

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Chiasson v. Chiasson, 2006 NSSC 139

Date: 20060508

Docket: SFPAD-036016

Registry: Port Hawkesbury

Between:

Lise Chiasson

Petitioner

v.

Jamie Chiasson

Respondent

Judge: The Honourable Justice Moira Legere Sers

Heard: January 24, 2006; February 23, 2006;
March 22, 2006

Written Decision: **May 8, 2006**

Counsel: Elizabeth Cusack, Q.C., for the Applicant
Duncan MacEachern, for the Respondent

By the Court:

- [1] Lise Chiasson commenced divorce proceedings on November 30, 2004. She sought custody, access, child support, spousal support and a division of property, in accordance with the Separation Agreement entered into between herself and the Respondent, Jamie Chiasson, dated August 30, 2004. She also seeks costs .
- [2] On December 15, 2004, Mr. Chiasson filed an answer and counter petition seeking custody, access, child support, spousal support and costs with a division of property.
- [3] He seeks a variation of the provisions regarding child support and spousal support. It is his position that the particulars of the agreement did not and do not now reflect his net business income derived from self employment. He seeks an increase in access.
- [4] Ms. Chiasson lived in the Cheticamp area since August of 1997. The parties began living together on October 31, 1998. The parties were married on

June 3, 2000 at Cheticamp, Nova Scotia and ceased living together on June 19, 2004.

[5] The Petitioner was born on March 29, 1978 and the Respondent on February 28, 1977. They are 28 and 29 years old respectively.

[6] She has currently returned to live with her family in Moncton, New Brunswick.

[7] Their child Remi Marcel Chiasson, born April 28, 2003, is currently in the joint custody of both parents; in the day to day care of the mother with interim access arrangements between the parties.

[8] I am satisfied that all jurisdictional elements have been proven. There is no possibility of reconciliation between the parties. I grant the divorce in accordance with Section 8(1)(2)(a) of the Divorce Act.

[9] The parties have deferred the issue of custody and access while they attempt to work out transitional issues with Doctor Landry. In the event that they are

not able to work out the transitional issues they will refer the matter back to this court for final resolution of the custody and access hearing.

[10] Before me are the issues of spousal support, child support and division of property.

Separation Agreement

[11] On the 30 and 31st day of August the parties entered into a Separation Agreement. Both parties were represented by counsel.

[12] That agreement purported to settle all matters between the parties and was to be incorporated into and form part of the Corollary Relief Judgement in this matter.

[13] The Separation Agreement has become an issue that requires a review. Ms. Chiasson believes that the court should incorporate the Separation Agreement as reflecting their true financial circumstances and a valid agreement between the parties entered into after consultation with counsel.

[14] Mr. Chiasson believes that the Separation Agreement was entered into to assure himself that his child would not be removed from his home town. He believed the agreement of joint custody would limit her mobility. In return he was prepared to give her his equity in the home and possessions and guarantee her enough money per month to ensure she remained in the matrimonial home with his son.

[15] He confirmed she wanted a Quit Claim deed to the home. As he had no intention of living there, he was prepared to sign his interest over to her to keep his son in the Cheticamp area.

[16] He acknowledges that he had the advantage of counsel and admits he had instructed his counsel simply to draft an agreement in accordance with the terms and conditions he and Ms. Chiasson previously agreed upon.

(a) In that agreement the husband and wife were to share joint custody. At the time of the agreement the wife was living in Cheticamp and the parties agreed that she should have to day to day care of the child and that the husband should participate in and be involved in all major decisions affecting the child of the marriage.

(b) The parties agreed that the husband would be provided timely information from all schools and medical service providers regarding any status reports as a result of their involvement with the child.

(c) The parties agreed that he should have access to the child on alternate weekends from 4:00 p.m. on Saturday until 4:00 p.m. on Sunday commencing August 7, 2004 and otherwise he should have regular access at reasonable times with reasonable notice.

(d) The husband agreed to pay child support of \$495.00 per month on the 1st of the month commencing August 1, 2004. They agreed that this was based on the husband's gross annual income of \$60,000.00.

(e) The husband also agreed to pay her any expenses incurred from prescription drugs, clothing, school supplies and sporting equipment.

(f) The husband also agreed to pay \$600.00 per month for spousal support for the his wife for a period of 15 years or until she married or lived in a common-law relationship, which ever came first.

(g) The husband agreed to Quit Claim his interest in the matrimonial home located at 12784 Cabot Trail, Grand Etang, in the County of Inverness, Province of Nova Scotia, in consideration for the wife assuming responsibility for the mortgage. He also agreed to release to the wife all his interest in the contents of the home.

(h) The husband retained the 2003 Ford motor vehicle and the 2002 Honda Four Wheeler. The wife retained the 1999 Ford Taurus.

(I) The husband agreed to maintain the wife as the beneficiary on the National Life Insurance for the child until the child reached 18 years of age.

(j) The husband assumed responsibility for all loans with respect to the motor vehicles in his name and the wife the responsibility for the mortgage in the amount of \$47,461.00.

[17] There are a number of factors that are relevant in this review. The parties concluded their agreement a little over 2 months after the separation on June 19, 2004.

[18] There have been significant changes in the life of the parties since that time. If the Separation Agreement itself stands, there are significant changes that have occurred since the signing of the agreement that allow the Court to review at least custody, access, child support and spousal support. The question is; to what extent should the Court intervene if at all in the division of property?

[19] The father indicates that there was always an undercurrent, a threat that the mother would leave the jurisdiction with the child unless the terms of the agreement were satisfactory to her. This agreement clearly favours the

mother. The father agreed to the terms in order to keep his child in the jurisdiction.

[20] The mother maintains that she did not ever hold out the possibility or threat that if her demands were not met she would leave the Cheticamp area and return to Moncton with her family.

[21] There was also a side agreement (unknown to the Respondent and to Ms. Chiasson's lawyer), between Ms. Chiasson and the paternal grandparents.

History

[22] Mr. Chiasson obtained his qualifications as a certified electrician after completing a one year course in Sydney, Nova Scotia, in the fall of 1995. He became a journeyman electrician in the year 2000. Between 1996 to 2000 he worked as an apprentice for Robin Jones and Whitman in Cheticamp. After working there for 4 years he left in August of 2000 and became self employed. He remains self employed today.

[23] The Petitioner completed High School in Moncton New Brunswick. She completed courses at Collège de l' Acadie to qualify as a Continuing Care Assistant/Worker between 1997 and 1998. She completed upgrading in that field in 2004 and worked in this field for more than 4 years. This type of work draws an income of \$14.00 per hour according to the Petitioner.

[24] She completed one semester of courses for bilingual secretary at the College de l'Acadie in 2001.

[25] When Mr. Chiasson met Ms. Chiasson in 1997 she was employed and continued to be employed until the birth of her child.

[26] Between 1998 and 2000 she worked as a Teacher's Aid. École N.D.A., Cheticamp. Between February 1998 to June 2002 she also worked part time in a casual position as a continuing care assistant for the Cheticamp Association for Community Living . She was paid \$13.70 an hour.

- [27] Between October 2002 and April 2003 she worked part time as a research assistance for Collège de l'Acadie. Between May 8, 2004 and June 15, 2005 she also worked as a bookkeeper -salesperson for Chiasson Furniture Store (owned by her parents-in law)They employed her 14 weeks per year and 5 additional weeks while on EI. She work weekends and some evenings while she was still in training as a C.C.W.
- [28] In addition and briefly the Petitioner worked at the Harbour Restaurant and the Cabot Trail Chalet's.
- [29] The Petitioner worked in Small Options, resigned her position, went on unemployment in the Fall of 2002 until she began her maternity leave when Remi was born April 28, 2003.
- [30] From the Fall of 2002 up to her maternity leave she had been working at a project sponsored by Human Resources at the College De L'Acadie.
- [31] A year later when her maternity leave expired in the Spring of 2004 she commenced work for Chiasson Furniture beginning in the Spring of 2004

with her final day of work on May 31, 2005. She experienced periods of lay off during the winter and the spring.

[32] The parties resided in a rental property in the Cheticamp area until they purchased a new home in Grand Etang in 2001. They lived in that property together from June of 2001 to June of 2004.

[33] They purchased their home for approximately \$45,000.00. They completed significant improvements including new vinyl windows, two vinyl doors, reconditioned roof, land scaping, moving some internal walls , painted, installed new flooring, bathroom, new counter top.

[34] They purchased all new furniture including bedroom furniture, appliances, living room furniture. The home contained a new water heater, new water pump system, circuit breakers, etcetera.

[35] The couple benefited from the generosity of their parents receiving financial assistance from both sets of parents. The Petitioner's father contributed \$5,000.00 and the Respondent's father originally contributed at least

\$10,000.00. Some of the \$5,000.00 contributed by the Petitioner's father paid off the Respondent's father.

[36] The Respondent's father owns a furniture and appliance store. They benefited from this when they purchased and furnished their home.

[37] They also benefited because they were able to bartered labour to complete renovations on their home. They received assistance from family and friends. They, their parents, their relatives and friends assisted in the renovations each doing what they were qualified and able to do.

[38] When the parties separated the primary focus of the father and his family was to ensure that the couple arrived at an arrangement that was geared to guarantee that the child Remi would remain in the area.

[39] The Petitioner and Respondent negotiated their own terms. It had to have been clear to all parties that the primary goal was to give sufficient money to keep the mother in the matrimonial home and to sustain her with the child to ensure that the child remained in the Cheticamp area.

- [40] The agreement as drafted reflected the parties discussions. The mother and father concluded in their initial discussions she would need approximately \$1,100.00. to stay in the home and maintain herself and the child.
- [41] Mr. Chiasson took that agreement to a lawyer and had an agreement drafted. Ms. Chiasson obtained counsel and sought to change the terms to receive \$1,600.00. This was beyond what Mr. Chiasson felt he could manage. He informed his parents that it was not realistic to attempt to pay more money to meet this demand.
- [42] The Petitioner went to see the paternal grandparents with her concern that she could not survive on the \$1,100.00 per month payment.
- [43] Her father-in-law and Ms. Chiasson agreed to a private deal of \$500.00 a month topping up the \$1,100.00 to meet the \$1,600.00 demand. Mr. Chiasson and the lawyers drafting the agreement were unaware of this private arrangement.

- [44] The grandparents paid \$500.00 to the Petitioner from August 2004 to June 2005, They also provided her with a Blue Cross Plan while she was employed at their store.
- [45] Ms. Chiasson signed the Separation Agreement and the parties commenced living separate and apart in accordance with the terms of the agreement.
- [46] This agreement gave the mother their newly renovated home and all it's contents, \$1,600.00 per month and all future equity.
- [47] The ongoing relationships broke down, both parties were in relationships with other individuals and ultimately the Petitioner left her employment with the Respondent's family in May 2005 and decided to move to Moncton to enter University. She applied in May and was accepted in June 2005.
- [48] She made an interim application to take the child with her to Moncton.
- [49] When this was announced the \$500.00 paid by the grandparents stopped.

[50] The Petitioner testified that at no time was there any threat by her to remove the child from the jurisdiction if the grandparents or the Respondent did not meet her demands.

[51] It is clear that there were discussions about her need to have sufficient funds to stay in the Cheticamp area. It had to have been clear that the primary driving focus of the Separation Agreement was to keep her and more importantly her son in the Cheticamp area.

[52] I do not accept that it was never a spoken reality. It had to have been discussed and was clearly implicit if not explicit in the final negotiations.

[53] The Petitioner's former lawyer testified and confirmed that he discussed with her the issue of mobility before signing the agreement. He confirmed that the parties had come to their lawyers with an agreement already largely worked out between them. The amount of support he said had been previously agreed upon. She was discussing with her lawyer how to remove Mr. Chiasson from the mortgage.

- [54] Her lawyer wanted to confirm the financial disclosure (which the parties did not do) to confirm whether or not Mr. Chiasson could pay the amount agreed upon. He confirmed that the spousal support was meant to cover her day to day expenses in Grand Etang.
- [55] The mother was successful in obtaining court permission to take the child to Moncton with her on certain conditions. She commenced a degree in Business Administration, an entirely different field of pursuit.
- [56] This significantly altered the fundamental purpose of the agreement. The house that was provided to the mother for the maintenance and support of the child is now rented by the mother and she receives the rent .
- [57] The spousal support, child support geared at keeping and ensuring that her and his needs were addressed all have changed and a new arrangement is necessary to reflect the access costs among other issues.

Variation of the Separation Agreement

[58] The Respondent claims that this agreement should be varied. There are two aspects to that argument. If there is evidence supporting a variation should it be varied under Section 29 of the Matrimonial Property Act or treated like an ordinary variation that occurs when circumstances change relating to support orders. There is a Divorce proceeding and the court may impose an order that does not necessarily accord with the terms of the agreement.

[59] Both parties had the opportunity to consult with independent counsel. If Mr. Chiasson limited his counsel's retainer or ability to advise him then that is a conscientious choice. I have no reason to believe he suffered from any obstacle or impairment.

[60] There is no evidence of undue influence, fraud or evidence that would affect the parties ability to retain and instruct counsel. There was no significant power imbalance or difference in bargaining positions of the parties to the agreement. There is nothing that would allow for the contract to be voidable or voided.

[61] The Respondent gave up all his interest in the division of matrimonial property (except for his vehicle). He agreed to pay child and spousal support in an amount that was not justified by his actual income or the circumstances of the parties lives. He agreed to a term of spousal support that exceeded what one might ordinarily expect in these circumstances.

[62] He was prepared to do that to assure himself that his child would remain in their matrimonial home, the same geographical area he continued to reside in. When he could not meet the higher demand for more monthly income he decided at that point to reconsider. The Petitioner informed his parents of her need for more monthly income if she were to remain in the home in the area. The paternal grandparents had a similar interests in keeping her and her child in the jurisdiction. They entered into a private arrangement unknown to lawyers and the Respondent. Thus the agreement as I see it was signed.

[63] The Respondent failed to negotiate a mobility restriction clause. Instead of explicitly indicating his intent he assumed the joint custody order would protect his interests. He testified he brought the terms of their agreement to

his lawyer and instructed him to prepare the agreement as he advised. His lawyer did not testify. As regards to what might have been discussed I make no presumptions. Thus he gave the consideration required to finalize their agreement but did not ensure he was fully protected by overtly addressing mobility.

[64] It may be unfair in that it was obvious what he intended and wanted. It is clearly unequal favouring the Petitioner. There is no evidence to suggest it was unconscionable. It was entirely foreseeable that mobility would become an issue at some point. No one prevented the Respondent from expressly addressing this point before the agreement was entered into.

[65] Therefore the court ought not to interfere with the agreement between the parties. However, in light of my findings and the fact that there are significant changes in the circumstances of the parties the court can review the terms of the Separation Agreement in this divorce proceeding and set an appropriate amount of child and spousal support that conforms to the circumstances of the parties and the needs of the child.

[66] A close look at the financial situation must now take place in order to determine the appropriate amount of child and spousal support if any.

Petitioner's financial circumstances -

[67] In 2002 Ms Chiasson earned \$17,195.00 received \$4,053.00 in EI earnings for a total of \$21,248.00.

[68] In 2003 she earned \$6,085.00; received EI of \$8,969.00 for a total of \$15,054.00.

[69] In 2004 her total income of \$19,865.00 consisted of \$9,514.00 earnings and \$7,951.00 EI together with some alimony.

[70] In 2005 she received a Canada Student Loan in the amount of \$7,140.00, (another \$6000.00 in 2006); income from Chiasson's Furniture of \$2,326.97 and an undisclosed amount of EI. Up to June of 2005 she received \$500.00 per month from the Chiassons', spousal support and child support as per the agreement. She now receives 380 for child support. She receives rent

from her tenant. This income covers the mortgage payment leaving a little in surplus funds.

- [71] The court hearing her interim application created an interim schedule of access between the child and his father and recommended the child support be reduced to accommodate for access costs. He recommended the father be excused from one week support per month.
- [72] The mother's January 2006 statement of guideline income shows monthly income from spousal support of \$600.00 (not always received); adjusted child support of \$380.69, house rental income of \$510.00, student loan income of \$595.00 bursary income of \$83.33 for a total monthly income of \$2,169.02; \$2501.55 with GST and Child tax credit. This creates an annual income of \$30,018.00. Excluding her student loan her monthly income is \$1,906.00 for an annual income of \$22,878.00.
- [73] She is currently living with her parents, going to University, on student loan and receiving her income as adjusted.

[74] She is not currently using her previous education and skills experience. She has decided to obtain a bachelor Degree in Business Administration with a concentration in accounting at Moncton University. She is capable, competent, intelligent and able to complete this should she continue to attend.

[75] She also has the benefit of a matrimonial home which she intends to rent to June of 2006. It has a municipal assessment of \$61,000.00, with an outstanding mortgage of \$44,540.00. As of June 2005 the house was not assessed for its market value. The equity can be used to advance Ms. Chiasson's personal pursuit of education that will no doubt benefit her.

Respondent's financial information

[76] Assessing Mr. Chiasson's income is somewhat more difficult. Ms. Chiasson maintains that the Court should use the \$60,000.00 figure inserted into the Separation Agreement to justify the amount of child support that the parties decided should be paid to keep Ms. Chiasson and the child in the Cheticamp area. She has not provided proof of this \$60,000 income.

[77] On the totality of the evidence I conclude the parties first arrived at an amount of child support and spousal support which when combined would keep the mother in Cheticamp. Using the guideline table they choose a gross income to justify the figure in order to satisfy any subsequent Court scrutiny. The information before me does not support a \$60,000.00 gross annual income.

[78] Mr. Chiasson profits greatly, as did Ms. Chiasson, from the strong support they received in the Cheticamp area from Mr. Chiasson's family, friends and relatives. The family and friends barter and exchange for services and supplies. This assisted the young couple and greatly enhancing their living conditions.

[79] Left on his own, Mr. Chiasson's income comes from various sources. First, primarily as a journeyman electrician, then plumbing repairs, maintenance work on appliances, cash jobs, barter for services given and received among friends, family and relatives.

[80] Mr. Chiasson estimated between \$400.00 and \$500.00 a month of his income is earned by cash jobs. . He admits that he works year around and he admits that he starts his day at least by 8:30 and ends by 5:00 unless there is a particular job and a deadline to be completed. He admits he does quite well. He acknowledges that he has sustained himself with strong financial and emotional assistance from his parents. He testified his father paid \$28,500 to him to assist in living up to the agreement he signed with the Petitioner. I have no reason to disbelieve this.

[81] Ms. Chiasson testified that when they lived together there were large amounts of cash at home. That in itself does not sustain a conclusion that he earns \$60,000.00 as a self employed electrician and handyman.

[82] I do have a number of documents that have assisted me in selecting an appropriate annual income. The first historical document is a loan application form signed by both Mr. and Ms. Chiasson on March 9, 2002. In that document Ms. Chiasson as a C.C.W. earned more monthly than Mr. Chiasson did in his employment. They declared she earned \$2,192.00 per month, (\$26,304 a year). Counsel and the Court have struggled with

attempting to decipher his self employment earnings in this document. It appears to be under \$1,650.00 per month. The total monthly appear to be \$3,300 plus or minus.

[83] In this document he acknowledges there are \$500.00 a month cash jobs. At the time he was also working cash jobs for a satellite company, that does not exist any longer.

[84] There is a second piece of information that is telling. In discussing his work history and his expectations in his six years as a self employed electrician and general maintenance worker, he believes, after quoting and bidding on jobs, administrative work, public relations work, if he can complete 20 hours a week at his current rate of \$30.00 an hour on average, that is a decent wage. That would amount to a yearly income of \$31,200.00 without vacation.

[85] Twenty hours a week is on the low side . He will continue to earn \$500.00 cash jobs a month at least. That is approximately 3.8 additional hours per

week. Rounded to a 25 hour week at \$30.00 an hour that would yield \$39,000 again without vacation.

[86] I have reviewed the gross profits, purchasing deductions and net profits of Mr. Chiasson's 2001, 2002, 2003 and 2004 income tax returns. He began late in 2000 and in 2001. His gross income was \$40,431.70; net \$4,278.00 After purchases(supplies) his net was \$13,908.00. Out of that he had to pay advertising fees, fees, insurance, 100% of his motor vehicle expenses(\$9396), office expenses and travel.

[87] Each year his business deductions differ. There are some consistent ones. In 2002 his gross profit was \$69,652.00 reduced after purchasing to \$25,394.74. After his business expenses including \$12,890.00 in vehicle expenses his net income was \$9,357.22

[88] In 2003 his gross profit of \$74,938.00 was reduced to \$19,164.00 after deducting his purchases. After business expenses including \$10,202.25 for vehicle his net income was \$3,374.48.

[89] In 2004 it was \$86,459.00 reduced to \$37,725.00 after considering his business purchases.

[90] We see an increase in his business. We do not see a significant increase in his income.

[91] For the 2004 year his consistent expenses including his business tax, fees and etcetera at \$1,817.00; meals and entertainment at \$44.00; his motor vehicles expenses at \$9,489.00; office expenses of \$449.00, other supplies and telephone and utilities at \$1,803.00 as well as mail at \$74.00. He shows a capital cost deduction of \$10,625.00 for a net income of \$10,102.00.

[92] The capital cost allowance increased from \$1,167.00 in 2003 to \$10,625.00 in 2004. Mr. Chiasson purchased a new vehicle to avoid \$2,000.00 worth of repairs on a vehicle that had 75,000 km's . He purchased a 2005 Ford F150 . His old vehicle is still used in his father's business.

- [93] Mr. Chiasson claims 10 percent of his household expenditures at his tax deductions, using his house to do his administrative work. He also claims 100 percent of his motor vehicle expenses.
- [94] In reviewing his expenditures for the purposes of determining child support what is deducted from income tax need not be necessarily be that in which is accepted in child support.
- [95] Mr. Chiasson needs to have sufficient income to run his business. Mr. Chiasson has filed his 2004 income tax return and that is what I have to work with for the child support. He shows a gross income of \$86,459.00 and a net of \$9,693.18. After spousal support payments and other deductions he shows a taxable income of \$6,101.00.
- [96] In his statement of business expenses he shows purchases during the year of \$48,734.00 reflecting the costs of goods purchased for his trade, reducing his gross profits to **\$37,725.00**. He has business fees, licences, dues, memberships or subscriptions in the amount of **\$1,817.00**. Motor vehicle expenses of **\$9,489.00**, office supplies of **\$449.00**. I have not an accounting

for the \$3,321.00 of other supplies . His cell phone of **\$1,803.00** and mail of **\$74.00** for a total of \$16,853.00 allowable (by Revenue Canada) as deductions added together with his capital cost deduction of \$10,625.00 for total expenses of \$27,478.00. However his lifestyle demands more than a \$10,000.00 income can support.

[97] If I allow approximately \$8,887.00 for expenses including ½ of the vehicle expenses, the cell phone, mail costs office supplies explained as necessary to work he shows an income for child support purposes of \$28,838. 00

[98] I do not have an adequate explanation for the necessary expenses on his T 2124 .

[99] Normally one would deduct the capital cost allowance as a business expense. The truck is a new truck purchased partially for personal use, partially for business use although 100 percent claim for business use. It may not have been totally necessary to get him where he needs to go but has an aspect of personal choice, one that I am not able to quantify.

[100] He lives a style of life that exceeds the declared income of \$9,693.00. His expenses listed, minus the spousal and child support are \$1,484.00 a month for a total of \$17,815.00 a month . He has acquired new debt since separation by way of a monthly Ford Credit of \$635.00 and a credit union loan of \$2800.00.

[101] He has effected major renovations to the home he owns with his current partner. This home he estimates is valued at \$150,000.00 (with a municipal assessment of \$143,000.00) His current partner has invested a significant sum in the home as well . They have two cars , and approximately \$10,000.00 in new appliances as well as new furniture.

[102] I allow for the fact that Mr. Chiasson did not fully explain/justify all of his business expenses, some of which may be allowable either as they currently are or as reduced to reflect personal use and choice. On the other hand he admits he earns money by cash jobs.

[103] **I am going to fix his income at \$28,837.00. This results in a monthly child support payment of \$257.00.**

[104] Another method I considered in assessing his income would be to utilize his admission to put in a 20 hour work week at \$30.00 an hour which would yield \$31,167.00. If I included in that an extra five hours per week to cover his cash jobs that would bring him to \$38,970.00, that would bring me to approximately \$30,000.00 after expenses, close to the current amount calculated.

[105] Ms. Chiasson has not provided proof that Mr. Chiasson ever made \$60,000.00. On the other hand, his current income tax returns with allowable tax deductions reflect a net income that would not support his current life style. His life style is attainable given his cash jobs and living in a community in which many individuals trade services. This helps elevate his life style beyond his income. He receives significant contributions from his parents and thus he is able to live a life style that exceeds the bottom line in his tax return.

Child Care Costs

[106] Ms. Chiasson decided to move away from child care services that were practically free. She testified she could not obtain a job in the area and would be accepting lesser jobs or lower paying jobs for a significant period of time given that she did not have a two income household.

[107] While married she has significant financial support and ability to work in the furniture business with her father-in-law. She was promised an ongoing job at the furniture store for \$40,000.00. She was qualified as a C.C.W. and had previous experience with health services and as a teacher's aide.

[108] I do not have evidence that she pursued those avenues seriously and insufficient evidence to conclude that she could not find suitable employment in the area.

[109] The choice to move to Moncton with her family was a personal choice. While she indicated it was not done to thwart access, she also indicated that given the conflict between the two subsequent to the separation, the geographical distance may prove to be a benefit. I accept it was a comfort decision to put her in her family's home. The Petitioner convinced the

Learned Trial Justice hearing the interim application that her family offered financial, residential, childcare and emotional support for her as she pursued this degree.

[110] This change in the status quo resulting from the move to Moncton has resulted in removing the child from his other parent and extended family. It was proposed by the Petitioner that the Respondent would have as much contact with his child as he did during the course of separation. It has also increased child care costs and transportation costs to ensure that the child remains connected with both parents.

[111] There were other options available to her. She could have studied closer to the home of the child, or left the child with his father while she pursued her career.

[112] The Petitioner is not pursuing a line of education which is built on her previous skills. While it may be an excellent long term choice for her, it has been done at significant cost to all parties and most particularly her parents.

It is a choice that was not necessary but may prove beneficial in the long term.

[113] If she is successful this child will have the benefit of both parents who can independently support him. However it has also increased her child care costs and by this application she seeks to increase them further.

[114] In the meantime she removed the child him from an area in which child care costs could be covered arguable better and cheaper. Given the costs of transportation for access, , the comparative financial circumstances of the parties Mr. Chiasson will be responsible for fifty percent of after tax child care costs associated with the child care submitted by Ms. Chiasson She shall verify these actual costs quarterly.

Spousal Support

[115] Ms. Chiasson entered into an agreement with Mr. Chiasson to receive a combination of spousal and child support as set out in their agreement. Many circumstances have changed since that agreement was entered into. The matrimonial home asset was signed over to her as all the furniture and

possessions to sustain her in that environment. She has voluntarily removed herself from that environment and the child. The pursuit of her education was a personal choice not necessary for income, perhaps profitable in the long run. This educational expenses while desirable for Ms. Chiasson was not necessary in order for her to attain self sufficiency.

[116] Her educational expense ought not to be the basis for assessing spousal support. She has the equity in the house and the contents of the home that may be used to support her educational pursuits. It would be important in future applications to know the equity in the home.

[117] The amount of 15 years suggested in the spousal support agreement far exceeds what one would consider might be imposed by a court of law given the years they were together and their income disparity. It was indeed a generous agreement entered into for the purpose of keeping the mother in the local area.

[118] The circumstances have changed significantly. Spousal support is reviewable.

[119] The parties lived together for 2 years, married for four and have one child.

Ms. Chiasson is employable but has not pursued employment in her own field of training. Instead she has undertaken by student loan and by the strong support of her family to pursue another career.

[120] She advocated at the interim hearing that she undertook this with the strong support of her parents. Moving to Moncton has resulted in a court ordered obligation to participate in an access regime which she estimates costs her \$140.00 per month. This may in fact continue for the foreseeable future if she continues to pursue her degree in Moncton.

[121] In reviewing his financial circumstances, his disposable income, fifty percent of the after tax child care costs, the costs of transportation to him to maintain access with his son and the costs of transportation to Ms. Chiasson. I am prepared to order while the child remains in Moncton an additional \$300 spousal support for a month for a limited term to address the access costs in the mother's budget that are associated with access.

[122] This \$300.00 ought to contribute towards her maintaining her car, the gas required and any incidental meals associated with ensuring that her child remains in contact with his father for the period of time that she resides in Moncton to pursue her degree.

[123] Spousal support is reviewable in the event those circumstances change.

[124] These moves have significant financial implications and these implications must be addressed in advance in order to maintain this child's contact with both parents and avoid the need for litigation after the fact.

[125] With respect to mobility other than to return to Nova Scotia Ms. Chiasson shall not remove the child from the Province of New Brunswick to live in any other province without the consent of Mr. Chiasson or court order.

[126] The spousal support award is also reviewable at the end of her current degree. Long term support is not called for in these circumstances. Support is also reviewable upon a change in circumstances and/or access regime.

[127] Counsel for the Respondent shall draft the order. The parties may make submissions on costs after the custody and access issues are settled by court order or agreement of the parties.

Justice Moira Legere Sers