISSUES

1. What is the Date Upon Which the Commencement of Cohabitation Began?

2. Has W. B. M. Fulfilled all the Outstanding Directions and Requirements of the Court in Previous Orders?

3. What is the Appropriate Custody Determination?

4. Should Immediate Access by the Child to her Father be Granted?

5. What is the Appropriate Matrimonial Property Act Division?

6. What is the Appropriate Amount of Child Support?

7. If the Answer to Issue 4 is No, What, if any Steps, Should be Taken to Provide for an Eventual Fulfilment of the Child's Right to Know and Have Access to her Father?

Issue No. 1 What is the Date Upon Which the Commencement of Cohabitation Began?

[39] B. M.'s evidence is that he lived at home with his mother and did not move in with D. M. until late 1997. D. M.'s evidence is that she started to build the home in October 1993 and that it was completed substantially by March or April of 1994. It is her evidence that B. M. moved in gradually and by the end of 1994 he had actually moved his stuff into the matrimonial home. Her evidence is that he did not contribute to the mortgage and that he did not contribute a whole lot and B. M.'s evidence is that they had an arrangement whereby D. M. would take care of the mortgage, taxes and insurance and he would take care of a number of

odds and ends but that they did somewhat share grocery buying. Surprisingly, none of the relatives on either side who were called shed any light on when the parties began cohabitation. Clearly they had developed the relationship towards each other by 1994 and on balance I accept the evidence of D. M. that cohabitation commenced near the end of 1994.

Issue No. 2 Has W. B. M. Fulfilled all the Outstanding Directions and Requirements of the Court in Previous Orders?

[40] Justice MacLellan in her April 8th, 2002 decision placed certain responsibilities upon B. M. which were set out specifically in her Order of June 4, 2002 referred to above. B. M. has fully complied with the requirements of the court in that he underwent a parental capacity assessment and participated and completed an anger management course. B. M. on March 26, 2000 was removed from the matrimonial home and a number of charges were advanced. One, if I remember correctly, was in January 2000 and between that charge and March 26, 2000 B. M. continued from time to time to act as the caregiver and babysitter for Da. as he remained in the matrimonial home to March 26, 2002. He recalls giving an outfit to their daughter, Da., and having her birthday celebrated on March [...]. In any event, he was found guilty of assaulting the boy S. and D. M. which

resulted in a probation order and conditional discharge. The probation order recommended that he take an anger management course and at the end of probation he voluntarily took this course which he repeated in compliance with Justice Claire MacLellan's order of June 4, 2002. B. M. also received an absolute discharge in relation to the criminal matters. Documentary evidence was tendered confirming that B. M. attended five sessions with the Family Services of Eastern Nova Scotia thereby successfully completing the requirement of Justice MacLellan's order in both areas of stress management and development stages of childhood. He also completed a co-operative parenting and divorce program which is apparently a six week program to help parents raise their children in a co-operative environment following separation. Justice MacLellan apparently recommended to both D. M. and B. M. that they read a particular text book and I am satisfied that both of them complied with that request and in addition B. M. read additional authority and guidance with respect to parenting.

[41] B. M., I find, went beyond the requirements of Justice MacLellan's order and the fact that she set out certain basic prerequisites they were obviously met as in her subsequent order of July 29, 2003 she removed the suspension of access and set out the provision for supervised access for Da. to her father.

Issue No. 3 What is the Appropriate Custody Determination?

[42] It is clear that the child, Da. has a strong, loyal attachment to her mother. Da. is, in all accounts, a very fine, young girl doing well in school and I have no doubt receiving love and affection from her mother and family. There is, at this time, no other choice but to leave Da. in the sole custody of her mother who will continue to have for the immediate future the full responsibility for her day-to-day care and welfare. It is sincerely hoped that the direction given later in this decision will be complied with by D. M. a to do otherwise may well invite at least a joint custody declaration down the road quite possibly a change of custody when Da. begins to fully appreciate what has transpired.

Issue No. 4 Should Immediate Access by the Child to her Father be Granted?

[43] There is no doubt that the child, Da., is a bright, energetic, young girl who has done very well at school in the environment of a single mother who is a professional in working shifts and managing a home. D. M. is a r[...] and with one glaring exception, she has been an excellent mother for Da.. The glaring

exception is her sustained conscious and unconscious conveying to the child, Da., that her mother does not want the child to have a relationship with her father. While I have the benefit of the report in evidence of the psychologist, Michael Bryson, I came to this conclusion by observing D. M. over a considerable period of time while she gave evidence. While she has the intellectual capacity to acknowledge that Da. would benefit now and in the future by access to her father her actions are contrary to her stated intellectual recognition of the desirability and benefit Da. would have by access to her father. My observation of her is that she is obsessed with continuing a poisonous environment which produces in the young child, Da., a strong loyalty to her, a desire by Da. to please her mother's wishes, resulting in the child's frequent expressions to the mother and her family members and friends of not wishing to have a relationship with her father. It is interesting to contrast the alienation of Da. to her father created and fostered by D. M. to some of the rare occasions Da. has spent with her father or in the case of Dr. Landry interviewed in the absence of her mother.

[44] The report of Dr. Landry of January 20, 2003 clearly indicates that Da. is unable to reach back in her memory as to what transpired long before separation and she denied to Dr. Landry that she had feelings of being afraid of her father and

expressed positively that she would like to see her father. On the first occasions when she saw her father through the intervention of psychologists, Dr. Landry and Paula Hines , the child reacted most favourably particularly when you realize the long drought that occurred in any communication or relationship between the daughter and father.

[45] Having outlined in brief summary my conclusion as to the main root of the problem as it now exists I have to acknowledge that if there were an order granting immediate access by the child to her father it runs the risk of being detrimental to the best interests and welfare of the child, that what is needed is some arrangement or re-introduction of this little girl to her father that would not carry with it the immediate stress on D. M. as an immediate access order would cause. Regretfully, this Issue No. 4 must be answered at this time in the 'negative'.

[46] D. M., through her solicitor, has expressed the view that there ought not to be any access at the present time and I acknowledge that there are cases where that is the appropriate determination because the best interests and welfare of the child are paramount and supercede the maximum contact provision in the *Divorce Act*.

[47] I do not feel it necessary to give an extensive recital of the law as I have the benefit of the decision of Justice Douglas C. Campbell in *Studley v. O'Laughlin*, [2000] N.S.J. No. 210 where he gave an excellent summary of our Court of Appeal decision in *Abdo v. Abdo* (1993), Carswell N.S. 52(CA) where Justice Campbell outlined the factors that were considered in *Abdo* above and stated the following:

> The termination of access rights between a parent and a child is a rare event that should only occur in grave circumstances where the welfare of the child dictates such a result. I am satisfied that this is such a case.
>
> 28 In reaching such a conclusion I have taken into account the following factors; the first two of which are relevant only in the context of the others
>
> > (1) The couple did not live together, after the child's birth, for a significant period of time in order to establish a bond that would ordinarily come from family life;
> >
> > (2) The lack of involvement between the child and his father has caused there to be no relationship between them;
> > (3) The relationship between Mr. Studley and Ms. O'Laughlin was accented by abuse, hot temper and cruelty on his part;
> >
> > (4) Mr. Studley appears to have a significant problem with anger management resulting in explosive and somewhat unpredictable losses of control, for which he seeks no help;
> >
> > (5) The regime of supervised access was intentionally designed to provide for an opportunity for Mr. Studley to learn how to perform in the role of access parent and demonstrate his abilities, to gradually build a relationship with his son and to improve his post-separation relationship with Ms. O'Laughlin so that access arrangements can appropriately be implemented -- an experiment which resulted in failure;
> >
> > (6) I have concluded that the adverse effect on Ms. O'Laughlin that would derive from having to deal with Mr. Studley in respect of access matters, would, at this time, have a negative impact upon her ability to discharge her parental duties.

> 19 In conclusion, I was unable to conclude that the child would benefit from access to hi father at this time. I have concluded that Ms. O'Laughlin has met the burden of proving that it is not in the best interests of the child to have access to be exercise, even on a supervised basis, by the father.

[48] The case before me clearly establishes a strong bond between the father and daughter prior to separation and a very strong bond between the paternal grandfather, S. M. and his granddaughter, Da.. B. M. has, as I indicated, done all that is required of him by Justice MacLellan in dealing with his anger management and indeed done more than the court required.

Issue No. 5 What is the Appropriate Matrimonial Property Act Division?

[49] The Matrimonial Property Act of Nova Scotia gives no arbitrary direction as to the date of valuation of matrimonial assets. This absence wisely permits the circumstances to prevail.

[50] The date of valuation is the date of division. Division takes place by agreement, by the factual situation giving rise to a deemed date and if neither occurs, by the court's determination at trial.

[51] Unfortunately, the parties are unable to agree on what constitutes matrimonial assets and their valuation, requiring the court to do its best on the evidence available.

Matrimonial Home

[52] The matrimonial home is located at [...], North Sydney and was built by D. M. in late 1993 and early 1994. The title of the property was taken in her name and that of her late father as joint tenants. This was done because D. M. could not, by herself arrange the necessary financing, by way of mortgage.

[53] The parties have resided together since late 1994 and continued to reside in the matrimonial home until separation, the 26th of March, 2000.

[54] D. M. takes the position that the matrimonial home should be given a valuation of $70,000 being its municipal assessment for the year 2000. The municipal assessment is supported by an appraisal on April 3rd, 2000 in the same amount. This appraisal was never provided by D. M.'s previous solicitor to the solicitors over time for B. M., and only produced at trial.

[55] D. M. and the child of the marriage have continued to reside in the matrimonial home since the separation and D. M. has covered the cost of maintenance, including mortgage, taxes and insurance. This is not a case for economic rent, *Stoodley v. Stoodley* (1999), 172 N.S.R. (2d) 101. B. M. places its value at $90,000 and in all the circumstances, I am satisfied that B. M.'s valuation is probably more accurate at this time. As noted later, D. M. has remortgaged the property on at least two occasions, the last to the extent of at least $80,000 and this generally gives an indication of value. Normally one would assume that there was a reappraisal when the property was remortgaged but whether or not such exists and if so its conclusion was not made available to the court.

[56] To determine the equity in the property it is necessary to take from the value of the property, the highly probable expenses that eventually will be incurred for its disposition. The inevitable real estate commission is estimated at $5,400, plus legal fees and migration with HST together amounting to $1,725for a total disposition deduction of $7,125.

[57] D. M. has created an immense problem for herself by virtue of having on at least two occasions since the separation, March 126, 2000, remortgaged the matrimonial home by representing it as being a non-matrimonial asset. Clearly the pleadings, statements of property and the evidence before me indicates that it is not only a matrimonial asset but that B. M. at no time waived his interest in the matrimonial home. He may well have indicated that he would not seek possession because, after all, it has been the home of the children but there is no waiver, letter, release or anything whatsoever that warranted D. M. making representations that it would be remortgaged without the consent of B. M.. My understanding from her evidence is that it is now carrying a mortgage of $80,000.

[58] I want to review the relative contributions to the matrimonial home since it was built in late 1994. To begin with D. M. acknowledges that she was bankrupt in 1996 and no savings or personal funds of her or her father were put into the property and the land was acquired and the property built through a mortgage of approximately $55,000. D. M. contributed to the household by payment of the mortgage, taxes and fire insurance but also had a home for herself and her two other children and for the family unit including B. M.. It is clear from the evidence that B. M. built a substantial garage on the property which must have

enhanced the value considerably. The evidence supports that the contribution by B. M. would be in the vicinity of $22,000 plus and he raises as a matrimonial debt the outstanding loan to his father S. M. of $17,000. If it were not for the substantial contribution of the adding of the garage to the property then I would have concluded D. M.'s contribution to the matrimonial home to be somewhat greater than that of B. M.. However, when you take B. M.'s contribution by virtue of the garage and where I am leaving him with the sole responsibility for the $17,000 indebtedness to his father it turns out that the greater contribution to the value of the matrimonial home is that of B. M.. This is also taking into account that D. M. has added some value over the years through accounting for a very small portion of the funds received by way of remortgaging which were utilized for a deck and some other additions to the property.

[59] The end result is that the matrimonial home is a matrimonial asset valued at its date of division now of $90,000 less the inevitable disposal costs (*Marcus v. Marcus*, [2004] N.S.J. No. 381 totalling $7,125. There must also be deducted the amount of the mortgage and D. M. has made it impossible through her remortgaging and failure to provide any specifics by way of documentation to ascertain with certainty what is the appropriate amount to be deducted for the

mortgage to reach the net equity. Doing the best I can, I will simply take the original mortgage of $55,000 would be approximately $46,000 at this time and deducting this amount leaves net equity in the property for distribution of this matrimonial asset of $36,875.

Furniture

[60] B. M. did make contributions to the furniture. Clearly, the majority of the furniture in the home was necessary at the time of the separation for the occupants, namely; the two additional children D. M. had from a previous marriage and the child of this marriage, Da.. In addition, D. M. would have had some furniture in the home prior to B. M. entering into cohabitation which at that time he had a room in his mother's residence. I would place a nominal value on the furniture under the *Matrimonial Property Act* to be taken into account at $2,000.

Motor Vehicles, Etc.

[61] D. M. retained the [...] at the time of separation. During the course of the evidence, counsel agreed with my suggestion that it be valued at the time of

separation at $5,000. B. M. retained the [...] and counsel agreed that it should be given a value of $2,700.

[62] It was with dismay that I learned that the [...] which would have been the vehicle utilized by the family while retained by D. M. after separation was abandoned by her on a relative's property because it had some problem. D. M. did not have a mechanical check whether it was a simple electrical problem or whatever and she made no effort to dispose of the vehicle by trade-in or sale and simply allowed it to sit and deteriorate and I understand it remains after all these years abandoned on a relative's property. This is totally irresponsible financially and the consequences are to be borne by her and she has to be credited with its value at the time of separation when it was retained by her, namely, $5,000.

[63] D. M. attempted to justify her actions with respect to the [...] by saying it did not have any insurance coverage for her and in that respect she was in error.

[64] B. M. retained the [...] and counsel accepted the valuation I placed on it at the time of separation at $3,750. It is to be retained by B. M..

[65] The [...], I fix at $1,500 to be retained by B. M..

[...] Four Wheeler

[66] B. M.'s position is that the larger four wheeler was to be retained by him and D. M. says it was a gift to her oldest son, S.. The evidence is totally unsatisfactory. D. M. indicates in her evidence that while it was a gift, S. could not use it frequently because B. M. was using it and that he essentially had to request using this item. The reality is that it remained with D. M. and presumably has continued to be used by S.. While I do not discount B. M.'s evidence that it was really to be retained by him, the reality must be faced and it has become S.'s four wheeler. In the end result both four wheelers remain with the previous children of D. M..

Tools

[67] The first question to be determined is whether or not these are matrimonial assets. (*Bryden v. Bryden* (1995), 140 N.S.R. (2nd) 308).

[68] I conclude that these tools were either the personal or business assets of W. B. M.. Considerable evidence was given as to their value. One estimate by Discount Tools and Equipment for a portion of these items amounts to $9,108.50. Welding supplies - $1,795.36; Electrical supplies - $1,288.47, plus $4,221.81 and Snap-On tools - $9,680.50. This totals $16,989.14. B. M. did receive a small percentage of his tools and equipment and I heard extensive evidence including a video, the evidence of S. M., L. M., Glen D., B. M. and D. M.. I am satisfied that very unwisely, B. M. has been deprived of these items. However, it is necessary to take a realistic approach to the valuation as they had been utilized for an extensive period of time by B. M.. Quite possibly, the Snap-On tools themselves would not show much, if any depreciation, but I am certain that the remainder would and doing the best I can in taking into account that he received somewhere in the nature of 20% to 30% through attempts by attendances.

[69] There are other tools and equipment that are unaccounted for. L. M., D. M.'s brother, produced a video of the equipment, tools, etc, in the garage prior to

the prearranged time for them to be removed and this video does not show substantial items such as saws, etc., that are clearly shown to have been in existence in photographs produced by B. M..

[70] I am satisfied that B. M. did not receive all of his snap-on tools, etc., and that he is entitled to same adjustment in that regard. I fix D. M. with the retention of a very conservative estimate of what B. M. should have received namely, $7,000. With respect to the substantial items that were not contained in the video but shown on the photographs I am at a loss to understand what has been their fate. Either D. M. and/or member of her family deliberately concealed and disposed of them or B. M. somehow removed them at an earlier date. I simply cannot determine with any degree of certainty what transpired although clearly D. M., post-separation, when B. M. was removed abruptly on March 16, 2000 ought to have provided a better accounting for what was there on the last time B. M. was freely able to be on the matrimonial property. In the end result, the determination as to what occurred with this substantial, quite valuable equipment must be left to the conscience of the person or persons that removed them.

[71] I am also satisfied that B. M. had some personal scuba gear and he's advanced a valuation of $3,022.70. So, once again I conclude that D. M. and her family should not have deprived him of this personal equipment. G.D. gave evidence and he would have preferred not to have been caught between the families as he is somewhat of a friend to both families. His evidence which I accept is that he has been involved for some time in scuba diving and he subsequent to the time of separation between the parties was at a Scuba Tech outlet and D. M.'s brother L. was there with a set of regulators and two tanks. One of the tanks L. had belonged to B. M.. B. had loaned it to him and when he had it filled in the past it had posted on it his initials GD. Once of the tanks L. had, he observed, had his initials GD on it. Again, however, this equipment has been in existence for some indefinite time and I determine a conservative estimate of its valuation at this time to be $1,800.

Guns

[72] B. M. had some guns, the number and value of which are not before me. There is no evidence that D. M. or any member of the family used the guns other than B. M. nor is there any evidence that they were acquired in such a manner and were of such value as to represent an investment of the marriage. They are the personal property of B. M. (*Sproule v. Sproule* (1985), 69 N.S.R. (2^{d}) 103.

R.R.S.P.'s

[73] It seems clear that there were Royal Bank RRSP's with a gross value at the time of separation of $23,149.90. Normally, these would have an increased value by the time of valuation, which normally would be at this time. I am satisfied however, that B. M. in de-registering the RRSP's paid the tax component and out of the proceeds paid CIBC Visa - $3,902.33; Scotiabank Visa - $3,696.67; Car Loan - $6,300; Truck Loan - $4,900 and that all of these debts were matrimonial debts at the time of separation. Counsel for D. M. point out that the amount he received and the tax component thereon would be greater than the actual taxation on the gross amount and I accept that. However, you will readily note that of the $16,000 proceeds, B. M. paid greater than that in matrimonial debts.

[74] D. M. had RRSP's in the amount of $2,272.23 which she deregistered not long after separation. These RRSP's are conceded to be a matrimonial asset and normally their division would take place now so that the court would add an increment of their increased value to this date of division. B. M. through his counsel does not press for other than a division of this matrimonial asset valued at time of separation on an after-tax basis and this approach is beneficial to D. M.. Reducing the gross value of 30% for tax purposes gives a value of $1,601.57.

[75] There is a debt listed as a loan from S.'s Machine Shop to build a garage in the amount of $17,000. I am satisfied and accept the evidence of S. M. and B. M. that in fact such a loan was made. However, in determining that there ought to be an equal division of the matrimonial home I have given B. M. credit for his investment in the garage, which he estimated at $22,960 as a contribution to the matrimonial home justifying an equal division and therefore it would be a duplication to allow him recovery of this indebtedness.

	D. M.	**B. M.**
Matrimonial Home - [...]	$36,875.00	
Furniture	2,000	

Motor vehicles	5,000	2,700
[...]		3,750
[...]		1,500
RRSP's	1,601.57	Accounted for in payment of debt
TOTALS	**$45.476.57**	**$9.950.00**

[76] At this point D. M. owes B. M. an equalization payment of $17.763.26 plus reimbursement relative of the tools of $7,000 and relative to the scuba gear of $1,800 for a total owed under the *Matrimonial Property Act* of $26,563.26.

[77] There remains two outstanding debts upon which B. M. has been paying interest for over five years. The interest factor alone amounts to several thousand dollars. One of the loans is an RRSP loan and the evidence clearly indicates it was not required by the bank to be paid out when the RRSP's were deregistered. This loan is still outstanding in the capital amount of $4,000 and the other loan outstanding is $8,305.40. Some allowance must be made for the substantial amount of interest paid by B. M. and I allow a conservative, almost nominal amount of $2,000. D. M. ought to have shared in the interest obligation and I simply add 50%, a nominal amount of $1,000 bringing the total amount of

equalization to $27,563.40. This leaves outstanding the two matrimonial debts totalling $12,305.40 and B. M. has the responsibility of retiring them. D. M. must share a responsibility of one-half, $6,152.70. Given their respective incomes there could well have been an argument advanced that D. M. ought to have taken a higher portion of these debts in line with a number of case authorities but to B. M.'s credit he has not raised this issue. Adding $6,152.70 brings the equalization requirement of D. M. to $33,805.96. The only asset left, which is matrimonial, is the pension and after commenting on the pension this provides an opportunity for a further adjustment.

Pension

[78] Even where it is earned by one party entirely prior to the entry into cohabitation/marriage it is *prima facie* a matrimonial asset, *Adie v. Adie* (1994), 7 R.F.L. (4^{th}) 54; 134 N.S.R. (2^{d}) 60. In *Adie* although a matrimonial asset having been earned entirely before entry into marriage this warranted a s. 13 Unequal Division resulting in a husband retaining the entire benefit of his pension.

[79] In this case it is more standard in that there is a mixed period a maximum of two years contributions prior to cohabitation up to separation March 26, 2000 and I have concluded that the entire pension in this particular factual situation shall be a matrimonial asset for division. The statement from Mercer would indicate that as of the date of separation including a period where B. M. was not employed would result in a locked-in transfer of $28,106.13, however, not all of the opportunity to buy back a portion of his pension has been exercises and there is a deficiency of $1,151.10 giving this asset a value as of the date of separation for division of $26,955.03. It would have a built in tax component payable when withdrawn or if in effect deregistered. There is no calculation before me of this tax component and so I am going to arbitrarily reduce its value for division again in a manner favourable to D. M. and the children by giving it a value of $22,000, which means that D. M. has an entitlement of $11,000 which is to be applied to her obligation for the equalization payment reducing it to $22,805.96.

Issue No. 6 What is the Appropriate Amount of Child Support?

[80] D. M. advances the position that B. M. is in arrears of his child support obligation. The reality is very much to the contrary. B. M. by interim order was

required to pay $391 child support in accordance with the guidelines based upon his income of $47,000.

[81] In addition, he was to contribute *pro rata* the net cost to D. M. of childcare, an additional $146 per month. Because the court held there might be some tax advantage he could pay the gross of $210 and he chose to do so. This was the most beneficial course of action to D. M.. D. M. already received tax relief for the total amount of her childcare payments so, not surprisingly, Revenue Canada would not allow B. M. any tax deductibility meaning that for several years he paid D. M. $210 per month when his obligation was only $146. This represented an overpayment of in excess of two thousand dollars. To his credit he seeks no set off and again D. M. should recognize the benefit to her of his position.

[82] The income of the parties fluctuated since the last order and rather than spend time doing minor adjustments the child support obligation effective October 2005 of B. M. based on an annual of $49,000 is $407 per month. He will also pay his *pro rata* share of the net cost of child support to be calculated by counsel and set out in the corollary relief judgment. D. M.'s most recent statement of financial information indicates an annual income of $62,794.56.

[83] The interim order required medical coverage and insurance coverage for the child, Da., and what the court requires is a complete disclosure of all insurance policies which must be identified and state clearly the beneficiaries so that the court can make a determination of the extent of insurance coverage to be provided for the child. Whatever coverage is determined, the child should be the sole beneficiary with the surviving parent as trustee. Similarly, the court requires each party to advise it of the full details of the medical, dental, prescription coverage available, again so that it can give the appropriate direction.

[84] The corollary relief judgment will contain a provision requiring each party to provide the other with a full and complete copy of their annual income tax return for the preceding year on or before May 30 in the following year. This provision will commence with the 2005 full income tax returns with any notice of assessment to be provided on or before May 30, 2006. D. M. will also provide full details of her childcare expenditures for the year 2005 and with this information the parties should be able to make the appropriate adjustment in the level of child support and childcare contribution.

Issue No. 7 If the Answer to Issue 4 is No, What, if any Steps, Should be Taken to Provide for an Eventual Fulfilment of the Child's Right to Know and Have Access to her Father?

[85] B. M.'s conduct and misconduct immediately prior to and after separation contributed substantially to the environment of mistrust that developed between the parents of Da.. It is understandable that D. M. had an early reaction to B. M.'s aggravation of the already strained and difficult environment post-separation. However, with the passage of time her continued alienation of Da. towards her father is unacceptable and not in the best interests and welfare of their daughter.

[86] Monumental efforts have been made by the psychologists, present counsel, then Associate Chief Justice Michael MacDonald and Justice M.C. MacLellan, all with some initial success which has not been sustained.

[87] Given this background it would not be appropriate nor likely successful to reintroduce immediately access even of a supervised nature for Da. with her father. There is the necessity of building some type of bridge with Da. between her parents.

[88] Justice M.C MacLellan in her extensive decision of April 8, 2002 had this to say about the grandfather, S. M. at page 14, para. 51:

> I accept that Mr. S. M. did visit B. M. and D. M. five to seven times per week, in addition to the time he spent working in the garage in the backyard. I accept that S. M. did babysit often and sometimes early in the morning if he was required. I accept that D. M. confided in S. M. regarding the financial problems she was having with her husband and her view that Mr. M. had a preference for Da. over the boys. I accept as well that she did not discuss Mr. M.'s temper or abuse with S. M.. I accept that S. M. himself saw B. M. and D. M. argue loudly in front of Da. and that, in S. M.'s view, Da. appeared to be in shock. I accept S. M.'s version of the meeting between D. M. and Da. at SuperValue. I accept his description that she did hold the child's fact into her body and backed away so that S. M. and Da. could not see each other. I accept that S. M. and Da. had a nice daughter/grandfather relationship where she could call him up three times at least in the morning on speed dial to talk to her papa.

At para. 56:

> I accept the reliance that D. M. placed on S. M. to help her with the communication with her family regarding Da.'s birth and as well her request for S. M. to help her out with the ongoing problems she had with B. M.. I accept that overall and on almost every issue S. M. was a positive influence on the M. household and the children.

At para. 59:

> I place no negative inference against any conduct of S. M., as I have indicated earlier whose conduct has been solid and mature throughout this difficult family upheaval.

[89] I had the benefit of observing S. M., now 71, as he gave evidence and he obviously has a great deal of love and feeling for Da. and is distressed at the interruption of the grandfather/granddaughter relationship. D. M. has, I believe, the intellectual capacity to recognize that she was in error in eliminating contact between the granddaughter and grandfather.

[90] There has been no suggestion whatsoever that Da. has any fear or concern with respect to her grandfather. It should not be a very difficult task for D. M. to encourage and require Da.'s attendance and participation in the renewal of this relationship. The directions and recommendations that I make should not be onerous on either Da. or her mother and any failure will in all probability be due to the failure of Da.'s mother.

[91] Unfortunately, the previous access arrangements never did reach the stage where the Y.M.C.A. of Cape Breton Supervised Access Services came into play and I can see down the road, subject to assistance from a psychologist, probably Dr. Landry that such would be one of the options for the eventual reintroduction of supervised access for Da. with her father. In addition to the directions given I

would urge D. M. to explore all the facilities and services available at the Y.M.C.A. of Cape Breton including such things as babysitting services so as to introduce early in 2006 Da. to the physical site, staff, etc., of the Y.M.C.A. so that in due course she would have a comfort level when supervised access to her father is attained. Unfortunately, the conduct of the parties, systemic delay, etc., finds the court endeavouring to deal with a poisoned, difficult environment which creates a limited opportunity to pursue and achieve the stated goal. I have concluded that perhaps the only avenue left to address the issue of Da.'s entitlement to access to her father is to rekindle the trust and enjoyment the child had with her grandfather and hopefully in due course and probably by May of 2006 the relationship of Da. to her grandfather will have progressed to one of trust and permit the grandfather to be a bridge to the commencement incrementally of access starting with a probable prolonged period of supervised access. Da. is getting a little older and I hope sincerely that D. M. recognizes mainly that there shall be no alienation of Da. with respect to the grandfather.

[92] I think it is important to restate the goal that both parties agreed to with the intervention of then Associate Chief Justice Michael MacDonald and the first operative provision of the Corollary Relief Judgment will be as follows:

IT IS ORDERED

1. That the goal of both parents shall be to encourage, foster and develop a strong, loving relationship between B. M., the father and the daughter of the parties, Da. Ma. E. M., born March [...], 1997.

The Corollary Relief Judgment will reflect the *Matrimonial Property Act* distribution and division also will contain the following provisions:

2. H. D. shall have the sole custody and day to day parenting of their daughter, Da. M. E. M..

3. If the parties are unable to agree upon a qualified person who should be a psychologist or social worker to facilitate the limited steps to be taken in the immediate future towards the goal then the court will, with his consent, appoint

Dr. Reginald Landry. If he is unable or unwilling to accept the role of facilitator the court will appoint a substitute.

4. Access by B. M. to their daughter, Da. M., will subject to further order be suspended to and inclusive April 30, 2006.

5. The child, Da., will be made available to the facilitator (Dr. Landry) as and when directed by him and her attendances shall be three in November 2005, two in December 2005 and three in each of the months January, February, March and April, 2006 at such place as is designated and for whatever duration is designated by the facilitator, the purpose being to reintroduce the child, Da. to her grandfather, S. M.. S. M. is to follow the instructions of the facilitator.

6. D. M. shall provide on a regular basis immediately it is available a schedule of her shift work which can be taken into account by the facilitator in setting the time for supervised reintroduction of Da. to her grandfather.

7. The child, Da., shall be taken to the sessions by someone other than her mother, D. M., and such person shall be subject to whatever directions the facilitator feels appropriate including being absent during the scheduled sessions.

8. The cost of the sessions now until April 30, 2006 shall be shared jointly between D. M. and B. M. and no session shall be cancelled on the basis that the child Da. is not feeling well and does not wish to attend. Any sessions that are missed by Da. without justification shall become the sole cost of D. M. and effective May 2006 the court will, if necessary, issue an appropriate order providing recovery to B. M. for his portion of the cost of any sessions cancelled or missed. If necessary, the total cost of such will be permitted to be paid direct by B. M. and deducted from his obligations for child support and sharing of childcare expenses. The court will issue any order to give effect to this provision but clearly it should not arise.

9. B. M. shall be permitted to provide a modest gift from himself and a modest gift from S. M. to Da. on occasions such as Christmas and her birthday.

10. The facilitator shall direct access to Justice Goodfellow who will retain jurisdiction as the **case manager** of this file and as such Justice Goodfellow will issue whatever additional orders that may be necessary or appropriate to ensure the achievement of the goal. On satisfactory completion of the time frame to April 30, 2006 it is expected and anticipated this will permit moving on to an incremental

exposure of the daughter to the father by way of supervised access. Should this not be achieved then the court will entertain whatever appropriate sanctions against D. M. that may be conducive to achieving the stated goal of the parties. Such sanctions may include a declaration of joint custody and possible force limited unsupervised access between B. M. and Da. M..

11. B. M.'s entitlement pursuant to s. 16(5) of the *Divorce Act* in relation to the ability to make inquiries about his daughter are suspended to and inclusive of April 30, 2006.

12. D. M. shall in a timely fashion provide direct to her father, B. M., copies of any and all school reports, notices, health reports, etc., and B. M. shall only attend any functions in which Da. is participating be they athletic, cultural, school play, church oriented when authorized and on such terms as the facilitator may dictate. There should be no restriction on the grandfather to attend any public functions that the granddaughter participates in. If there is any interference with the direction contained in this paragraph the court will consider, as case manager, issuing a formal order to the sources such as school, family doctor, etc., and any costs occasioned thereby to be borne solely by D. M..

13. If the facilitator recommends counselling of any kind is necessary for D. M. the court will consider granting the appropriate order and cost of any such counselling or assistance shall be borne solely by D. M.. The court hopes and expects that with the achievement of the goal agreed to by the parents that this will not become necessary.

14. If D. M. conducts herself in such a manner that these very minimal steps are thwarted then the court will reserve unto itself the right to send to Da. on the occasion of her sixteenth birthday a copy of this decision so she will be able to appreciated that what has transpired has occurred due to the failure of her mother.

15. The first case management conference will take place at the Sydney Courthouse on Monday, October 17, 2005 at 9:30 a.m.

J.