

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *J.D. v. G.S.*, 2017 NSFC 32

**Date:** 2017-07-18

**Docket:** FATMCA-065620

**Registry:** Antigonish

**Between:**

J.D.

Applicant

v.

G.S.

Respondent

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**DECISION**

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**Editorial Note:** Identifying Information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Judge Timothy G. Daley

**Heard:** July 11 and 18, 2017, in Antigonish, Nova Scotia

**Oral Decision:** July 18, 2017

**Counsel:** Mallory Arnott for the Applicant, J.D.  
Respondent Self Representing

[1] This decision concerns two wonderful children, M.D. and G.D. and what is in their best interests. M.D. is 13 years old, and G.D., is 10 years old. Their father, J.D., has made application to vary the existing order and seeks joint custody of the children as well as increased and different parenting time with them. Their mother, G.S., opposes this application.

[2] There is an existing consent order issued on August 19, 2014. That order grants sole custody of the children to their mother and by inference, primary care of the children with her. The father is to be informed of education progress, he can attend events at school and may provide his perspective to school staff on issues arising in school. The father can meet with and share his perspective with medical and mental health professionals so long as it is not in a manner that would undermine the service or the mother's position with the children. There is a prohibition on communication between the parents and an access coordinator, M.G., was appointed.

[3] There was graduated parenting time for the father including a supervised access visit preceded and followed by a meeting with the children with Dr. Patricia Gerior to deal with any issues. If none arose, access was to graduate to every second weekend from Friday to Sunday. There are other related parenting times for the father in the order.

[4] J.D. seeks joint custody now on the basis that he wants to be more involved in decision-making respecting his children. He raises various concerns and complaints regarding not being involved in their healthcare, decisions around education and related issues. He says the parents are communicating well and should be able to do so in the future and there is no reason why he should not have joint custody instead of the sole custody currently in place.

[5] G.S. says that, while the parents can communicate effectively from time to time, there is a continuing ongoing pattern of dysfunctional communication caused by J.D. being unable to respectfully communicate with her. Instead, he attacks, insults and demeans her, criticizes the children and otherwise is unable to communicate in their best interests. As a result, she says the only alternative is to leave the sole custody order in place.

[6] With respect to parenting time, J.D. says that he wishes to switch his every second weekend access to the opposite weekends so that he, his partner and her children can spend more time together with his children as a blended family. They

[7] recently purchased a home, plan on residing together and he believes it would be in the children's best interests to spend that time with his partner, her children and him.

[8] He also requests increased time with the children and says that will be best for them, they express interest in doing so and he believes this will bring them closer and will benefit the children.

[9] G.S. says that she has concerns regarding changing the weekend parenting time. She says that the children do not want to do this, that M.D. is resisting spending time with her father and they have a very dysfunctional relationship. She says that the children do not feel treated equally in the home of their father. She does not believe that increasing the parenting time would be in the children's best interests nor would it benefit them to change the times for weekend parenting.

[10] Each of the parents has filed multiple affidavits and provided viva voce evidence in the matter. In addition, J.D.'s partner, A.M., likewise provide affidavit evidence.

[11] I first want to be clear what this decision is not about. This is not a competition to prove who loves these children more. I accept without hesitation that each of the parents loves both children very deeply and wants what is best for them.

[12] This case is also not about what is best for the father or the mother or more convenient for them or other people in their lives. The sole and exclusive focus of this case is what is in M.D's and J.D.'s best interests and their best interests only.

[13] To properly analyze the evidence in this matter, it is appropriate necessary to review the law as it applies to cases such as this.

## **The Law**

[14] The governing legislation in this circumstance is the *Parenting and Support Act*. The beginning point in any analysis under that *Act* is Section 18 (5) which directs that

In any proceeding under this act concerning the care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[15] Section 18 (8) further directs that

In making an order concerning the care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child.

[16] In determining what I should consider in assessing what is in M.D.'s and G.D.'s best interests, Section 18(6) sets out some of the relevant considerations to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

- (a) the children's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's... willingness to support the development and maintenance of the child's relationship with the other parent...;
- (c) the history of care for the child having regard to the child's physical, emotional, social and educational needs;
- (d) the plans proposed for the child's care and upbringing having regard to the child's physical, emotional, social and educational needs;
- (e) the child's ... religious and spiritual upbringing and heritage;
- (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can be reasonably ascertained;
- (g) the nature, strength and stability of the relationship between the child and each parent...;
- (h) the nature, strength and stability of the relationship between the child and each other's significant other person in the child's life;
- (i) the ability of each parent... or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child....

[17] In this matter, there are allegations of family violence and as a result, I must consider section 18(6)(j) as follows:

the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

- (i.) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
- (ii.) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[18] Family violence is defined in Section 2(da) and without reviewing each provision individually, it is sufficient to indicate that I find that, I must consider the issue of family violence in this case.

[19] The analysis of the M.D. and G.D's best interests, however, does not end with the factors set out in the *Act*. I must also look to what other courts have said in relation to the determination of a child's best interest. The leading decision in Nova Scotia respecting that analysis is *Foley v. Foley* 1993 CanLII 3400 (NSSC), a decision of Goodfellow J. I note that this decision predates the *Act* and the factors contained in section 18 (6) but I do find that the so-called "Foley factors" have been largely subsumed by these amendments but remains a helpful analysis of the test of best interests. I will not at this time review all of the factors set out in the *Foley* decision, but I take them into account in this decision.

[20] While I may make comments further in this decision regarding the order and subsequent events, it is important to note that, because there is an existing order that this is a variation application. It is therefore J.D.'s burden to prove, on a balance of probabilities, that there has been a material change in circumstances since the granting of that order in 2014. If he can do so, I must then embark on a fresh inquiry into what is in the children's best interests today.

[21] The leading decision on what constitutes material change in circumstance is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC).

12 What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way... The question is whether the previous order might have been different had the circumstances now existing prevailed earlier... Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order. ...

13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or

circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[22] As with most matters of this type, credibility is an issue. A leading decision respecting assessment of credibility in civil matters is that of *Baker-Warren v. Denault* 2009 NSSC 5, a decision of Justice Forgeron. While I will not review all of the factors she identifies which are helpful in assessing credibility in civil matters, I do remind myself of them and take them into account in this matter.

[23] I also note that there is a great deal of evidence of what the children are alleged to have told each parent or A.M. over the last number of years. This is hearsay and, though family courts sometimes admit such evidence, I am very mindful that any such evidence is hearsay and cannot be challenged in court by cross examination. I therefore find that it is inappropriate to give any such hearsay statements by the children any weight and do not accept them for the proof of the truth of the statements they make. On the other hand, in certain circumstances I will refer to those statements, particularly those captured in text communications by M.D., to make comment on the resulting behaviours and communications of the parents.

### **Evidence and Analysis**

[24] As with most cases before this court, each parent has a vastly different perspective about the history of the proceedings and the evidence they present regarding the children's best interests. There are issues raised about cooperation, or lack thereof, in changing parenting time, allegations that the mother has denied extra parenting time for the father, suggestions that the mother has blocked travel time with the children and that she has manipulated the children into resisting parenting time with the father.

[25] The father alleges that M.D. is not receiving appropriate counselling and therapy regarding her sexual identity and her resistance to spending time with her father. There are disagreements about braces costs, dental services and changes to those services, the inappropriate use of photograph of A.M. by the mother and allegations of poor communications between the parties and poor communications overall among everyone involved.

[26] I find that throughout the evidence, many of these allegations are properly dealt with by each party. My decision is not based on any one individual allegation made, but, rather an assessment of the overall evidence. In doing so, of course, I need to refer to specific evidence adduced in my analysis.

[27] Respecting whether there has been a material change in circumstances, I am prepared to find that there has been such a change. Since the order of 2014, three years have passed and the children are that much older. J.D. is now in a new relationship and intends to live with A.M. and her children in the home they have purchased. There are clearly issues regarding at least the circumstance of J.D.'s relationship with M.D. For these reasons, I am prepared to find that there has been a material change in circumstances.

[28] Moving to the issue of custody, I begin by noting that in the first affidavit of J.D, he referred to the order that he was seeking to vary as a consent order of September 6, 2012 which he attached as an exhibit to that affidavit. He notes that order granted joint custody of the children. Yet it is clear on the record that there was a subsequent order of 2014 which changed that to sole custody. This is concerning for several reasons.

[29] First, while the 2014 order is apparent on the record, it is incumbent on any party bringing an application before the court to be accurate in the representations made in any affidavit. Such affidavits are sworn or affirmed to bind the conscience of the affiant and must be true and accurate to the best of the affiant's knowledge, information and belief. In the case of the 2014 order, it was a consent order that J.D. would be well aware of, yet he did not refer to that order.

[30] Second, the contents of the 2014 order are very different than that of the 2012 order. The 2012 order grants joint custody and the 2014 order grants sole custody to the mother. Moreover, the terms of access are very different, including that in the 2014 order there was to be consultation with Dr. Gerrior, graduated access and other restrictions, terms and conditions that were absent from the first of the two orders.

[31] Third, J.D. fails to make any reference to the source of that changed order in 2014 which, I find, were various criminal charges laid against him, some of which he pled guilty to in 2013. Specifically, the record indicates, and it was confirmed in evidence before the Court, that J.D. pled guilty to an assault from 2012, criminal harassment and failure to comply charges. This resulted in a period of probation with conditions. None of this was disclosed in his first affidavit. While it is true

that as a general principle courts are not to look behind existing orders, I find this to be an appropriate circumstance where J.D. should have provided this information in his first affidavit along with a reference to the correct order to avoid leaving the impression that he had failed to disclose this material information as part of his pleadings.

[32] G.S. subsequently filed an affidavit setting out this information which was later confirmed by J.D. in subsequent evidence. I find this does affect his credibility but more importantly, provides context for the 2014 order of sole custody and informs the court respecting serious concerns regarding the circumstances of the children and the parents leading up to this application.

[33] That said, it is very clear as well J.D. participated in programming, including anger management, as part of his probation order and successfully completed each of those programs. His probation is now complete, any restrictions or conditions have been satisfied and he is relieved of the probation order.

[34] It is not clear in the evidence that his conviction for assault related to M.D. or anyone else in the family. The incident to which he admits occurred in 2013 when he grabbed and shook M.D., which was obviously not in 2012. He received services and later plead guilty to other charges. I am therefore not prepared to find that he was convicted of assault on M.D. This does not, however, negate in any way his admission of grabbing and shaking her in 2013.

[35] A significant and overarching issue in the evidence is M.D.'s relationship with her father. For some time, she has resisted spending time with him and though it is J.D.'s evidence that this circumstance seems to be improving as of late, this is a significant challenge. Their relationship has been fragile and, at times, nonexistent. This is, of course, of concern to both the parents and the court.

[36] Each parent has a different perspective on why M.D.'s relationship with her father deteriorated and is not as healthy as it could be. The father blames the mother for allowing M.D. to choose whether she comes to see him and for having no rules within her home or punishments for misbehavior by M.D. or not visiting with her father or communicating with him.

[37] The mother says that M.D.'s refusal to spend time with and have a significant relationship with her father is her father's responsibility. She says that he blames M.D. for all the problems between them, does not communicate with her and, put simply, is not a supportive, empathetic and approachable parent but rather



is demanding and controlling in his relationship. She would say that he is the author of the misfortune.

[38] In analyzing the evidence surrounding M.D.'s relationship with her father, much can be gleaned from the texts between the parties and the evidence of events such as the trip to Florida. In fact, those text communications, which include but are not limited to discussions regarding M.D., are very significant in assessing the parenting styles, ability to communicate and the resulting custody arrangement that would be most appropriate for the children.

[39] Joint custody implies, in part, that parents can communicate effectively regarding major issues concerning the best interests of the children including, but not limited to, their health, education, religious upbringing and general well-being. While communication does not have to be perfect at all times, in order for parents to have meaningful and effective communication, there must be an expectation that they will do so in at least a polite, respectful and businesslike fashion, will not attack, demean and insult one another on a regular basis and will not seek to blame one another for difficulties that arise. Again, it need not perfect but effective and appropriate communication is the cornerstone of joint parenting and a joint custodial arrangement.

[40] When I look to the objective evidence of the communication style, content and tone between the parents, it is very troubling.

[41] First, I find that the mother is not perfect in her method and tone of communication. There are times when she said inappropriate things to the father and she has acknowledged that.

[42] Second, it is also clear that, on occasion, the parties can effectively and appropriately communicate regarding issues concerning the best interests of the children. J.D. attached copies of such communication to his affidavits and I accept that these are good examples of what appropriate communication would look like.

[43] That said, there is ample evidence before me that, generally, J.D. is unable to appropriately communicate with G.S. respecting the children without devolving quickly into ad hominem attacks, insults, deflection and, from time to time, blaming the children for issues that are clearly not their responsibility. The evidence demonstrates again and again that J.D. can begin communication in an appropriate fashion but quickly loses all proportion and sabotages any possibility of effective communication with childish and churlish attacks and insults.

[44] As a few examples, there is a chain of emails beginning on November 16, 2016 when J.D. emails G.S. to discuss a dental appointment for M.D. and dental costs. She replies that she wishes to set off any contribution by her to these costs against other expenses she has incurred for activities for the children. In his reply on November 24, 2016 J.D begins to change his tone significantly. He says in part

I will expect payment in full, by the 30th of the month, or I will take the same route you are taking to suck another \$8000 out of me, hope you enjoy it sunshine ... It will be the last of it!!

I will be so glad when those girls are 18, and you're officially out of my life ... you have been nothing but a pimple on my hole since I met you.

[45] The reply from G.S. was, I find, rather restrained giving the tone of the last email. Yet J.D. could not seem to help himself and he replied on November 24, 2016 referring to Ms. S. as "Gizzy ... wink, wink ...". The reference to the nickname Gizzy is significant. It is clear on review of all the various communications between the parties on record that J.D. does not use this nickname when he is calm and measured in his communication but rather uses it when he becomes emotional, angry or upset. It was G.S.'s evidence that this is reference to a sexual term, it is not one that she favours, but she tolerates it to keep the communication open. I find it is clear throughout the evidence that J.D. uses this term to upset G.S., only uses it when he himself is upset, angry or attempting to exert control and it demonstrates a clear inability to communicate in a mature and respectful fashion.

[46] In a subsequent email as part of this chain, J.D refers to having a "large and deep pool of contacts in this province. Provides me with a wealth of info on all sorts of things ... Lawyers, crooked cheating cops ... stealing politicians. Like in Guysborough ... and just all-around stupid fucking people."

[47] At this point the parties are discussing payment of money owed by J.D. to G.S. and she offers that he could pay weekly and he should discuss this with the Sheriff. In replying, he uses foul language respecting the Sheriff, again repeats the offensive nickname to G.S. with a "winkieface" emoji and says "this will be the last you get out of me Bahhahahaha. Time for me to come calling on you!!! Bahhahahaha."

[48] As another example, in an email exchange respecting Christmas, J.D. begins quite calmly and respectfully, asking about attending mass with the children on the

Saturday and plans for the following Christmas Day and dinner. When he doesn't get the reply he wants, he again descends into attack mode, using the insulting nickname and asking if the mother is stoned. When G.S. replies that if the Christmas schedule discussed is not acceptable, the girls would remain with her for the weekend, the communication from J.D. does not improve. He uses the nickname again and his ability to communicate appropriately completely breaks down.

[49] There are other email exchanges where the parties discuss M.D.'s sexuality and her refusal to visit with her father or her request to return home to her mother when with her father. G.S. repeatedly suggests that J.D. needs to have a conversation with M.D., perhaps over dinner privately, to find out how she feels. He says, and it is clear in the evidence, that he does not have a problem with M.D.'s sexual identity. That is to his credit.

[50] On the other hand, it is clear from his communication regarding his daughter that he has absolutely no idea how to communicate with her. He resists any suggestion that he has any responsibility to initiate appropriate communication. Even though he has admitted to laying hands on M.D. in 2013. He continually suggests that it is M.D.'s fault that the relationship has broken down, that it is the mother's fault that M.D. won't visit with him or communicate with him and he has no insight whatsoever regarding his own role in the breakdown in the relationship.

[51] He suggests M.D. needs therapy, which she may, yet he has no ability to recognize that for him to properly parent her and communicate with her, he may need some assistance as well. For example, on December 9, 2016 there is an email exchange in which G.S. suggests that J.D. take M.D. out for dinner alone and have a heart-to-heart talk. In response, he says in part "I'm finding it a very difficult issue to buy for both of them and especially M.D., and given her behaviour and ignoring me and being rude I am certainly questioning if she really deserves anything at all from Santa in St. Andrews."

[52] There is much evidence about an alleged incident in Florida. M.D. and J.D. were there with their father, A.M., and her children. At one point, G.S. received text communication from M.D. who alleged that her father had assaulted her, was saying terrible, rude and hurtful things to her and about her and she was locked in the bathroom asking for her mother's help. I do not accept the hearsay evidence that M.D.'s description in the texts is accurate and the father denies all of the allegations. That, of course, is not the point.

[53] At no time after those communications were shared with him did J.D. provide any indication that he has insight into the fact that M.D., for whatever reason, was extremely upset in Florida, was texting her mother and was asking for help. It may be that she made it all up or she misinterpreted what she was hearing or what had happened. But the fact that she locked herself in the bathroom, would not come out, would not communicate with her father and texted her mother should surely had been a red flag to anyone as it was to her mother, that there was a serious problem afoot. Yet from that day to this he blames M.D., takes no responsibility himself and looks outward rather than inward for answers.

[54] Another example is T., the dog. T is owned by J.D. and was purchased after separation. M.D. enjoys time with the dog as does J.D. Despite their estrangement, M.D. has, on at least a few occasions, asked to see T. and J.D.'s response has been one that demonstrates his need to control M.D. rather than engage with her. For example, when G.S. texted him about M.D. wanting to see the dog, he replied

If M.D. wants to see Tucker she's going to have to start coming to St. Andrews on a regular basis. Pretty simple. I know her games.

[55] When she did come with her mother to his home to see the dog, the evidence is that, rather than engage with M.D. while she visited with the dog, J.D. remained aloof and did not take advantage of the opportunity to try to communicate with her. Put simply, it is clear that he is using the dog as a tool to force M.D. to have a relationship with him rather than consider that he might have to be more generous, allow the dog to visit with M.D. and thereby encourage the father daughter relationship.

[56] This is reinforced in the text from April 17, 2017 when G.S. asks if they could bring the dog to her home because M.D. missed him. J.D.'s reply was

I really don't care if M.D. misses him. She is supposed to be coming to St. Andrews. She is 13 years old. What does that teach her. She thinks she can do whatever she wants. And it has to stop. Allowing her to take my dog to town because she misses him is not teaching her anything. I am not playing games with a 13-year-old who think she is 20. All done. Nice try though.

[57] I find that this again demonstrates a father who believes that his relationship with his daughter is one of control. His daughter is entering a new phase in her life. She is going to want to express her own beliefs, take some control of her circumstances and exhibit independence. While we would wish that she could maintain a relationship with her father, I find the evidence is clear that the

breakdown in that relationship is solely and entirely the fault of J.D. who fails to appreciate the impact of family violence on her and the changes she is going through. He has no insight into his role in allowing that relationship to deteriorate and will not seek out help or accept any suggestions regarding how he might modify his communication and relationship with his daughter. Instead, he lashes out at his daughter and her mother, blaming each of them for what is clearly his responsibility. He expects a young child have the insight that he does not demonstrate in his own behaviors.

[58] This is reinforced, I find, by his constant reference to the criminal charges to which he pled guilty as "trumped up". This alone suggests that he has no real insight into his own behaviors.

[59] This review of the evidence is but a part of the overall circumstance of the parties before me. I find this a sufficient to conclude that it is not in the children's best interest to change the sole custodial order to a joint custodial order. I find that there is no reasonable prospect that the parents can effectively communicate respecting the best interests of the children and will likely not be able to do so until J.D. gains insight into his communication style, responsibilities and role in the very difficulties he describes.

[60] Moving to the issue of parenting time, there is a Voice of Child Report before the court for M.D. provided by Michael Craig, a social worker. This report was admitted in evidence without objection and J.Craig was not cross-examined. The report, from June 2017, describes his interaction with both parents in preparation for interview of M.D.

[61] From this interview of M.D. it is clear that she is struggling in her feelings regarding her father, his new partner and his new partner's children. She does not feel that her father loves her, her sister, his partner and her two children equally and she told J.Craig that she will not confront her father about her feelings because of his anger.

[62] When asked about the possibility of spending more time with her father she said she "will not go." She described feeling that her father wants to control her and that she only wants to visit with him for limited periods of her choosing. She said she does not want to spend time there as a family with her father's partner and her two children nor does she want to spend vacation times with him.

[63] J.Craig provides his opinion that M.D. is able to make mature choices and she is clear in her preference. He did not believe that she was subject to any coercion or undue influence.

[64] To this must be included the clear evidence from both parents that M.D. has resisted spending time with her father, his partner and her children. While that may have improved lately, she is clearly struggling in that relationship. I find this is not surprising given the evidence of J.D.'s approach to M.D.

[65] There was less evidence regarding G.D. and the benefit or impact of any increase in parenting time for her with her father. The mother says that G.D. tells her she doesn't mind spending time with her father, but at other times doesn't want to spend any more time with her father. The evidence on this is unclear. She says she doesn't want to spend time with her father's partner's children. The father says exactly the opposite based his conversations with her.

[66] I find that the children are safe and well cared for in each home. The issue is the parenting environment created by J.D. Despite these challenges, I also find that each of the children loves each parent and, despite the challenges in M.D.'s relationship with her father, those relationships are deep and worthy of respect and support.

[67] I also find that the mother supports the children's relationship with their father despite his claims otherwise. She has been supportive despite J.D.'s behaviors and provided sound advice to him. I find that she has tried to encourage resolution of his difficulties with M.D. She has made clear she will not force the children to go with their father and I find there is good reason for her to do so and that is found throughout the evidence. Children are not chattel to be exchanged. These are individuals whose circumstances must be considered and I find that G.S. has done that in her decisions around parenting time.

[68] I find that, though the issue of religion has been raised by the father, there is little evidence before me that this had been a factor in the children's upbringing. Certainly, the father may wish to bring the children to church during his parenting time or otherwise discuss this with them but it is not a factor that has any weight in this decision. Any such decision to do so must be made in the context of the custodial arrangement.

[69] I find it appropriate that when M.D. and G.D. visit with the father they do so together. Based on all the evidence before me, I find that it is not in G.D.'s or

M.D.'s best interests to change the parenting arrangement, in particular the parenting weekends when they visit with their father. I find that doing so would cause further stress to M.D. and would put G.D. at risk of some additional stress from that circumstance.

[70] I therefore will not order any change to the custodial or weekend parenting time arrangement for the family.

[71] I will however, adjust and change special parenting time for the children and other issues to provide clarity to these arrangements.

[72] In doing so, I strongly suggest that J.D. take immediate steps to engage with an appropriate mental health professional to deal with his obvious anger issues that remain ongoing despite his work with service providers under the probation order and otherwise. This therapy should be focused not only on his anger but should provide counselling and therapy respecting effective communication with the mother, and especially to obtain advice and guidance on how to appropriately communicate with and reinforce his relationship with M.D. before it is irrevocably damaged. M.D. cannot be expected to fix that relationship. She is the child.

[73] As for M.D., while it would be helpful for her to continue with the guidance counsellor that she is seeing at school and it may well be helpful for her to see a therapist on her own, she cannot be forced to do either. Moreover, she is still a young person and her ability to gain insight into the problems between her and her father will be limited.

[74] Once this process is completed, it may be appropriate for J.D. to seek to change to the custodial and parenting arrangements. Until then, I do not find that it is in the children's best interest to make any such changes.

[75] Having determine the foregoing, it is appropriate to renew and update the terms of the order. Many provisions, such as the prohibition on communication between the parents, need clarification and revision.

### **Decision and Order**

[76] This will be an order of sole custody in favor of the mother. She will have primary care and residence of the children. She will have the responsibility to keep the father informed of all major matters concerning the children, their health,

education, and general wellbeing. She will have the final decision making authority respecting those major decisions.

[77] Each parent, when the children are with them, will have the right to make emergency care and consent decisions, but must immediately inform the other parent in such circumstance. From that point forward the other parent must be kept informed of that circumstance. If the father is making the emergency decisions, he must inform the mother and she, as the sole custodial parent, will have any further decision making authority.

[78] All communications between the parents must be polite, respectful, business like and child-focused.

[79] Each parent is absolutely prohibited from making any negative or derogatory comments about the other parent when the children are in that parent's care.

[80] Each parent has a positive obligation to ensure that no one else makes such derogatory or negative comments about the other parent at any time the children are in that parent's care. If the third party will not cease such comments immediately, they are to remove that person from the vicinity or remove the children from the vicinity.

[81] Each parent is absolutely prohibited from discussing any of these legal proceedings with the children.

[82] Both parents shall, within 7 days, purchase and begin the use of the software Our Family Wizard for the purpose of primary communication between them, scheduling and sharing of information.

[83] They will maintain that subscription on an annual basis until either further order of the Court or joint decision of the parties to discontinue its use.

[84] The mother will support parenting time with the father and will encourage the children to attend. She will not be required to force the children to attend for parenting time with the father. All parenting times may be varied and adjusted by the parents, by agreement, from time to time.

[85] The father will have reasonable parenting times at reasonable times on reasonable notice including, but not limited to the following: Every second



weekend from Friday after school, or if there is no school at 5:00 p.m. until Sunday at 5:00 p.m. There will be no change in the pattern or sequence of weekends.

[86] During the week following his parenting weekend, he will have parenting time with the children from Wednesday after school, or if there is no school at 5:00 p.m. until Thursday when he takes them to School. If there is no school 8:00 a.m. or other time that is agreed to between the parents.

[87] The following special parenting times will apply and the normal bi-weekend and weekday parenting times will be suspended during these special parenting times as described.

[88] For Christmas, the mother will have the children Christmas Eve to Christmas Day at 2:00 p.m. and the father will have the children 2:00 p.m. Christmas Day to boxing day at 8:00 p.m. each year.

[89] For Easter, the father will have the children from Good Friday morning until Easter Saturday at 2:00 p.m. The mother will have the children from Easter Saturday at 2:00 p.m. until she takes them to school again on Tuesday morning.

[90] During the school spring break, there will be no special parenting arrangements unless otherwise agreed.

[91] During the summer school break, each parent will have up to two non-consecutive weeks of parenting time for the purpose of vacation. The will provide written notice to one another through "Our Family Wizard" by April 1 of the weeks they wish to have with the children. If there is no conflict in those dates they will have those dates. If there is a conflict in the scheduling, the mother's dates will have priority in even numbered years and the father will re-arrange his dates. The father will have priority in odd numbered years and the mother will re-arrange her dates.

[92] This summer's school break schedule will commence formally in 2018. For the remainder of the summer 2017, whatever arrangements have been made for the children's parenting time with each parent will apply.

[93] Travel outside of Canada will be permitted. The normal provisions around outside travel will be included.

[94] Either parent can request a passport for the child. The mother will have possession of those passports and she will not unreasonably withhold them from the father on his request for travel.

[95] Both parents shall provide reasonable notice for travel overnight outside of Nova Scotia. This is not for permission, simply notice including where the children will be, for how long, when they are expected to return, and if there is a contact other than the cell phone, how to reach them.

[96] Counsel for the father shall draw the order. Counsel and J.D. can provide written submissions to the Court on costs.

Daley, J.