IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Roach v. Roach, 2008 NSSC 384

Date: 20081216
Docket: 1206-5373
Registry: Sydney, Nova Scotia

Between:

Shauna Marie Roach

Applicant

v.

Charles Hubert Roach

Respondent

DECISION

Judge:	The Honourable Justice Theresa M. Forgeron
Heard:	October 21, 2008
Oral Decision:	December 15, 2008
Written Decision:	December 16, 2008
Counsel:	Mr. Alan Stanwick, counsel for Shauna Marie Roach Mr. Alfred Dinaut, counsel for Charles Hubert Roach

By the Court:

I INTRODUCTION

[1] Shauna and Charles Roach are former spouses. They have three children: Krystal who is 18, Sharlene who is 17, and Jonathan who is 7. The parties returned to court because the Corollary Relief Judgment contemplated a review of access and maintenance. In addition, Ms. Roach filed a variation application to permit a change in the permanent residence of the children.

[2] The following people testified at the hearing scheduled on October 21, 2008: Shauna Roach, Krystal Roach, Charles Roach, Dr. Landry and Delphine MacLeod. The court adjourned until today's date for decision.

[3] The court's reasons and findings during the divorce trial were provided in an oral decision. The relevant portion of this decision dealing with supervised access is appended as Schedule "A" and the relevant portion of the decision dealing with potential income imputation is attached as "Schedule B."

II ISSUES

[4] The court has been asked to determine the following four issues:

a) What access is in the best interests of Jonathan?

b) Should Ms. Roach be permitted to move the permanent residence of the children to New Brunswick?

c) Should income be imputed to Mr. Roach?

d) What is the appropriate quantum of child support?

III ANALYSIS

[5] **What access is in the best interests of Jonathan?**

[6] **Position of Shauna Roach**

[7] Ms. Roach seeks to terminate access because she believes that access is not in the best interests of Jonathan for the following reasons:

a) Mr. Roach has not changed. He continues to be angry and hostile. He continues to belittle her in front of the children. He continues to be abusive to Krystal and Sharlene. He continues to be abusive to female partners with whom he forms relationships;

b) Jonathan has been negatively affected by the supervised access which was ordered in the Corollary Relief Judgement. Jonathan was consistently upset immediately before and after the exercise of supervised access; and

c) A negative inference must be drawn from Mr. Roach's failure to participate in the court ordered parental capacity assessment.

[8] **Position of Mr. Roach**

[9] Mr. Roach seeks unsupervised access. In the alternative, he states that any concerns of Ms. Roach could be resolved through a renewed supervision order.

[10] Mr. Roach states he should continue to have contact with Jonathan because access is in Jonathan's best interests. Mr. Roach bases his position on the following:

a) Jonathan has a right to know and love his father;

b) He has never physically abused Jonathan;

c) He is a good father. This statement was corroborated by Mr. Roach's sister, Delphine MacLeod who confirmed a loving and involved relationship between Mr. Roach and Jonathan;

d) Ms. Roach unilaterally stopped access by refusing to take Jonathan to the YMCA supervised access program in contravention of the Corollary Relief Judgement; and

e) He and Jonathan would be devastated if access were to be terminated.

[11] Mr. Roach acknowledges that he did not complete the court ordered assessment with Dr. Landry. Mr. Roach refuses to accept responsibility for this failure. He claims that he attempted to participate in the assessment. He attended Dr. Landry's office on many occasions, but the office was closed. In any event, Mr. Roach submits that Jonathan should not be penalized by a no contact order because he misunderstood the assessment process.

[12] **Legislation and Case Law**

[13] Because the access issue proceeded by way of review pursuant to s. 2(c) of the Corollary Relief Judgment, a change in circumstances need not be proven. I must take into consideration only the best interests of Jonathan as determined by reference to his condition, needs and other circumstances. Conduct of Mr. Roach is relevant to the extent that it affects the ability of Mr. Roach to parent. Further, I must give effect to the

principle that Jonathan should have as much contact with his father as is consistent with Jonathan's best interests.

[14] There is no absolute right to access, although the best interests of a child is generally promoted when a child has meaningful contact with both parents. In **Abdo v. Abdo**, 1993 CarswellNS 52 (C.A.), the Nova Scotia Court of Appeal discussed three legal principles relevant to access termination decisions:

> a) The right of a child to know and to be exposed to the influences of each parent is subordinate in principle to the best interests of the child;
>
> b) The burden of proof lies with the parent who alleges that access should be denied, although proof of harm need not be shown in keeping with the decision of **Young v. Young**, 1993 CarswellBC 264 (SCC); and
>
> c) The court must be slow to extinguish access unless the evidence dictates that it is in the best interests of the child to do so.

[15] In **Abdo,** *supra*, the court terminated access because the father was physically and emotionally violent to the children and to the mother. The court found that the mother's health was jeopardised because of her fear of the father and her concerns for the children.

[16] In **V.S.J. v. L.J.G.**, [2004] O.T.C. 460 (S.C.), Blishen J. conducted an extensive review of the case law involving the termination of access. She summarized the seven factors which are frequently cited in support of access termination, often in combination form, as follows:

> a) Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress or fear;
>
> b) History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child or presents a risk to the child's safety and well being;
>
> c) Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent;
>
> d) Ongoing severe denigration of the other parent;
>
> e) Lack of relationship or attachment between the noncustodial parent and child;
>
> f) Neglect or abuse to a child during the access visits; or
>
> g) Older children's wishes and preferences to terminate access.

[17] In **V.S.J. v. L.J.G.**, *supra*, Blishen J. noted that the option of supervised access, even long term supervision, must be “carefully” considered before termination is ordered: paras. 137 and 140. She

observed, however, that supervision is not always a solution, and provided four examples where supervised access could prove unworkable:

> a) Where the child remains hostile to the access parent during the visits;
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> b) Where the child reacts badly after visits;
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> c) Where the access parent continually misses visits or is inappropriate during the access; or
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> d) If the purpose of supervised access is for the access parent to attend treatment or counseling and there is a refusal or unwillingness to follow through.

[18] In **Studley v. O'Laughlan**, 2000 CarswellNS 190 (Fam. Ct.), access was terminated because the father suffered from significant anger management and control issues for which professional assistance was not sought. There was no parent child relationship established despite the regime of supervised access which had been designed for that purpose. The father's relationship with the child was found to be "accented by abuse, hot temper and cruelty".

[19] In **Baker v. Zwicker,** 2000 CarswellNS 376 (Fam. Ct.), access was terminated because the father made little effort to change his violent

behaviour and abusive attitude, and because the father failed to recognize that his previous parenting was unhealthy and inappropriate. Further, the father had no access for a period of approximately three years.

[20] In **Newhook v. McEachern**, 1997 CarswellNS 215 (Fam. Ct.), access was denied as the father failed to successfully complete the anger management course which had been ordered by the court as a condition to be met before access would be reviewed. Further the father failed to participate in extensive counseling to deal with past abuse. The father did not attend the parenting course as ordered. The father was a virtual stranger to the children.

[21] In **R. (M.) v. S.(K)**, 1998 Carswell NB16 (QB), the father abused the mother physically, emotionally and sexually. The abuse was witnessed by the children. The children were also physically abused by the father. Expert evidence confirmed that the children would be adversely affected by access in the circumstances and so access was denied.

[22] Access termination is a remedy of last resort. The Applicant's burden is an onerous one given the seriousness of the relief sought. Supervised access must be reviewed and weighed as an option in the event termination is being considered. As in all parenting determinations, the best interests of the child is the paramount consideration.

[23] **Decision on Access**

[24] I have considered the legislation, case law, the submissions of the parties, and the evidence presented. I have assigned the burden of proof to Ms. Roach. I find that it is in the best interests of Jonathan to terminate access with his father at this time. I reach this conclusion based upon the following findings which I make:

> a) Mr. Roach did not participate in the court ordered parental capacity assessment. This second assessment was ordered because the first assessment, the Bryson assessment, was out-of-date by the time it was presented at the divorce trial in January, 2008. The Bryson assessment, dated September 2006, recommended supervised access between Mr. Roach and the children. During the divorce trial, Mr. Bryson stated that if Mr. Roach did not effect positive changes, then access should be terminated. Mr. Roach stated that he had successfully completed several anger management courses after the first assessment, but before the divorce trial. Mr. Roach said that he had learned to control his anger and was not a violent man. Mr. Roach questioned the validity of the Bryson assessment

because of the changes in his circumstances. At the divorce trial, supervised access was therefore ordered, together with a second parental capacity assessment. The second parental capacity assessment was to provide the court with expert opinion on all clinical issues impacting upon Mr. Roach and the quality of the access between Mr. Roach and Jonathan. The court does not have the benefit of this expert opinion because of Mr. Roach;

b) I draw a negative inference against Mr. Roach for failing to participate. I do not accept Mr. Roach's feeble excuses as acceptable reasons for failing to cooperate with the process. Mr. Roach could have made contact with Dr. Landry's office for appointments. Mr. Roach could have telephoned Dr. Landry's office; Mr. Roach could have left a voice message; Mr. Roach could have written Dr. Landry or had his counsel make contact. I infer that Mr. Roach's failure to participate is because Mr. Roach has not changed. He remains the violent, angry, aggressive, and abusive parent that was exposed in the Bryson assessment;

c) I accept the evidence of Krystal Roach. Krystal lived with Mr. Roach and his girlfriend Angela MacMaster for several months. During this time, Mr. Roach regularly degraded Krystal. Mr. Roach attacked Krystal's personal integrity and confidence by yelling and name calling. The language which Mr. Roach used is language which should never be directed at anyone, and most especially not at one's own child. There is no excuse, no justification for this appalling conduct;

d) I accept the evidence of Krystal Roach as it relates to the abusive relationship which Mr. Roach had with Ms. MacMaster. This is similar to the abuse which Ms. Roach and the children endured for years before the marriage break-down. Mr. Roach does not value the women in his life. He frequently views women as objects of scorn and contempt;

e) I find that Mr. Roach has little ability to self-monitor and self-control. He is reactive and impulsive. He is manipulative. He is unpredictable. His conduct is harmful and will continue to be harmful

to his children. His conduct causes his children to experience shame, hurt, and guilt. Krystal and Sharlene are victims and bear long term emotional scars. Jonathan, too, is beginning to experience similar turmoil. Jonathan cannot be placed in the hands of someone, even in a supervised setting, who is as disturbed and harmful as Mr. Roach;

f) I accept the evidence of Shauna Roach that Jonathan reacted negatively to the supervised access visits at the YMCA. Ms. Roach had to physically drag Jonathan to the access visits. Jonathan would punch, kick and scream after visiting with his father. Jonathan became noncompliant and defiant after access visits. Once access terminated, Jonathan no longer exhibited the negative behaviours;

g) The courses undertaken by Mr. Roach since the Bryson assessment have had no discernable impact upon him. Mr. Roach lacks insight. He fails to accept responsibility which is the corner stone of change;

h) I find that if access were reinstated, even in a supervised setting, that the risk of harm to Jonathan would be significant. Mr. Roach has no understanding of the harm that flows from his abusive conduct and the ongoing denigration of Ms. Roach in the presence of the children; and

i) I find that the relationship and attachment between Jonathan and his father is a negative one. I am unable to find any positives in the relationship as it presently exists. I reject the evidence of Delphine MacLeod and Charles Roach where it conflicts with the evidence of Shauna Roach and Kystal Roach.

[25] The termination of access is a remedy of last resort. Rarely should such a remedy be granted. Because of the exceptional nature of this case, it is in the best interests of Jonathan to terminate all access to his father at

this time. Mr. Roach is encouraged, but not ordered, to engage in professional programs and interventions with a view to satisfying the court in the future that it is in the best interests of Jonathan to have access with his father in a loving, nurturing and nonviolent fashion.

[26] **Should Ms. Roach be permitted to move the permanent residence of the children to New Brunswick?**

[27] **Position of Ms. Roach**

[28] Ms. Roach is seeking to move to Fredericton, New Brunswick with her children. She found employment in the Fredericton area. She wishes to establish a better life for herself and the children in Fredericton.

[29] **Position of Mr. Roach**

[30] Mr. Roach opposes Ms. Roach's application. Mr. Roach feels that it is in the best interests of the children to remain in the local area which has always been their home.

[31] **Legislation and Case Law**

[32] The mobility request proceeded by way of variation application. A change in circumstances must therefore be proven pursuant to s.17 (5) of the *Divorce Act.* The paramount consideration which I must apply continues to be the best interests of the child. Parental conduct relevant to parenting, s. 17 (6) of the *Act*, and the maximum contact principle, s. 17 (9) of the *Act,* must likewise be reviewed.

[33] In **Gordon v. Goertz**, [1996] S.C.J. No.52, the Supreme Court of Canada held that the court must balance the benefits and detriments of allowing the move against the benefits and detriments of refusing the move when considering a relocation request. Each party bears the onus of proving that his/her parenting plan is in the best interests of the child. The discretionary principles to be applied in this determination were set out in the decision as follows:

> a) The parent applying must meet the threshold requirement of demonstrating a material change in the circumstances of the child;

b) If the threshold is established, the court must embark on a fresh inquiry as to the best interests of the child, having regard to the relevant circumstances relating to the child's needs and the ability of the parents to meet those needs;

c) The inquiry is based on the findings of the court who made the previous order and the evidence of new circumstances;

d) There is no legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect if made on a *bona fides* basis;

e) Each case must be examined in reference to the unique circumstances and according to the best interests of the child;

f) The focus must always be on the best interests of the child, and not the interests and rights of the parents;

g) The courts should consider the following factors:

(i) The existing custodial arrangement and relationship between the child and the custodial parent;

(ii) The existing access arrangement and the relationship between the child and the access parent;

(iii) The desirability of maximizing contact between the child and both parents;

(iv) The views of the child if they can be ascertained;

(v) The reason for the move only in exceptional cases where it is relevant to the ability to meet the needs of the child;

(vi) Disruption to the child as a result of a change in custody; and

> (vii) Disruption to the child as a result of being removed from the family, schools and community where the child lives.

[34] I find that it is in the best interests of the children to move to New Brunswick with their mother. In making this decision, I find that Ms. Roach has met the burden upon her for the following reasons:

> a) A change in circumstance results from the planned move from the area;
>
> b) Ms. Roach has found employment in Fredericton. Financially she will be more secure in New Brunswick. The division of assets which was ordered in the Corollary Relief Judgement has not materialized. The minimal maintenance ordered has not been paid. Ms. Roach has little available to her from a material perspective in the local area. Improved financial circumstances will be beneficial to the children;
>
> c) Ms. Roach's plan was not made in haste. Ms. Roach made appropriate preparations in keeping with the needs of the children;
>
> d) Jonathan and Ms. Roach have a very good relationship. Ms. Roach is nurturing and loving. It is a healthy, parent child relationship;
>
> e) The court has terminated access between Jonathan and Mr. Roach because it was not healthy. It was not positive. The move to New Brunswick will have no impact on Jonathan's relationship with his father; and
>
> f) Although the children have many connections to the local area, I find that the children's primary, positive attachment is to their mother, Ms. Roach. The children no doubt will experience some adjustment difficulties with their new environment, but such changes will be handled appropriately by the children because they are in their mother's custody and care.

[35] **Should income be imputed to Mr. Roach?**

[36] **Position of Ms. Roach**

[37] Ms. Roach seeks to have income imputed to Mr. Roach for the following reasons:

> a) Mr. Roach is under-employed and provided no medical evidence to confirm that his health prevented him from working or limited his ability to work;
>
> b) Mr. Roach failed to perfect his application for CPP disability as required in the Corollary Relief Judgment;
>
> c) Mr. Roach failed to produce financial information when legally required to do so; and
>
> d) Mr. Roach is engaged in the underground economy.

[38] Ms. Roach submits that there is no reason why the entire financial responsibility for the parties' children should rest with her. Mr. Roach can, and should, contribute to the financial costs associated with the children.

[39] **Position of Mr. Roach**

[40] Mr. Roach opposes the application to impute income to him. He states as follows:

> a) He is in receipt of worker's compensation benefits and this proves that he is unable to work;
>
> b) He took the CPP forms to his doctor and his doctor was supposed to complete the forms on his behalf. He is not at fault because the doctor didn't complete his application form; and
>
> c) Although he drives a delivery truck for a family member, he does so on a volunteer basis and does not earn income.

[41] Mr. Roach states that in the circumstances, he should not be required to pay child support to Ms. Roach. Mr. Roach says that he is unable to meet his current maintenance obligation of $19 per month and that he definitely does not have the financial ability to pay more.

[42] **Legal Analysis**

[43] Section 19 of the federal *Child Support Guidelines* provides the court with the discretion to impute income in specified circumstances. Ms. Roach relies upon ss. 19 (1)(a) and (f) of the *Guidelines*. The discretionary authority found in s. 19 of the *Guidelines* must be exercised judicially and in

accordance with rules of reasons and justice - not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness must be shown before a court can impute income: **Coadic v. Coadic** 2005 NSSC 291(S.C.).

[44] Mr. Roach did breach s. 19 (1) (f) of the *Guidelines* because he did not disclose income tax returns and pay stubs as required. This failure is relevant to the issue of costs: **MacLean v. MacLean**, 2002 NSSC 5, and not to the issue of imputation. I accept that Mr. Roach's only reported income source is and was WCB. Disclosure of tax returns would not have revealed any more income.

[45] Mr. Roach also relies upon s. 19(1)(a) of the *Guidelines*. In **MacGillivary v. Ross**, 2008 NSSC 339 (S.C.), this court reviewed the law where health problems were raised as a factor which limited employment. The court stated the following relevant principles:

> a) The burden of establishing that a spouse is under-employed is upon the party requesting that income be imputed;
>
> b) Once under-employment is established, the evidentiary onus falls upon the under-employed spouse to prove that health problems

> compromise his/her ability to work by showing a meaningful link connecting the spouse's health needs to the inability to work; and
>
> c) If this evidentiary onus is not met, then the burden of establishing the appropriate quantum to impute, falls once again to the party requesting the imputation.

[46] Ms. Roach has proven that Mr. Roach is under-employed because he states that he is not working. His reported income consists of WCB benefits.

[47] Mr. Roach has not met the evidentiary burden upon him. He has not proven that health needs limit his ability to work. I reach this conclusion, based upon the following factual findings which I make:

> a) Mr. Roach presented no medical opinion that he experienced any health difficulties which compromise his ability to work. In fact no medical evidence was called;
>
> b) Mr. Roach did not perfect his CPP disability application as ordered in s. 3(d) of the Corollary Relief Judgment dated April 8, 2008 which states as follows:
>
> > The Respondent, Charles Roach, must perfect his Application for Canada Pension Plan (CPP) Disability Benefits with proof, not later than 30 days before the October 21, 2008 Hearing. If this is not done, the Court may assume that the Respondent can work and may impute income to him accordingly.;

> c) I draw a negative inference against Mr. Roach for his failure to perfect the CPP application. I dismiss Mr. Roach's attempt to blame his doctor who Mr. Roach assumed would complete the entire application on his behalf [not just the medical portion]. Mr. Roach is not naive. He was aware of his legal obligation. He was represented by counsel. The Corollary Relief Judgment was not ambiguous about the obligation, nor of the potential consequences. I therefore draw the conclusion that Mr. Roach did not perfect the CPP application because he is capable of working and prefers employment in the underground economy;
>
> d) I accept the evidence of Krystal Roach who said that Mr. Roach works for a family member. Mr. Roach drives a delivery van and is paid cash for each delivery. Mr. Roach prefers the cash economy because he wants to avoid his maintenance obligation; and
>
> e) Mr. Roach is not credible. I reject his evidence that he drives the delivery van on a volunteer basis.

[48] When determining the amount of income to be imputed, I am not restricted to actual income earned, rather I must review Mr. Roach's income earning capacity having regard to his age, health, education, skills, and employment history, work availability and all other relevant matters impacting on Mr. Roach's income earning capacity: **Coadic v. Coadic**, *supra*, and **Hanson v. Hanson**,[1999] B.C.J. No.2532(S.C.).

[49] I find that Ms. Roach has met the burden upon her. She has proven on a balance of probabilities that income should be imputed to Mr. Roach

because he is under-employed. Mr. Roach has a grossed up income of $9,000 from WCB pursuant to the Corollary Relief Judgment. Ms. Roach has proven that an additional $5,000 should be imputed to Mr. Roach given the circumstances, including Mr. Roach's difficult personality. His annual income is therefore deemed to be $14,000.

[50] **What is the appropriate quantum of child support**?

[51] Sharlene and Krystal's residences change from time to time. Sometimes they reside with their mother who has sole custody. Sometimes the girls live elsewhere for long periods of time. Sharlene and Krystal are not settled because they suffer from the effects of the abuse they received from their father. Mr. Roach will not be required to pay for the girls when they are not in the care of their mother.

[52] Maintenance will be based upon the following order:

a) When three children are primarily residing with Ms. Roach, Mr. Roach will pay $239 per month;

b) When two children are primarily residing with Ms. Roach, Mr. Roach will pay $222 per month;

c) When one child is primarily residing with Ms. Roach, Mr. Roach will pay $102 per month;

d) Ms. Roach will notify the Maintenance Enforcement Program when there are changes in the number of children who are primarily residing with her. Maintenance will be varied the month following one of the children's move from, or return to, the primary residence of Ms. Roach; and

e) The new maintenance obligation is effective as of October 1, 2008.

IV. CONCLUSION

[53] Ms. Roach's application to move the permanent residence of the children to New Brunswick is granted. Access between Jonathan and Mr. Roach is terminated in Jonathan's best interests. Income is imputed to Mr. Roach in the amount of $14,000 per annum, with child support payable based upon the Nova Scotia table and the number of children living with Ms. Roach.

[54] Costs of $500 are assessed against Mr. Roach because of his lack of financial disclosure. If Ms. Roach is represented through legal aid, costs will be payable to Nova Scotia Legal Aid. If additional costs are sought given Ms. Roach's success, written submissions are to be provided by

January 6, 2009. Mr. Stanwick is to draft the order and forward it to Mr. Dinaut for his consent as to form.

Forgeron. J.

"SCHEDULE A"

Despite my reservations, I will permit supervised access. I have determined that Ms. Roach has met the burden upon her and that she has proven on the balance of probabilities that it is in the best interests of the children to have supervised access to Mr. Roach at this time. I make this decision based upon the following reasons:

a) Mr. Roach is violent. I accept the evidence of Mr. Bryson who noted that during the assessment, Mr. Roach was quick to use profanity and demeaning comments to describe Ms. Roach and Ms. Roach's mother. I accept the evidence of Mr. Bryson that Mr. Roach showed no qualms about degrading Ms. Roach in the presence of Jonathan. I accept the evidence of Mr. Bryson who noted that Mr. Roach's threatening actions led his therapist Mr. Burns to contact the police. I accept the evidence of Ms. Roach when she described the abusive behavior of Mr. Roach following the parties' separation and during access exchanges. I accept the evidence of Ms. Roach that Mr. Roach followed her after he signed an undertaking to have no contact with her. I accept the evidence of Ms. Roach when she said that Mr. Roach threatened her. I reject the evidence of Mr. Roach where it conflicts with the evidence of Ms. Roach and Mr. Bryson. There is little about Mr. Roach that is credible. Mr. Roach is a violent man. Violence and parenting do not provide a nurturing environment for children;

b) Mr. Roach minimizes his behavior. Mr. Roach does not accept responsibility for his actions. Mr. Roach attempts to deflect responsibility by assigning blame to Ms. Roach. Mr. Roach lacks insight into his behaviors. I accept the evidence of Mr. Bryson who described Mr. Roach's inability to gain insight and to assume responsibility. Mr. Roach's own evidence showed little acceptance of responsibility for past conduct. Without an acceptance of responsibility, there is little hope that Mr. Roach will be able to change his ability to parent in a loving and nurturing way in the future;

c) Mr. Roach lacks respect for authority and for societal norms. Mr. Bryson's assessment found that Mr. Roach had antisocial and narcissistic personality traits. Mr. Bryson found that Mr. Roach rationalizes his aggressive and abusive behavior as appropriate. Mr. Bryson states that Mr. Roach lacks impulse control. Mr. Bryson states this poses a significant risk of physical harm to the children in Mr. Roach's care. I accept the expert opinion evidence of Mr. Bryson. This expert opinion is consistent with Mr. Roach's conduct and presentation;

d) It is not in the best interests of children to be placed in the unsupervised care of a parent who is violent. It is not in the best interests of children to be placed in the unsupervised care of a parent who lacks impulse control and insight. A violent and controlling parent will tear at the confidence and self esteem of a child. A violent and controlling parent will also by his actions teach a child that violence is an acceptable means of dispute resolution. It is not. A violent and controlling parent will teach a child that violence is a part of a loving relationship. It is not. Sharlene and Krystal have been identified as high risk by Mr. Bryson. I find their difficulties are due to the violence which they experienced from their father. I recognize that Sharlene and Krystal have improved in that each attended counseling after the interim order issued and each are learning to deal with the significant emotional scars they amassed during their childhood. Jonathan is encountering some difficulties because he is exposed to the violent actions of his father during access. He too sees a counselor through Child and Adolescent Services. Unsupervised access in their father's presence is not in the best interests of any of the children;

e) The YMCA program will protect the children from physical and emotional harm. This program will also protect Ms. Roach from Mr. Roach's abusive behavior during access exchanges. The professionals in charge will ensure the physical and emotional safety for all. Any infractions will result in the termination of the access;

f) The Bryson report was quite dated. The file was delayed in being brought forward for trial. Mr. Roach indicates that he has made changes to his behavior since the assessment was completed by attending, on several occasions, programs and counseling designed to assist him with anger management, impulse control and other personal issues. The Bryson report may not necessarily represent the true circumstances of Mr. Roach at this time; and

g) The parties and the children will participate in another assessment to be completed by a child psychologist. Clinical issues continue to present for the children and Mr. Roach. The assessment will provide an expert opinion to aid the court in the determination of the access issue. As stated previously, supervised access is not meant to be an indefinite solution. Access should at some point become unsupervised or terminated if that is in the best interests of the children. Access may also occur in the presence of the psychologist conducting the assessment so that the assessment can be comprehensive.

The order will also provide that the supervised access between Mr. Roach and Sharlene and Krystal shall be at the discretion of Sharlene and Krystal given their ages.

Mr. Roach is to have no other access to the children outside the confines of the YMCA program. This means no other telephone contact and no other in-person contact.

Mr. Roach is urged to take advantage of all of the courses, programs and counseling services which exist so that it becomes in the best interests of the children to have unsupervised access to their father. Ms. Roach is encouraged to continue in counseling and to ensure the children receive any professional help that they require.

This matter will be brought forward in October 2008 for review. One day of trial time will be assigned. The assessment is to be commissioned immediately.

“SCHEDULE B”

I will allow Mr. Roach a period of time to perfect the CPP disability application. He will take all steps necessary to have the application perfected 30 days before our next court appearance. If he chooses not to do so, then this will be evidence that Mr. Roach has placed himself in a position where income can be imputed to him, unless evidence to the contrary is shown. The court will also assume that Mr. Roach may very well have an ability to work in light of his non-perfection of the CPP disability application. Further, if Mr. Roach does not file his income particulars inclusive of a sworn Statement of Income, and income tax returns/assessments for 2006 and 2005 prior to the next court hearing income can also be imputed to him pursuant to s. 19 (f). This income information is to be filed no later than 30 days prior to the review hearing.