IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *L.J.H.* v. *L.J.P.,* 2005 YKSC 64 Date: 20051124
Docket No.: S.C. No. 01-B0054
Registry: Whitehorse

Between:

L.J.H.

Plaintiff

And

L.J.P.

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
Ms. L.J.H. On her own behalf
Ms. Debbie Hoffman For the defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This trial is about custody, access and the division of family assets.

[2] The parties started their relationship in 1994 and were married on June 10, 1995. The child, W., is a boy, born January 19, 1996. He has medical and psychological problems and a variety of special needs. The couple lived together in Atlin, British Columbia during their relationship, until they separated on September 9, 2001. At about that time, the mother moved from Atlin to Whitehorse, Yukon with the child.

[3] The action was commenced under Yukon legislation rather than the *Divorce Act*, because neither party had been ordinarily resident here for at least one year prior to the commencement of the action.

[4] The parties were granted interim joint custody of the child on October 4, 2001. The child lived with the mother in Whitehorse after that order was made, but the father had weekly access from Friday morning to Sunday evening and was allowed to take the child with him to Atlin.

[5] Following a further order of this Court on September 27, 2002, the mother moved from Whitehorse to Almonte, Ontario. She and the child initially lived with the maternal grandparents, but have since moved a couple of times before settling in the mother's current residence. While the mother has had primary care of the child, the father has continued to involve himself in the child's affairs during his annual winter time visits to Ontario. His parents, the paternal grandparents, reside about 1½ hours drive from Almonte.

[6] The father is a commercial fisherman during the summer months and a trapper during the winter months. The mother is presently unemployed, but has previous experience as a massage practitioner and is currently attempting to complete her certification as a message therapist.

[7] The father has been represented by counsel throughout these proceedings. The mother has had counsel from time to time, but ultimately represented herself at this trial.

ISSUES

The following issues are in dispute:

1. The mother is seeking sole custody of the child, whereas the father seeks joint custody.
2. Future summer time access:
    a) the father wants the child to visit with him in Atlin for the month of August each year;
    b) the mother is opposed to that, but says the father can visit the child in Ontario.

3. Access by the paternal grandparents:

    a) the father wants his parents to have specified access to the child on one weekend each month, with the particular weekend to be selected by the mother, unless otherwise agreed between the mother and the paternal grandparents;

    b) the mother does not want specified access, but is prepared to agree informally to one weekend every second month.

4. The mother does not want direct contact with the father.

5. The father wants to participate in the choice of the child's school. The mother wants to make that choice unilaterally.

6. The mother wants the father to share in the cost of the child's nutritional supplements. The father wants to first be satisfied that these are necessary and in the child's best interests.

7. The valuation and division of the family assets:

    a) the family home,
    b) the joint bank account,
    c) the moveable property retained by each party on separation, and
    d) the fishing business.

CUSTODY

W.'s Special Needs

[8] W. was born with an atrophied urethra, a condition known as hypospadia, which required at least two operations during the child's early formative years. He was referred to the Child Development Centre in 2000, which recommended that he be given special help upon beginning his schooling. The child was also tested by a psychologist who recommended the same types of support and special help.

[9] W. was initially placed in the Golden Horn School in Whitehorse, following the mother's move with him from Atlin. It was quickly determined that the child suffered from certain developmental and psychological problems, as well as his medical ones. It was the opinion of the school's principal that W. would need more special supports than were available at any school in Whitehorse.

[10] Historically, W. has been a diagnostic challenge for his attending professionals and care givers. Initially he showed poor and odd language skills and demonstrated a high degree of fantastic ideation. His stories would often be perseverative and have obsessional qualities. His attention span was quite limited. His motor skills showed some developmental delay. Historically, he was also focused, if not obsessed, with his penis as a result of the medical treatments for his hypospadia. This may continue to have a strong effect on his sexual development, especially as an adolescent, and further surgeries may be required.

[11] It was the tentative opinion of chartered psychologist, G.S. Powter, who prepared the Custody and Access Report dated January 28, 2002, that W. might have symptoms of a pervasive developmental disorder called Asperger's Syndrome. Mr. Powter noted that the most obvious hallmark of this syndrome is the peculiar and idiosyncratic areas of "special interest" to the children affected. He said, at page 22, they are noted to show certain autistic symptoms such as

> "a tendency to avoid spontaneous social interactions or to show very weak skills in interactions, problems sustaining simple conversations or a tendency to be perseverative or repetitive when conversing, odd verbal responses, preference for a set routine and difficulty with transitions, difficulty regulating social/emotional responses involving anger, aggression, or excessive anxiety, hyperactivity, appearing to be "in one's own world," and the tendency to overfocus on particular objects or subjects. …"

As one author put it, quoted by Mr. Powter at page 23, children with Asperger's syndrome "often don't like surprises".

[12] Following W.'s arrival in Almonte with his mother, he attended a local primary school. It was soon determined that the types of problems identified in Whitehorse were continuing to cause him difficulties. Ultimately, he was referred to a special day treatment

program at the Royal Ottawa Hospital. As I understand it, this program involves placing special needs children into a school curriculum, which is supervised by a professional multi-disciplinary team working out of the hospital, including a child psychiatrist. For the 2003 – 2004 academic year, Dr. Sue Batth was the attending child psychiatrist on W.'s professional team. The following year, W. continued the day treatment program under the supervision of child psychiatrist Dr. Barb Jones and the associated professional team, but was relocated from the Royal Ottawa Hospital to the Children's Hospital of Eastern Ontario ("CHEO"). Each year the team develops an individualized treatment program for W. on the basis of his identified needs.

[13] Dr. Jones testified that she has seen W. almost daily over the past academic year in a variety of settings including in class, out of class, and in therapy. She stated that W. has difficulty with communication, although the problem is more to do with his comprehension than his expressive language. She also noted that he suffers from certain mental delays and fine motor skills delays, which affect his ability to print. He continues to be challenged in the area of social communication. For example, he is egocentric and often has difficulty with reciprocity and understanding the need of the other party to a conversation. He is challenged with the processing of information. He is emotionally fragile and is frustrated with any changes in his environment and his support systems. He is internally quite disorganized with his thought processes. He struggles with learning. If he is assisted with rote matters, he can manage. However, as he gets into new learning areas or abstract concepts, his difficulties increase. He needs to hear very simple words with concrete and reality-based examples in order to comprehend issues. If he is stressed, he goes into his fantasy world and emotionally regresses. He is also learning about how to please others and is therefore quite vulnerable to suggestions from peers.

[14] Dr. Jones said that W.'s developmental deficits are chronic and will require monitoring throughout his childhood. Even if he is reintegrated with the mainstream school system, he will still need psychological support and help with integration into community activities.

[15] According to Drs. Batth and Jones, W.'s formal psychiatric diagnosis is Pervasive Developmental Delay (PDD). This diagnosis includes aspects of Autistic Spectrum Disorder and Asperger's Syndrome, but does not fit neatly in either because of his developmental delays. Sometimes W. can appear as high functioning, for example, when he repeats phrases or sentences after watching a television program, while in fact he continues to have difficulty with true comprehension.

[16] In his formal schooling W. performs at a grade or two below his notional level of grade 4, at his current age of 9. But even then, this is only if he is doing something he likes and is fully supported in doing so.

[17] It will be difficult to predict how well W. will integrate as a teenager and an adult. However, Dr. Jones said that W. has a lot of strength. She referred to him as "a delightful little guy", who is beginning to try to be "kind" in social situations. However, he needs help to check in with others before attempting to help, lest such attempt should be perceived as intrusive.

[18] W. does not cope well with transitions and becomes anxious about his environment, even to the point of appearing to have an anxiety disorder. This caused Dr. Jones to recommend medication for W. Since W. has begun this medication, there has been a lessening of his over-reactive responses and an increase in his positive social behaviour.

[19] Dr. Jones also encouraged the mother to enrol W. in structured social activities over the summer of 2005 to help him develop his social skills. The mother has done this and claims that W. has had a better summer this year than in previous years.

[20] In cross-examination, Dr. Jones confirmed that W. was treated as an “outpatient” for the summer months of July and August 2005. I understood this to mean that he was not in full time attendance at the CHEO education program, but took the same summer vacation as other school children. Dr. Jones and an alternate child psychiatrist were available to the mother during this time, while the mother planned and executed various activities such as day camps and other excursions for W. The doctors’ records indicate that there were only four contacts between the mother and W.’s treatment team over this time period. There is no evidence that any of these contacts were the result of any particular trauma or difficulty experienced by W.

[21] Dr. Jones conceded that W. is making “baby steps” to adapting more appropriately to new situations as a result of his medication. To use her words, “progress is slow”. The issue is when to implement changes in W.’s life and how quickly to do so, as he needs preparation for everything and may even react badly to parental attempts to prepare him.

[22] As I understood Dr. Jones, changes in W.’s routine are more likely to be successful and accepted by W. if he is prepared for those changes well in advance. His anxiety and the risk of negative overreaction to the change can be reduced by showing him pictures, reminding him of similar previous experiences and discussing with him what he can expect to experience in the new situation or activity. For example, W. went on a number of road trips with his mother this past summer to a museum, a science centre and a zoo in communities outside the Ottawa area. She prepared W. by showing him pictures of what

he was about to visit and discussing the trips with him in advance. The mother testified that these trips were generally successful.

[23] Dr. Jones met with the father in January 2005, while he was making his annual winter visitation to Ontario. She said that he appeared to show some insight to W.'s problems and to understand his need for consistency and structure. Dr. Jones also said that he appeared to be a concerned father who wanted to do whatever he could to help W. She said the professional team is open to communication with the father about W. She particularly noted that W. has never said he did not feel safe with his Dad.

[24] In summary, Dr. Jones felt that W. needs more than normal supervision, but he also has the need to grow and to do things on his own.

[25] Dr. Batth generally supported the diagnosis of Dr. Jones about W.'s condition. She initially diagnosed W. as exhibiting disruptive behaviours partially due to cognitive function delays and expressed learning disabilities. She also said he showed significant anxiety disorder traits. However, based on her observations of W. from June to September 2005, she noticed positive changes as a result of his medication. In particular, she said that he seemed calmer and was exhibiting less anxiety. He seemed keen to play, was using free association in his thought processes and was trying to understand how people feel. Finally, Dr. Batth conceded that the only way for W. to make progress is for him to continue to experience changes in his life, for W. to be prepared for those changes, and to have the related support.

[26] Unfortunately, in her evidence about the father, Dr. Batth seemed rather negatively biased. For example, in a letter she wrote to the mother's former counsel dated June 19, 2005, she stated as follows:

> "Future care of [W.]: Due to my limited past experience with [the father] communication between biological parents can become

> adversarial over minor issues. This increases [W.'s] anxiety and he may then refuse to visit his dad. For these reasons, *it is essential that [W.'s] visits with his biological father remain supervised by his paternal grandparents …"*
>
> (emphasis added)

[27] Dr. Batth was cross-examined about her comment that parents can become "adversarial over minor issues". I understood her to refer to an event she witnessed approximately two years ago when the father came to W.'s school to exercise a pre-arranged access visit. When asked whether she was aware at that time that the father was trying to take his son and that the mother was denying access, Dr. Batth initially said "no" and that the father was only there on a classroom visit. However, she later conceded that the father had pre-arranged an access visit and that she ended up trying to mediate a dispute between the mother and the father over that access visit. In the end, she acknowledged that W. did go with his father for that visit.

[28] Further, when asked why she thought the visits by the father should "remain supervised", Dr. Batth said that she had *assumed* the father was accessing W. under supervision and that consequently "there must be a reason why". For example, she noted that the father has been through "AA and counselling". While she did not come right out and say so, the implication from Dr. Batth's evidence on this point is that she suspected the father of some improper historical conduct, which prompted the need for supervision and coincided with his participation in AA and counselling. In fact, the father has never been under a requirement of supervision during his access and he has been sober for 10 years. This was pure speculation on Dr. Batth's part and she was incorrect. Thus, her opinion that it is "essential" the father be restricted to supervised access is without foundation.

[29] Dr. Batth was also asked why she recommended that the father's access be supervised by the paternal grandparents. When cross-examined about her previous

contacts with either grandparent, she could only recall having met on two occasions with M.P. in the context of meetings with W.'s professional team. She never met the paternal grandfather, D.P., at all. There is also no evidence that she witnessed M.P. together with W. Nevertheless, she was prepared to recommend both grandparents, as supervisors. Once again, I have to say that I found her opinion in that regard is based on little or no foundation.

[30] Dr. Batth said that joint custody can create problems, particularly if immediate decisions need to be made for W.

[31] Dr. Batth was also opposed to W. going for a full month to Atlin each summer. She advised beginning with a one week visit, assuming W. wishes to go, and then perhaps increasing that by one week each summer, providing all goes well. However, immediately preceding that evidence, Dr. Batth spent a significant amount of time repeating certain statements that W. had allegedly made to her, which tend to create the impression that W. did not wish to go to Atlin. For example, she attributed W. as saying:

- "Dad does not treat me well."
- "Dad treats me like if I'm a baby."
- "Dad does not give me enough time to think."
- "I want Dad to come here to see me."
- "I don't want to go there, it's a small place and there is nothing to do there."

[32] Dr. Batth paraphrased W. further by suggesting that he "absolutely" said he did not want to go boating and fishing for a whole month, as he may not like it and his Dad won't listen.

[33] However, these selective quotes from Dr. Batth must be considered in the light of her overall bias against the father. Further, Dr. Jones was the most recent child

psychiatrist on W.'s professional team and she noted W. saying that he felt bad because he could not see *both* his parents and that he misses his father.

[34] In any event, Dr. Batth acknowledged that the father can obtain "feedback" from the school which W. is attending. That is consistent with Dr. Jones' evidence that the professional team is "open" to communications with the father. I understand this to mean that the father would have access to W.'s professional team on an "as needed" basis, should he have access visits with W. either in Ontario or in British Columbia.

[35] As for Dr. Batth's opinion against joint custody and access in Atlin, I prefer the evidence of Dr. Jones, which allowed for the possibility of both.

The Mother's Position on Custody

[36] I commend the mother for the steps she has taken to improve the quality of W.'s life since the two of them moved to Ontario. She was pivotal in obtaining the referral from W.'s community school in Almonte to the hospital day treatment program. She has also put a good deal of thought and effort into involving W. in such extra curricular activities as horseback riding, skiing, bowling, bike riding and card playing. Fortunately, a community services organization in her area subsidizes the mother to the extent of $225 per month for these types of activities. W. also attends the circus every year and in the summer he goes to the beach in Almonte almost every day. He has attended two week-long day camps this past summer as well as a day trip to Disney World in Florida and the other excursions I have already mentioned. To use the father's words, the mother has made "Herculean efforts" to meet W.'s various needs.

[37] The only real issue here is whether the father should have joint custody of W. or be limited simply to a right of access. The mother opposes joint custody primarily because she feels that she and the father do not get along well enough to make joint custody work.

She says that the conflict between them is not overt, but is quite “underhanded”. I am not entirely sure what she means by that, as the evidence she attempted to enter in support of that proposition was ruled inadmissible by me. She also described, somewhat inconsistently, the amount of such conflict as “extreme” and says that, as a result, she cannot be in the father’s presence for any period of time. She has panic attacks when she spends too much time with him.

[38] The mother also attempted to attack the father’s character. For example, in her final submissions, the mother said that there is no evidence that the father has taken an anger management course, as ordered by this Court on September 27, 2002. However, that suggestion is directly contradicted by information in the Custody and Access Report at p. 16:

> “Since the court order in the fall of 2001, [the father] has been attending counselling at both The Family Violence Prevention Unit and Yukon Family Services, and I spoke with both his counsellors (Doug Knudson and Doug Mowat, respectively). Both these counsellors indicated that [the father] has been attending all his sessions, and has been an active participant, both in individual and in group sessions. They also stated that they had the sense that [the father] did not pose any risk of harm to the child, and in their opinion, had probably not been violent with [the mother]. They both said that they were "not sure that he really needs to come in.”

[39] The mother further submitted that she does not feel the father “knows his son” and that he is “in total denial” of his son’s condition. For reasons which will become obvious when I review the father’s evidence on the custody issue, I find these assertions to be overstatements which are unsupported by the evidence.

[40] The mother also pointed to the opinion of Mr. Powter, at p. 26 of the Custody and Access Report, that this family was not a good prospect for joint custody:

> “Is this family a good prospect for joint custody? In my opinion, no. Although they do have less conflict than do many parents

> in this situation, and have had better communication than some, there is still a great deal of anger and resentment, particularly surrounding financial and extended family issues. If [the mother] pursues the matter of [the father's] family's alleged criminal activities, this will be sure to amplify the bitterness and resentment. As well, [the mother] continues to express fear about [the father], and this is obviously a very poor ground for resolution of their anger."

However, I would first note that this comment was made on January 28, 2002, at a time when the conflict between the parties was at a higher level than it is today. Second, it is my view, having heard both parties testify, that it is primarily the mother who continues to feel anger and resentment. I detected little if any of these emotions on the part of the father. Third, the financial issues are likely to be resolved upon the division of the family assets. Fourth, it is apparent that the mother has not taken any steps to pursue her allegations of criminal activities against either the father or his extended family. Finally, her fears about the father, in my view, are largely due to her own anxiety, as opposed to being founded on the evidence. Therefore, I find that Mr. Powter's opinion as to the viability of joint custody in 2002 is of little weight today, over three years later.

The Father's Position on Custody

[41] The father has had interim joint custody since this Court's order of October 4, 2001 and says he has consistently and faithfully made every effort to involve himself in his son's life since then, both directly and indirectly.

[42] After the initial separation, the father obtained an order authorizing him to have weekly access from Friday morning until Sunday evening, which I'm told was exercised by him at the family home in Atlin.

[43] Each year since the mother and W. moved to Almonte, the father has made arrangements to travel to Ontario in order to exercise access. These visits have varied

slightly in duration, but generally have been six to eight weeks long. While visiting in Ontario, the father resides with his parents near Pembroke, which is 1½ to 2 hours drive from the mother's residence in Almonte. The father has visited the schools which W. attends and has spoken with members of his professional team. He has sought to educate himself about W.'s condition and his special needs.

[44] Although he is occupied in the Atlin area during the summer fishing season, he nevertheless attempts access by telephone when that is possible. He also involves himself indirectly through his mother, M.P. He speaks more or less on a weekly basis with M.P. on the telephone (when he is not out of communication on the Taku River with his fishing business) and obtains updates about W.'s progress and M.P.'s visits with him.

[45] The father has paid interim child support in the amount of $267 per month since October 1, 2001. He has never missed a payment, notwithstanding my impression that his net annual income has fluctuated from year to year.

[46] The father's counsel emphasized that joint custody is particularly important in this case because the child has special needs and a complex prognosis, and, as the father's home and the child's primary residence are thousands of miles apart, the father is not within the primary sphere of contact for the child's professional team, as the mother is. Consequently, the father feels that he does not get the respect he deserves as a parent from some of the professional caregivers. For example, his counsel indicated that he had asked Dr. Batth for more detailed information justifying the use of W.'s nutrient supplement therapy, but never received a response.

[47] Although the father conceded that for a time after the separation, he had spoken badly about the mother to the child and others, he has since refrained from doing so.

[48] His friend, T.A., has known the father for six or seven years and has had a number of conversations with him, many of which were of an intimate nature. In particular, the father first talked to T.A. about his son about three or four years ago, shortly after W. left for Ontario. T.A. noticed that the father was obviously hurting and was quite upset. Despite being upset, the father mentioned that he was trying to recognize that there were better opportunities for W. in Ontario for dealing with his disabilities. He also recognized that the mother's parents were willing to help her and W. He was focusing on letting W. go and trying to see the positive aspects of the move.

[49] T.A. also spoke of the father's extensive community involvement in Atlin, he described the father has a motivator and a community organizer who leads by example. He says that he has never heard the father say a mean thing towards anyone. He has never seen him under the influence of alcohol or drugs. He has observed him in the presence of other friends with children and noted him to have a very good rapport with those children. He says that the father is "quite an exceptional individual who loves his son very much".

[50] T.A. first met the father through the Alcoholic Anonymous program in Atlin and for the last six or seven years they have been members of an AA group which meets weekly in Whitehorse. When the father is not involved with his seasonal fishing business, T.A. has observed the father attend two or three meetings each month in Whitehorse, consistently over the last several years (Atlin and Whitehorse are about 2 hours apart by road). He said the father just celebrated his tenth year of sobriety in March 2005.

[51] The paternal grandmother, M.P., testified very favourably about the father's parenting style. While one might naturally expect M.P. to be biased in favour of her son, I found M.P. to be an objective and careful witness, free of any tendency to embellish her evidence. This is likely due in part to her background as a child protection worker, until her

retirement about 9 years ago. She said that the father is warm, firm and consistent with W. He keeps him on a regular schedule and does most of the caring for W. during his access visits. She has also been present for the exchanges of W. between the father and the mother. She has noticed that W. is generally cheerful and smiling when he arrives at her home with his father.

[52] She also mentioned that the father was the oldest of her 7 sons and that he frequently looked after his younger brothers and his grandmother while he was growing up. One brother in particular was mentally challenged and the father was occasionally called upon to assist in an extended therapeutic “patterning” program, where adults would work with the challenged son for several hours at a time to modify his behaviour.

[53] M.P. mentioned that the father was “delighted” to become a father to W. and that long absences from W. distress him. When asked about the child-parent bond between the father and W., she said that given the absences she did not think it could be any better than it is.

Analysis on Custody

[54] I confess that it was not always easy to follow the mother’s submissions on either the issue of custody or the other issues. She seemed to have great difficulty keeping track of any significant volume of sequential information. Her thought processes and demeanour both as a witness and as her own advocate were often scattered and inconsistent. I also found the mother’s conduct at times during the trial to exhibit a distinct immaturity. For example, she would attempt to press a particular point and when I challenged her for some form of justification or to consider an alternate means of making the same point, she would simply give up on the point altogether with a heavy sigh, muttering something like “it doesn’t matter”. When this happened, which it did repeatedly, I would urge the mother to

continue to try to make her argument if she felt it was important to her case. Sometimes she succeeded or made a valiant effort, but often she simply abandoned her point and moved on.

[55] Indeed, much of what I observed of the mother's conduct at the trial reflects the observations of Mr. Powter in the Custody and Access Report where he said, at page 6:

> "Her thought process and affect were, in my opinion, clearly agitated. In all our meetings, [the mother] demonstrated pressured speech, and a level of anxiety that seemed to produce scattered and sometimes disorganized thinking. It seemed hard for her to finish sentences sometimes, and she required redirection back to questions on a number of occasions. [The mother]'s affect was labile – she swung rapidly back and forth in her moods, from frustration to tears to anger to laughter in a matter of moments (to be fair to her, though, much of the content of the discussion was by its very nature complicated and conflictual)."

[56] In any event, I attempted throughout this trial to give the mother the benefit of the doubt on many issues, recognizing that she is not trained in the law and is unfamiliar with the legal procedure. However, I also reminded her that she would be bound by the *Rules of Court* and the rules of evidence, just as the father would be. This resulted in a number of rulings by me during the trial excluding certain evidence tendered by the mother, or preventing her from posing questions in cross-examination, because of either a lack of relevance or prejudice to the father. Her attempt to adduce evidence of the "underhanded" conflict with the father was one such example. Occasionally, I had to go over the same points repeatedly with the mother, as she simply did not seem to understand some of my rulings or the reasons behind them.

[57] On the other hand, the father impressed me as someone with intelligence, energy, commitment, creativity, care and patience. I agree with the statement by his counsel that it would be in W.'s best interests to have "this" father involved in the decision making for the

child. He deserves to play a full parental role in the child's life and the child can only benefit by that involvement. To use the father's words, he does not want to be just a "weekend Dad".

[58] I also agree with the father's counsel that the mother's reasons for opposing joint custody relate more to her feelings about the father than to W.'s best interests. She generally described those feelings as ranging from discomfort to fear to panic, when she is in his presence for any significant period of time. The mother also attempted to suggest, in her final submissions, that her reasons for these negative feelings are because of some historical mistreatment by him towards her and the child. In particular, she attempted to allege that the father was both violent and abusive towards her and the child. However, she did not testify or present any other *evidence* to support these allegations.

[59] Admittedly, the mother did refer to similar allegations she had made to Mr. Powter in the preparation of the Custody and Access Report. Although that report was admitted as an exhibit and does indeed contain references to the mother's allegations, as I told her at the time, the fact that such allegations were made is not proof of their truth. I also emphasize that the mother did not address these particular allegations until all of the evidence in the trial was completed. Therefore, the father's counsel had no opportunity to challenge them or call evidence to the contrary.

[60] According to the father's disclosure to Mr. Powter, these alleged incidents were the result of the mother's provocation and involved her attempts to stop the father from leaving during arguments. On one occasion, the mother notified the Atlin police. However, according to the father, they did not follow up on the complaint because they recognized that "there was another side to the story". The father insists that the mother was equally involved in the physical side of the conflicts, including leaving permanent scratch marks on

his neck. Indeed, apart from this passing reference in the Custody and Access Report, there is no evidence of any further or other police involvement with the father.

[61] There is no independent evidence to corroborate the mother's allegations. On the contrary, as I noted earlier, Mr. Powter said in the Custody and Access Report that two of the counsellors directly involved with the father were both of the opinion that he probably had not been violent with the mother.

[62] Therefore, the mother's suggestions that the father was violent and/or abusive towards her and the child are without foundation and I give them no weight.

[63] This case is similar in some respects to that of *A.T.* v. *L.T.T.*, 2002 BCSC 981, where Morrison J. noted at para. 17 that at trial the mother insisted that she was an abused and battered spouse, but that there was no evidence to sustain that allegation, even though the father, at one point, was arrested for assault and eventually placed on a peace bond. The expert report in that case, which was accepted by the court at para. 52, acknowledged that the mother was afraid of the father, but stated that her fears were overstated with respect to the issue of custody. The expert concluded that the mother's fears about the child's vulnerability to the father's violence arose from her own anxiety. The expert did not accept that any of the mother's particular fears affected the father's capability to care for the child.

[64] I would say the same about the mother's fears and anxiety about the father in this case. Indeed, it appears as though the mother's "extremely high level of anxiety", noted by Mr. Powter at the time he prepared the Custody and Access Report (at page 7), continues to colour and distort her view of the father, especially as a caregiver for W., to this day.

[65] In short, the mother has not pointed to any particular piece of evidence in this trial which gives me a reason to conclude that it would not be in W.'s best interests for the

father to have joint custody. I conclude, as Morrison J. did in the *A.T.* case, that the child has the right to know and be loved and nurtured by both his parents, not just his mother. The parties will share joint custody of W.

ACCESS

By the Father

[66] The father's winter access to W. in Ontario has largely been agreed to by the parties. The real issue here is about summer access. The father wants the child in Atlin for the month of August each year. The mother wants to limit the summer access to one week in Ontario, but is prepared to consider increasing that time in future years. She is adamantly opposed to the child spending any time with the father in Atlin. She also wants any access to be supervised.

[67] The father has indicated his willingness to compromise his business interests for the sake of having more time with his son. In particular, he has committed that he will shut down his fishing business for the month of August in order that he may travel to Ontario to pick up W. and bring him back to Atlin. He will also ensure that W. is returned to his mother's residence in Ontario at least one week before W.'s school commences each year, which is expected after the Labour Day weekend in September. Alternatively, the child may be accompanied to and from British Columbia by the paternal grandmother, M.P.

[68] In anticipation of the initial summer time visit to Atlin in 2006, the father intends to meet with W.'s professional team this November and develop plans on how to best introduce the idea to W. and prepare him accordingly. For example, the father testified about supplying W. with photographs of the Atlin home, his Atlin cousins and friends, and discussing with W. the activities he would like to be involved in. The father would also like

the mother to participate in the development of that plan by speaking with W. and assisting by showing him pictures, etc, while he is living in Almonte.

[69] There was evidence that W. is particularly interested in science, the outdoors, geology and “earth stuff”. Thus, I found it particularly assuring that the father plans to pursue W.’s interest in minerals by reading books with him about gold mining in Atlin and the Yukon and to have W. succeed in actually finding some gold. He also plans to use metal detectors with W. and to go camping in order to study rocks.

[70] The father also testified that he has kept up W.’s British Columbia health benefits. He also said that W. will have access to an on-call nursing station in Atlin. In the event that W. requires emergency medical attention which could not be administered through the nursing station, the father said that he could be medivaced to a hospital (presumably either in Whitehorse or another city in northern B.C.).

[71] In the Custody and Access Report, Mr. Powter noted at p.26:

> “I do believe, however, that [the father] also has a strong and rightful bond with the child. There is considerable psychological evidence documenting the importance of a child maintaining contact with both parents. The evidence says however, that continuity and contiguous frequency are not the most important factors in this contact (except when the child is very young). Rather, *quality* time with the non-custodial parent on a *predictable* schedule is the key to a successful relationship into the future. …”
> (emphasis already added)

[72] There has been no case made by the mother for supervised access. Indeed, in her final submissions, she was unable to even commit to whether she wanted supervised access at all. On the one hand, she greatly values M.P.’s involvement with the father’s access to the child in Ontario, but at the same time conceded that M.P. is not always present when the father exercises that access. In any event, the mother did not point to any evidence that would suggest that there is a reason for access to be supervised. I have

already found that the opinion of Dr. Batth that the access be supervised by the paternal grandparents is of no weight.

[73] In general, the mother said that she is not comfortable with the father looking after W. in Atlin because she does not have the ability to “control” the situation as she does in Ontario. Later in her evidence, she said that she is W.’s “stability”. Still later, when asked why she felt supervised access was required, she said “It is about my recovery”. These comments lead me to conclude that the mother is more concerned about her own interests and needs than the needs of the child to have quality time on a predictable schedule with his father.

[74] The mother further argued that she is more specifically opposed to the child going to Atlin for one month each summer because:

a) it is a long trip from Almonte, Ontario to Atlin, British Columbia;

b) there is no psychiatric care for W. in Atlin;

c) the father is in denial of what is happening with W.; and

d) W. does not want to go to Atlin.

In my view, none of these reasons are sufficient to deny the father the access he seeks.

[75] First, the child has made a number of long trips across the country by airplane, both before and since the separation, all without any apparent ill effect. Most recently, he flew from Ontario to Florida (Disneyworld) and back again in a single day, again without any apparent problem.

[76] Second, while there may be no resident child psychiatrist in Atlin, both Drs. Jones and Batth indicated that they would be open to receiving communication from either parent about the child’s needs. That was the situation over the summer of 2005, when the child was on his summer vacation. If it was considered satisfactory for the mother to be able to

access the child's professional team by telephone in that context, then I fail to see how it would be less appropriate for the father to do so, if the need arises for him to contact the team by telephone from Atlin. I also take some assurance from Dr. Jones' evidence that since W. has been on his new medication he has been adapting better to new situations. More importantly however, the father clearly testified that he would follow the advice of W.'s professional team and if they were not supportive of the visit, or if things did not go well in Atlin, then he would take W. back to Ontario if necessary. Indeed, the father went so far as to say that he would be content, in the alternative, with spending part of August with the child in Atlin and the rest of the month with the child in Ontario.

[77] Third, I have already made a finding that the mother's assertion that the father is "in denial" of W.'s problems, is unfounded and unfair.

[78] Fourth, the assertion that the child does not wish to go to Atlin is hearsay to the extent that it is supported only by the mother's testimony. To the extent that Dr. Batth mentioned the same point in her evidence, I remain unpersuaded that is truly W.'s wish, because of Dr. Batth's bias towards the father and because of the contrary evidence from Dr. Jones.

[79] I conclude that it would be in W.'s best interests to have unsupervised access with the father in Atlin each summer during the month of August. The father will be responsible for accompanying the child from Ontario to Atlin and return, but may delegate that responsibility to M.P., if she consents.

By the Paternal Grandparents

[80] The father wishes the access by his parents to be specified for one weekend every month, unless the mother agrees otherwise with either the father or the paternal grandparents in order to preserve maximum flexibility. The father indicates that the mother

can choose the weekend for this access and expects it to run from Friday after W.'s school day finishes until Sunday at 6 p.m. To be clear, the father says his parents should have this access during the bulk of the year when he is residing in Atlin.

[81] The paternal grandparents have been exercising frequent but irregular access to W. at their home near Pembroke, ranging from two to four days in duration. They travel to Almonte to pick up and deliver W. M.P. said she has not witnessed any particularly challenging behaviours by W. during these visits. That is significant, given M.P.'s background as a child protection worker.

[82] The mother is opposed to scheduled access by the paternal grandparents. However, her reasons for doing so are indiscernible. She acknowledged that she gets along fine with both M.P. and D.P. Indeed she seems to have a very high opinion of M.P. in particular. She also acknowledged on cross-examination that W. adapts very well to a schedule and often does better if he knows his schedule well in advance. She also said that W. likes M.P. very much. However, when specifically asked whether a regular schedule of access for the paternal grandparents would be better for W., she disagreed saying "I am W.'s stability and going to the [paternal grandparents] is pulling stability". She then specifically contradicted herself by saying that a "set schedule" is not the best thing for W.

[83] I disagree and find that it would be in W.'s best interests to have regular and predictable access with his paternal grandparents.

DIVISION OF ASSETS

The Family Home

The Father's Equity

[84] The father has lived in Atlin since the mid 1980's. In 1989, with the assistance of a loan from his mother of $15,600, he bought a house which subsequently became the family home. He made lump sum payments on the loan at the end of each fishing season, including amounts for interests and taxes.

[85] He then met the mother in the spring of 1994 and the couple began to live together in the fall of that year. They were married in Atlin on June 10, 1995.

[86] There is a documentary record of the paternal grandmother's loan to the father for the home (Exhibit 22), showing the principal balance due each year as well the payments for interests and taxes. As of March 16, 1995, just prior to the couple's marriage, the father owed his mother a net amount of $4,325.33. Therefore, as of that date, the father said he had $11,274.67 in equity in the home.

[87] Pursuant to s.6(1) of the *Family Property and Support Act*, R.S.Y. 2002 c. 83, if a marriage breakdown occurs, each spouse is entitled to have the family assets at the time of the breakdown divided in equal shares. Under s.6(2), the marriage is deemed to have broken down when the parties began to live separately and apart. It is agreed that the date of the separation is September 9, 2001. It is further agreed that the family home is a family asset and that its value should be divided equally, subject to the father's claim for his equity accumulated prior to the marriage.

[88] Further, under s.13 of the *Family Property and Support Act*, I may make a division of family assets in unequal shares if dividing the assets in equal shares would be inequitable having regard to "any other circumstances relating to the … preservation, maintenance,

improvement, or use of property rendering it inequitable for the division of family assets to be in equal shares".

[89] The mother argued that no amount should be set aside for the father as equity, for three reasons: (1) she and the father jointly made a payment on the home in 1994, prior to their marriage; (2) the couple exclusively used her vehicle for a time when they first got together; and (3) her parents contributed cash and sweat equity to the home.

[90] As for the first reason, Exhibit 22 does not show any payment was made in 1994. It does indicate that the principal balance owing the end of 1993 was $5,355. As of March 16, 1995, that principal balance, not accounting for additional taxes, interest and interim payment of $2,400, had increased to $5,921. The interim payment of $2,400 was made in March 1995, by which time the couple had been living together for between 6 and 8 months. Perhaps this is the payment that the mother is referring to in her submissions.

[91] The father testified that the types of payments to his mother were usually lump-sum payments out of his income from his fishing business. Further, although he said that the couple reunited in May 1994 (they were friends in high school), they did not start living together until the fall of 1994. I also heard him say that in the summer of 1994, the mother travelled back to Vancouver for a period of time. Therefore, I find that the mother likely did not participate in the father's fishing business in the summer of 1994. I also find that it is most likely the payment made by the father to his mother in March 1995, in the amount of $2,400, would have come from the father's fishing income from the previous season. In other words, I do not find that the mother contributed in any material way towards making that payment and that it would not be inequitable to credit the father exclusively with having done so.

[92] As for the mother's second argument, she felt it was important that when she came into the relationship, the couple used her Suzuki Sidekick 4-wheel drive truck as the only family vehicle at the time. She estimated its value then at about $11,000. However, the truck is clearly an item of movable property, not real property, and it will be accounted for as such later in these reasons.

[93] As for the mother's third argument, she stressed that her parents put in cash (approximately $5,000) and labour (approximately $30,000 in value) to help the couple improve the family home about the time they started living together. Somehow, by a process of reasoning that eludes me, the mother feels that she should receive some credit for this contribution by her parents when it comes to the division of the value of the home. In my view, any claim that the parents may have against the home would be in the nature of a third party claim and is not one which can accrue to the benefit of the mother.

[94] Therefore, I find that the full amount of $11,274.67 should be credited to the father as equity and deducted from the value of the home prior to the division of each party's interest in the home.

The Valuation of the Home

[95] The father's position is that the best evidence of the family home's value at the date of separation, September 9, 2001, is a certified appraisal done by one Grant Livingston on February 21, 2002. The father said that he was required to obtain this appraisal after approaching his bank to obtain financing to settle the family property division. The appraisal was filed in evidence and indicated that it took into account the heating sources as both "gravity/monitor" and "wood/oil". It also recognized that the home was not yet finished and was based on the then current status of construction. The appraisal valued the home by the direct comparison approach, which considers the value of similar

properties in the same area of Atlin. It was stated within the appraisal that its purpose is to "estimate market value" and that its intended use was for "financing". The definition of market value was stated to include the following:

> "The most probable price which a given property should bring, assuming a competitive and open market under all conditions requisite to a fair sale … Implicit in this definition is [that] … a reasonable time is allowed for exposure in the open market and …. the price represents the normal consideration for the property sold, unaffected by special or creative financing or sale concessions granted by anyone associated with the sale …."

The market value of the home as of February 21, 2002, was assessed by Mr. Livingston at $61,000.

[96] I further accept the father's testimony that the condition of the home had not changed in any significant way between the date of separation and the date of the appraisal.

[97] The mother relies upon various property assessments done by the Province of British Columbia for the purpose of assessing taxes on the property. The following assessments were done, producing assessed values at different times:

July 1, 2000	$56,500
July 1, 2001	$56,000
July 1, 2002	$55,100
July 1, 2003	$68,300

[98] It appears as though the assessed value of $68,300 (which actually appeared in the 2004 assessment) was appealed by the mother on the basis that the assessor was not aware of the presence of oil heat, a septic system and certain electrical features which had been present in the home. The appeal was conducted on June 10, 2004 and was attended by the mother. The mother filed a tax assessment appeal report dated June 11, 2004,

detailing the outcome of that appeal. Although the report indicates that the presence of oil heat could add approximately $1,200 to the value of the property, it further stated that “it was agreed that the assessment was appropriate and [the mother] will fax the Board withdrawing her appeal.” I therefore find that the assessment of $68,300, as of July 1, 2003, remained unchanged.

[99] The mother also made inconsistent submissions about the value of the home. On the one hand she argued that the value should be between $70,000 and $80,000, because of a comment made in the tax assessment appeal report of June 11, 2004:

> “The Assessor summarized 3 sales from May 2002 to August 2003 ranging from $58,000 to 90,000 which he felt indicated a general range of $70 – 80,000 for the property under appeal. The Assessor also indicated that the actual assessments in this area are on average at about the mid-90% of actual value …”

It is important to note, however, that this assessment was done as of July 1, 2003, and I am interested in the value of the home on the date of separation in 2001.

[100] On the other hand, I heard the mother agree that tax assessments are simply estimates of value for tax purposes. It is implicit in that concession that a certified appraisal is better evidence of the true value of the home. And yet, the mother continued to argue that the certified appraisal should be discounted because any potential purchaser would know that the home was being appraised in the context of a marriage breakdown and that the value would effectively be a “fire sale” price. The problem with that submission is that it ignores the definition of market value stated within the certified appraisal, which I just quoted above, “The most probable price … assuming a competitive and open market under all conditions requisite to a fair sale…”.

[101] Counsel for the father submitted that the tax assessments by the Province of British Columbia are less probative of the value of the home, because they are estimates of the

market value for tax purposes only and are not supported by the kind of detailed investigation done by a certified appraiser.

[102] On balance, I am satisfied that the certified appraisal by Grant Livingston of $61,000 is the best evidence of the value of the family home at the date of separation.

Occupational Rent

[103] The mother seemed to make an argument that she should be compensated for the fact that the father has received the benefit of occupying the family home since the separation, while the mother has been waiting to be paid for her share of the value of the home. I reject that argument for three reasons. First, the mother did not specifically plead a claim for occupational rent in her Statement of Claim. Second, the mother acknowledged that she has not paid any property taxes on the family home since the separation. While there is no clear evidence as to the total value of those taxes, which I infer were paid by the father, it does appear from Exhibit 22 that the annual property taxes over the period from 1990 to 1995 were in the neighbourhood of $300 each year. Further, those annual property taxes would likely have increased between 2001 and 2005. Third, as I will come to again shortly in these reasons, it seems likely to me that much of the delay in this litigation has been due to the mother's actions or inaction, as the case may be.

Conclusion on Family Home

[104] In summary, I conclude as follows:

Purchase Price in 1989:	$15,600.00
Amount owing as of March 16, 1995:	$4,325.33
Payments made including interest and taxes (the father's equity)	$11,274.67
Appraisal of February 21, 2002:	$61,000.00
Less the father's equity:	$11,274.67
Balance to be divided equally:	$49,725.33
Each party will retain:	**$24,862.67**

Therefore, the father will pay to the mother **$24,862.67** for her one-half interest in the family home, at which time the mother's interest will be deemed to be transferred to the father, such that the father will become the sole owner of the home.

The Joint Bank Account

[105] It is agreed that the money in the couple's joint bank account is a family asset, which is to be divided equally, subject to any agreement between the parties to the contrary. It is further agreed that the father withdrew $24,000 from this account on September 15, 2001. That left a balance of $6,114.17, which was used exclusively by the mother.

[106] After the separation, I find that the father also made the following payments:

- to the Receiver General of Canada for the mother's income taxes – $540.76;
- to British Columbia Ministry of Health, as the family's health care premiums – $187.20; and
- to the mother's lawyer – $2,300.

[107] It is further acknowledged by both parties that the father made a payment of $5,000 to his counsel to be held in trust for the mother's benefit, to help pay for her expenses for attending the trial. I understand that the entire amount of the $5,000 has been expended by the mother, or soon will be.

[108] The father also tendered a copy of a letter from the mother's then counsel, Joie Quarton, to the father's then counsel dated October 5, 2001. In that letter, Ms. Quarton referred to this joint bank account and stated as follows:

> "It is my understanding that the parties also discussed Mr. [P.] keeping sufficient funds ($8,000) to replace his boat and motor and the parties sharing the balance of the funds. …"

[109] When the mother was cross-examined about this letter, she adamantly denied that she provided these instructions to her lawyer. She said a couple of times that she did not

agree with that statement in the letter and that her lawyer had made a mistake. However, in her closing submissions, the mother appeared to concede that she was under a lot of stress at the time the letter was written. She said she was focused on the needs of her son and that she probably did discuss with both the father and her lawyer the matter of the father keeping $8,000 to replace his boat and motor. Indeed, the mother ultimately submitted "I'm sure it all happened", which I take to mean that the discussion between her and the father happened and that she provided instructions to her lawyer accordingly. Therefore, I am satisfied that the $8,000 are non-family assets. The funds should be set aside for the father's use exclusively for his fishing business and should not form part of the family assets to be divided between the parties.

[110] Therefore, on the topic of the joint bank account, I conclude as follows (the figures in parentheses are debits, the others are credits):

Transactions	**the father**	**the mother**
Original Balance	$24,000	$6,114.17
Boat Replacement	($8,000)	
The mother's Income Taxes	($540.76)	$540.76
BC Health Care	*($187.50)	
Retainer – Joie Quarton	($2,300)	$2,300
The mother's Court Expenses	($5,000)	$5,000
Balance	$7,971.74	$13,954.93
Total	$7,971.74 + $13, 954.93= **$21,926.67**	

* Not credited to the mother because the father also received a benefit from this payment.

[111] The total combined balance of the monies in the account is to be divided equally ($21,926.67 ÷ 2 = $10,963.34), such that each party will notionally retain $10,963.34. Since the mother has already received $13,954.93, and should only have received $10,963.34, she must repay the difference of **$2,991.59** to the father to equalize the division of the amount of money to be retained by each party from this account.

The Movable Property

[112] As I understood the evidence of the parties, they agree which party kept which items of moveable (personal) property after the separation. They also agree that the value of these assets should be fixed as of the date of separation. The disagreement is over the value of the assets.

[113] Sometime in the fall of 2001, the father prepared a list of the items taken by the mother from the family home to Whitehorse. He attached values to each of those items at that time. I also heard from the mother in cross-examination about what she felt the value of the items should be.

[114] Similarly, the mother presented a series of photographs, with notations in the margins, of the various items of movable property kept by the father. The father testified about each item and provided his evidence as to the probable value of each.

[115] Of necessity, I must go through the items retained by each party and note whether the value is agreed upon or not. If not, I will assign a value to the item, as of the date of separation.

Items retained by the mother

Leather Couch & Loveseat:

- The father estimates the value at $3,200. He said that was the purchase price of the items and they were in very new condition, approximately one year old.
- The mother estimated the value at $1,500.
- I start with the assumption that the market value of each item will drop by approximately 30% (+ or –) upon the initial purchase of the item. In other words, an item purchased for $100 brand new on day 1, will likely only fetch about $70 on resale on day 2. This assumption is based on common sense and experience, and assumes the item is in pristine condition upon resale.
- I assign a value of **$2,240**.

Stereo(s):

- The parties agreed on a value of **$600**.

O-Zone Generator:

- The parties agreed on a value of **$600**.

Beds:

- The father's estimate is $200, which includes bunk beds, mattresses and foamies.
- The mother's estimate is $125 for these used items.
- I assign a value of **$150**.

Television:

- The father's estimate is $250. He said the purchase price was $300 to $325.
- I assume a purchase price of $325 and reduce by approximately 30%.
- I assign a value of **$225**.

Microwave:

- The father's estimate is $500. He said the purchase price was about $600, but the item was a wedding present, therefore about 6 years old.
- I reduce the value by 50% and assign a value of **$250**.

Telephone:

- The father's estimate is $250. He said that was the purchase price about one year ago.
- I reduce the value by 50% and assign a value of **$125**.

Dishes & Kitchenware:

- The father's estimate is $200. He said this was the cost for the dishes purchased for the Atlin home to replace those taken to Whitehorse.
- I accept the father's evaluation at **$200**.

Chairs and tables:

- The father acknowledged that one table was returned to the Atlin house and therefore reduced his estimate value to $350.
- The mother's estimate is $100.
- I assign a value of **$225**.

Vacuum Cleaner:

- The father's estimate is $250. He said that was the purchase price on September 19, 2001 (after separation).
- I accept the father's evaluation at **$250**.

Mother's ski clothes and skis:

- The father's estimate is $1,000. He said the items were brand new in the fall of 2000 and the purchase price was more than $1,000.
- I assign a value of **$700**.

Bicycle and Tandem

- The father's estimate is $300. He said the tandem was new and the bike was in good condition.
- The mother said the purchase price for the bike was $100.
- I assign a value of **$200**.

Massage Table:

- The father's estimate is $300. He said the purchase price was $350 US in the fall of 2000.
- The mother did not seriously argue with this value.
- I accept the father evaluation of **$300**.

Spare Tires:

- The father's estimate is $500. He said this was the purchase price in spring of 2001.
- I assign a value of **$300**.

The mother's 1994 Suzuki Sidekick:

- The parties agreed on a value of **$8,000**.

Assets retained by the father

1985 Cube Van:

- The mother's estimate is $7,600, but she was not involved in the original purchase of this used vehicle in 1997 and was unaware that it was not in running condition at the time of separation.
- The father recalled that it was purchased in 1997 for approximately $4,000.
- The van has been in the possession of the parties for 3 or 4 years and was used by them to transport cargo from Ontario to the Yukon.
- I assign a value of **$3,000**.

Salvaged Boat:

- The mother's estimate is $800, but she acknowledged that the actual value of the item was unknown.
- The father confirmed that the boat was salvaged from Juneau and that the value was unknown, as the couple were restoring it at the time of separation. As an experienced fisherman, his estimate is $400.
- I assign a value of **$400**.

Wood truck:

- The parties agreed on a value of **$1,000**.

4-wheeler:

- The mother's estimate is $1,000, but she acknowledged that it was the father who purchased it.
- I accept the father's estimate of **$500**.

3-wheeler:

- The mother's estimate is $600, but she acknowledged that she was unaware of when it was purchased. Thus, I assume that she was not involved in the purchase.
- The father said this item was purchased in 1982.
- I accept the father's estimate of **$200**.

Dune Buggy:

- The parties agreed on a value of **$600**.

Tent:

- The mother's estimate is $300, saying that it was purchased in 1999 or 2000.
- The father said that the purchase price was $179 US.
- I accept the father's estimate of **$200**.

Freezers (x4):

- Here there was a mixture of old and new and large and small freezers. The mother estimated a total value of $1,050 for all four.
- The father's estimate is $750.
- I assign a value of **$900**.

3 cords of wood:

- The parties agreed on a value of **$300**.

Shop Vac and assorted items:

- The parties agreed on a value of **$300**.

Fish in freezer (upon separation):

- The parties agreed on a value of **$400**.

Windows:

- The mother's estimate is $2,000, but she acknowledged that the couple did not pay anything for them. They were salvaged and transported to the Yukon from Ontario.
- The father said these were appropriate for sunroom windows only, as they did not have thermal panes and were not sealed for northern weather. He assigned a value of $500.
- I assign a value of **$1,000**.

[116] The mother attempted to include in her list of the assets retained by the father an oil tank, an oil monitor heater and a wood stove for a total value of $4,750. However, I am

satisfied that those items are fixtures within the family home, as those heat sources were specifically identified in the certified appraisal by Mr. Livingston. Indeed, the mother later agreed on cross-examination that these items were fixtures. Therefore, they were properly accounted for as part of the appraised value of the family home and should not be included with the movable property being accounted for here.

[117] The mother also filed an invoice for a clothes dryer, a clothes washer and a fridge, apparently purchased in September, 1998 for a total of $2,025. Unfortunately, other than this invoice, I was unable to find any further reference to these items in my review of the testimony of the parties or their final submissions. I assume the items remained in the family home after the separation. They are not specifically referred to in the Livingston appraisal, presumably because they are generally considered to be moveable property and not fixtures. In any event, it appears that the father retained these items after separation and the mother should be credited accordingly. Since they would have been about three years old at the date of separation, I have reduced their value by about 50% and I assign a total value for all three items of **$1,000**.

[118] In summary, the following table reflects the assets retained by each party along with the values agreed to or assigned by me.

Assets	**The Father**	**The Mother**
Leather couch & Loveseat		$2,240
Stereo(s)		$600
O-Zone Generator		$600
Beds		$150
Television		$225
Microwave		$250
Telephone		$125
Dishes & Kitchenware		$200
Chairs & Tables		$225
Vacuum Cleaner		$250
Ski Clothes & Skis		$700
Bicycle & Tandem		$200

Massage Table		$300
Spare Tires		$300
1994 Suzuki Sidekick		$8,000
Cube Van	$3000	
Salvaged Boat	$400	
Wood Truck	$1,000	
4-Wheeler	$500	
3-Wheeler	$200	
Dune Buggy	$600	
Tent	$200	
Freezers	$900	
3 cords of wood	$300	
Shop Vac etc.	$300	
Fish	$400	
Windows	$1,000	
Dryer, washer and fridge	$1,000	
Balance	$9,800.00	$14,365.00
Total	$9,800 + $14,365 = **$24,165.00**	

The total combined valued of the assets is $24,165. That value should be divided equally, such that each party should notionally end up with $12,082.50 worth of assets. Since the mother has already received $14,365, and should only have received $12,082.50, she must repay the difference of **$2,282.50** to the father to equalize the division of the value of the moveable assets.

The Fishing Business

[119] The father testified that he began his fishing business in approximately 1983. Since then, he has been using the same squatted camp on an island in the Taku River, which is a strategically important location for fishing. He initially erected a tepee at the camp site and later built a cabin referred to as the “A-frame”. After the parties were married, the mother would attend annually at the fish camp to help the father with his business. She took two summers off after W. was born, but then returned to the camp each summer with W. as a young child. In 1999, the couple purchased materials to build the A-frame.

According to the father, these materials cost approximately $3,500 US. They were also given additional building materials at no cost.

[120] The father's estimate of the value of the fish camp is approximately $20,000 as of the date of separation. He said that estimate takes into account the condition of the boats and motors, numbers of tents, the value of the buildings and the cost of the building materials. The A-frame is still unfinished and needs to be plumbed and completely enclosed against mosquitoes. It also needs a more permanent kitchen and a lighting system.

[121] On cross-examination, the mother conceded that she had no idea of the value of the materials required to build the fish camp, with the exception of the steel roof which was purchased for $1,400 US. She attributes a value of $30,000 to the fishing business, primarily because of the structures at the camp. However, the mother provided no reference to any particular piece of evidence that supports her valuation. In fact, the mother was cross-examined about her previous testimony under oath at her examination for discovery on September 8, 2005, which contradicted her valuation at trial:

> "Q And you assigned a value of twenty to $30,000 for the value of the A-frame. How do you come to that - -
>
> A No, I said 20 to 25. How did I come to that? Well, in building construction, if you investigate with a contractor, you know, they say it's a hundred dollars per square foot. But that's - - let's say we're not good builders, so that cuts it down to 80. So that's 4800, where the square footage is 20 by 24. But, because there's no cement foundation, or - - that's where I'm cutting the value. Although, some people might think the kind of foundation that was done, being put up high like that, for safety reasons, would be more. But I cut the value on that, for that reason. And I cut the value because there's no value on the lands.
>
> But the wood is all new, it's all brought in from Juneau. And the roof was very expensive; it cost more than the roof on our house in Atlin. American money. It was 1400 American.

> Q Okay, do you recall how much you and [the father] spent on the materials for the A-frame?
> A No, it was all money from the fish. Kings. All king money.
> Q Okay, but do you recall how much of it was used to purchase the materials for that A-frame?
> A No, it was in American dollars, …"

[122] The mother filed a 2-page document from a realtor, Angie Richardson. The document contains a number of notes presumably made by Ms. Richardson. The mother acknowledged that she provided all the information recorded on the document by Ms. Richardson. Indeed, the document includes the note "opinion of value only based on facts and figures given by [the mother]". The mother conceded that Ms. Richardson did not visit the fish camp or do any other independent investigation. She says that Ms. Richardson determined the value of the fish camp to be $48,000. However, even that is not immediately obvious from a careful review of the document. It is nothing more than a series of handwritten notes and numbers, some of which are unintelligible. In any event, it is simply an example of "boot strapping", since all of the information recorded came from the mother herself, and I give it no weight whatsoever.

[123] Given that the father's value of $20,000 for the fish camp coincides with the low end of the range estimated by the mother under oath at her examination for discovery, I accept it as fair and reasonable.

[124] The father admitted that he maintained $2,000 US in a bank account in Juneau for the purpose of running the fishing business. According to the Bank of Canada currency conversion results filed by the father, that would translate into a value of $3,130.80 CAD as of September 10, 2001, the day after the separation. The father acknowledged this money should be added to the value of the business.

[125] Finally, the father admitted that he spent $7,562 on a new boat motor, which value should also be added to the overall value of the fishing business.

[126] I have already found that the father was allowed to retain $8,000 from the couple's joint bank account to replace the fishing boat. That amount was indeed spent by him on a shipment of aluminium from Seattle, Washington, for the purpose of constructing a boat hull. Since the parties agreed to the father using those funds for that purpose, and since I have already found those funds to be non-family assets, there is no need to address them here.

[127] With the exception of the $8,000, the father is not attempting to set aside any other portion of the value of the fishing business as "non-family assets". That is despite the fact that he started and ran the fishing business for almost 12 years prior to the mother becoming involved in 1995. He could have made such an argument, but chose not to.

[128] Therefore, the total value of the fishing business and each party's equal portion will be calculated as follows:

Value of the fish camp	$ 20,000.00
US Bank Account	$ 3,130.80(CAD)
	$ 23,130.80
Motor	$ 7,562.00
	$ 30,692.80

Each party's equal portion($30,692.80 ÷ 2) is **$15,346.40**

Conclusion on Asset Division

[129] In her closing submissions on the day of trial, the father's counsel presented to the court a 3-page summary of figures and calculations respecting the division of assets between the parties. The mother had an opportunity to review and comment about this summary during her closing submissions.

[130] A few days later, on October 3, 2005, the father's counsel filed a memorandum with the Court indicating that there were a couple of calculation errors she wished to correct in the document she previously filed. I confirm that the supplementary document was identical in all respects with the original document, subject only to 2 arithmetical errors, which once corrected, resulted in some further consequential adjustments.

[131] On October 5, 2005, the mother filed a 6-page memorandum of information regarding the division of assets. The mother had not previously presented any such written material when she made her final submissions at the trial. Consequently, the father's counsel did not have an opportunity to review this new memorandum or comment on it in her closing submissions. In an attempt to be as fair as possible the mother, I reviewed her memorandum in good faith, but noted that there is a significant amount of new information not previously provided in evidence. Also, the information was unclear and confusing. Given that the father had no opportunity to address this information and given that much of it was not in evidence in any event, I have completely disregarded this memorandum.

[132] The amounts to be paid by the father to the mother are as follows:

For the house	$ 24,862.67
For the fishing business	$ 15,346.40
	$ 40,209.07

[133] The amounts to be paid by the mother to the father are as follows:

Joint bank account	$ 2,991.59
Movable property	$ 2,282.50
	$ 5,274.09

[134] The difference owing from the father to the mother is **$34,934.98** ($40,209.07 – $5,274.09).

NO DIRECT CONTACT

[135] The mother does not want direct contact with the father (except in the case of an emergency) because she fears him and he makes her uncomfortable. It may be apparent from my comments earlier in these reasons that I view the mother's fears about the father as largely the result of her own anxiety. I found no evidence to support those fears or her claim that there exists "extreme conflict" between them.

[136] On the other hand, I did not detect any particular desire on the part of the father to re-establish direct contact with the mother. In any event, there is no particular need for the parties to have direct personal contact.

[137] However, I do not wish to put either party in jeopardy in the event of unintentional contact, for example, while exchanging the child, or while attending the child's school. Also, there will clearly have to be exceptions to allow the parties to jointly attend meetings with W.'s professional team or to refer matters to mediation. Finally, there will need to be an exception for written communication (e.g. letter, fax or email) in order to negotiate and resolve the various matters they have identified regarding the child's upbringing. Obviously, they must be able to communicate in some fashion in order to attempt to reach agreement on these matters.

[138] I therefore order that there will be no intentional person-to-person direct contact between the parties. However, this condition will not apply:

a) in the event of an emergency;
b) if the parties jointly attend a meeting with W.'s professional team (or any future professional caregiver or teacher); or
c) if the parties jointly attend a mediation.

Wherever possible, the parties will communicate through the paternal grandmother, M.P., providing she consents. They may also communicate with each other in writing. The parties shall, at all times, communicate with one another in a respectful manner.

CHOICE OF W.'s SCHOOL

[139] One of the usual rights which flow from joint custody is the right of each parent to participate in the choice of the child's school. Here, the mother has steadfastly refused to give up what she views as her unilateral right to make that choice. However, once again, her reasons are unsupportable. She said that the father is "not trustworthy", yet she provided no evidence to justify that assertion. She further argued that allowing the father to have input in such a choice would "disrupt her household". Frankly, I do not understand what she meant by that comment, but the disturbing implication is that she may once again have put her own needs ahead of those of the child, as the comment suggests it might be *inconvenient* for her to have to consult with the father on such matters. As a result, I rule against the mother on this point. The parties must consult with each other on the choice of W.'s school and if they are unable to agree, then they must refer the matter to mediation.

THE NUTRITIONAL SUPPLEMENTS

[140] The mother wants the father to share the cost of W.'s nutritional supplements. The father wants to be satisfied the supplements are truly necessary and in W.'s best interests before he agrees to pay anything towards them.

[141] Once again, it would ordinarily be an incident of joint custody that both parties should determine what medication and treatment the child receives. This issue was raised in a pre-trial application and on March 3, 2005, I ordered the mother to request an opinion from a medical practitioner about whether the proposed supplements are necessary and in W.'s best interests. In response, the mother relied upon a 2-page document entitled

"Special Diets Application Form", apparently signed by a Dr. F.A. Murphy, a physician for W. Although Dr. Murphy "ticked off" on the standardized form, certain mineral and vitamin supplements, the document is far from clear. Indeed, the date of the document is completely unintelligible. As a result, I do not accept that this document sufficiently complies with my Order.

[142] On the other hand, to be fair to the mother, Dr. Batth did testify in this trial that she felt it was important for W. to continue his custom formula of supplements, minerals and amino acids because of his metabolic dysfunction. She also said that wherever W. travels, he must have access to both his medication and his custom formula. While I have expressed my concerns with Dr. Batth's evidence in relation to the father, I have no reason to question her objectivity on this particular point.

[143] Therefore, while I decline to order the father to pay for these supplements, I urge him to consider Dr. Batth's evidence here in good faith in future discussions with the mother about the issue of these supplements.

MATTERS AGREED TO

[144] At the pre-trial conference on September 8, 2005, the parties agreed on the following:

1. The father will have access to the child in Ontario during the winter months when the father is visiting in Ontario on every weekend, from Friday afternoon until Sunday evening, for a total period of eight weeks, but not including Christmas access.
2. The father will have regular access to the child by telephone, email and Internet once a week for a period of 30 minutes.
3. The father will pay child support of $267 per month, based on an income of $30,000 per year.

[145] At the trial, it was further agreed:

1. Christmas access by the father will be for one week over the Christmas holiday period. The switch will be made on Boxing day. On odd numbered

years, commencing in 2005, the father will have access to the child for the week preceding and including Christmas day. In even numbered years, the father will have access to the child for the week following Christmas day, commencing on Boxing Day.

2. The mother will provide monthly updates to the father on the child's education, medical care and developmental progress.
3. The mother will notify the father if the child requires any emergency medical care, which will include any accident requiring same, and information on any updates on the child's recovery from such care on a case by case basis.
4. The mother will notify the father of all meetings about the child with the child's professional, medical or educational therapists or teachers to which either or both parents are invited. The mother may provide this notice to the father through the paternal grandmother, M.P. If the father is visiting in Ontario at the time of such a meeting, he will attend personally. If not, M.P. will attend on the father's behalf.
5. The mother agrees that, except for a change of the child's school, any change in the child's treatment, therapy or education made by his professional care givers may only be made after consultation with both parents and providing that both parents agree to such a change. In the event that the parents are unable to agree to the change, they will to attempt mediation with the assistance of the child's professional team, or such other mediator as they may agree upon.

COURT COSTS

[146] The mother obtained an Order on June 20, 2002 for which she received her court costs "in any event of the cause". That, of course, means the father must pay her party and party court costs for that application, regardless of the outcome of this trial.

[147] The father was awarded court costs for the applications made by the mother on March 3 and September 19, 2005. The father's counsel suggested that I fix a lump sum for those costs in the amount of $1,500 for each of those applications, for a total of $3,000. The father's counsel based her suggested figure of $1,500 per application on her experience that the actual party and party costs for such applications under Appendix B of the *Rules of Court* commonly range from about $1,200 to about $1,700 per application. I accept that as reasonable.

[148] I also agree that it would be appropriate to exercise my discretion under Rule 57(13.1) of the *Rules of Court* to award lump sum costs for all three applications, rather than requiring the parties to file Bills of Costs and, if necessary, to have those Bills of Costs assessed by the Clerk of the Court. Not only would that be a very cumbersome procedure for the mother, given her lack of legal training, but I anticipate it might lead to further delay for the father as well, given the mother's difficulty in communicating and her argumentative attitude towards the financial matters between the parties.

[149] I therefore award the mother $1,500 in lump sum costs for the Order of June 20, 2002. I also award the father $1,500 in lump sum costs for each of the Orders of March 3 and September 19, 2005, for a total of $3,000.

[150] Finally, as the father was largely successful in his defence and counterclaim for joint custody, summer access, and specified access for the paternal grandparents, I find that costs should follow the event. For the mother's benefit, that means the mother must pay the father's party and party court costs for this trial.

[151] Here, I have given full consideration to the conduct of the mother throughout this trial and the pre-trial proceedings. At the pre-trial conference, the mother confirmed that she retained and fired no less than four counsel prior to this trial. She alleged on the record that she did so because her previous counsel were either not following her instructions, or were making mistakes, or that she was unable to accept their advice. This repetitive hiring and firing of lawyers has no doubt protracted the proceedings for the father. Indeed, it was he who applied in April of this year to have the trial scheduled, as the mother had not yet taken any steps to do so.

[152] I have also previously noted the mother's conduct in this trial and her often scattered, disputatious and somewhat petulant manner of approaching the issues. While

she did end up agreeing to a number of matters, she continued to argue against relief such as unsupervised access by the father and specified access by his parents, when she had no clear justification for doing so. I have no doubt that her attitude and conduct protracted the time to present the evidence and resolve the issues at this trial. All that has added to the father's time and expense.

[153] At the close of the trial and before adjourning to reserve my decision, I said to the mother that I was confident that even though she had proceeded without legal counsel, she had done her best to make her case. While I do not retract from that view, I also warned the mother during pre-trial hearings and at the pre-trial conference that there would be consequences and risks associated with her decision to proceed without counsel. In my respectful view, there is a better than even chance that this entire matter would have been settled long ago without the stress and expense of a trial had the mother accepted the advice of her previous counsel. As a result, I have no hesitation in awarding the father his party and party costs for this trial, to be fixed under scale 3 of Appendix B of the *Rules of Court*.

[154] Rule 57(13) of the *Rules of Court* does not allow me to fix lump sum costs for the trial without the consent of the parties. Therefore, it is open to the father to prepare a draft Bill of Costs, fax it to the mother and seek her approval. In the absence of her approval, the father may seek to set the matter down for assessment before the Clerk pursuant to the *Rules of Court*. I assume the mother may participate in any such assessment by a teleconference call.

[155] In the alternative, the father's counsel may attempt to settle the trial costs with the mother. In that vein, I propose that for this 5-day trial, the costs could be fixed at a lump sum of $1,500 a day, inclusive of disbursements. For five days of trial, that would result in

a total of $7,500. The figure of $1,500 per day is based upon the expectation that under the tariff of Appendix B of the *Rules of Court*, the father would be entitled to 15 units for preparation and attendance for each day of the trial. Under scale 3 of Appendix B he would be entitled to claim $80 for each unit. That would result in a claim of $1,200 a day for each day of trial, but would not include all the other steps which the father could claim for under the tariff, for such things as the preparation of pleadings, discovery of documents, examinations for discovery, attendance at pre-trial conferences, and so on. Further, the $1,200 a day figure would not include any of the father's reasonable out-of-pocket disbursement expenses, which he would otherwise be entitled to include in a Bill of Costs. With that in mind, the suggested amount of $1,500 a day (and $7,500 in total) is probably significantly less than what the father could claim if he went the formal route of preparing and assessing his Bill of Costs. Indeed, he would be entitled to *additional* costs against the mother for doing so.

[156] However, I repeat that I am unable to order lump sum costs for the trial. Rather, I will leave it to the parties to indicate whether they consent to such costs, or otherwise settle the issue of costs, in order to expedite the conclusion of these proceedings.

[157] If the parties need further direction on the issue of the mutual costs owing, they may ask the Clerk for a hearing date and time before me. The mother may participate by telephone from Ontario and the father may be represented by his counsel.

[158] At the end of the day, the amount to be paid by the mother to the father will be reduced by setting off the $1,500 in costs for the Order made June 20, 2002. Further, the amount to be paid by the father to the mother will be reduced by setting off the $3,000 in costs for the hearings on March 3 and September 19, 2005, as well as the amount assessed or agreed upon as the costs for this trial.

CONCLUSION

[159] I make the following orders:

1. The parties will share joint custody of W., born January 19, 1996.
2. The primary residence of the child will be with his mother.
3. The child will reside with the father in Atlin, British Columbia, for the month of August each year. For the purpose of exercising this summer time access, the father will travel to Ontario to accompany the child to and from British Columbia, return. Alternatively, the father may delegate that responsibility to the paternal grandmother, M.P., if she consents.
4. The paternal grandparents, M.P. and D.P., will have access to the child one weekend each month from after school is finished on Friday until 6 p.m. on Sunday evening. For the purpose of exercising this access, the paternal grandparents will travel from their home near Pembroke to the child's home in Almonte and return. The particular weekend in each month on which this access will be exercised will be as agreed upon between the mother and the paternal grandparents, on the understanding that the mother may select the weekend of her choice, with reasonable advance notice to the paternal grandparents. Further, this access will take place during those times when the father is not present in Ontario for the purpose of exercising his winter time access, as set out below.
5. While the father is present in Ontario during the winter months each year, he will have access to the child each weekend for a total period of eight weeks. If this eight-week period overlaps Christmas, then the father's access during the two weeks of the Christmas holiday season, as set out below, will not be included

and will therefore interrupt the eight weeks of access. If the father wishes to exercise further winter time access beyond the eight weeks, then he will do so every second weekend. The weekend access will run from after school is finished on Friday (or from 9:00 a.m. if W. does not attend school on Friday) until 6 p.m. on Sunday evenings (or 6 p.m. on Monday evenings, if the weekend falls on a long weekend).

6. The father will have access to the child during each Christmas holiday season for the week before, and including, Christmas day, with the exchange to the mother being made on Boxing Day, commencing this Christmas in 2005, and on every following Christmas, in years ending with an odd number. In years ending with an even number, the father will have access to the child commencing on Boxing Day for the week after Christmas. The father will be responsible for picking up and dropping off the child, and may delegate that responsibility to M.P., if she consents.

7. The father will have regular access to the child by telephone, fax and Internet at least one day each week for up to 30 minutes, regardless of whether the father is residing in Atlin or in Ontario.

8. The mother shall provide monthly reports to the father, through the paternal grandmother, M.P., on the child's educational progress, medical issues, and developmental progress.

9. The father will pay child support to the mother in the amount of $267 per month, based upon the father's admitted gross annual income of $30,000.

10. The father shall provide the mother of his notice of income tax assessment and reassessment, if any, by August 31st each year, until the child is no longer considered a “child of the marriage” as defined in the *Divorce Act*.

11. There will be no intentional person-to-person direct contact between the parties. However, this condition will not apply:

    a) in the event of an emergency;
    b) if the parties jointly attend a meeting with W.’s professional team (or any future professional caregiver or teacher); or
    c) a mediation contemplated under this Order.

    Whenever possible, the parties will communicate through the paternal grandmother, M.P., providing she consents. They may also communicate with each other in writing. The parties shall, at all times, communicate with one another in a respectful manner.

12. Throughout this Order, there are several conditions which require and anticipate the agreement of the parties on specific matters. If they are unable to reach agreement, they must refer the matter to mediation with the assistance of the child’s professional team or teacher at the time, or such other mediator as they may agree upon. Should the father be residing in British Columbia at the time, he may participate in such mediation by teleconference or video conference, at his expense. Subject to that proviso, the parties shall bear the costs of such mediation equally.

13. The mother will cooperate with the father in preparing the child for his annual summer access in Atlin. The mother will agree to all reasonable requests made by the father for that purpose. If the father and mother are unable to agree on

any point relating to this preparation, then they shall refer the matter to mediation.

14. Neither party shall commit the other party to any expense for the child's care or upbringing without giving prior notice to the other party and obtaining that party's agreement in writing. Where the parties are unable to agree, they shall refer the matter to mediation.

15. Whichever parent the child is residing with shall have authority to make emergency medical decisions, providing they notify the other parent immediately if the child receives any emergency medical treatment, or is involved in any accident requiring the same, and update the other parent on the child's progress related to and following any such treatment.

16. The mother will direct the members of the child's professional team at the Children's Hospital of Eastern Ontario ("CHEO"), and any future professional caregivers or teachers of the child, to notify the father of all meetings regarding the child which either or both parents are invited to attend. In any event, the mother shall notify the father of any such meetings which she becomes aware of. If the father is residing in Ontario at the time of the meeting, he may attend in person. If the father is residing in British Columbia at the time of the meeting, M.P. may attend on the father's behalf, if she consents.

17. The father will have access to all of the child's records maintained by the child's professional team operating the current day treatment program at CHEO, and any future school or medical records regarding the child.

18. If any change in the child's educational, medical or developmental program is recommended by his professional team or any future professional caregiver or

teacher, such change may only be made after consultation with both parents and providing they agree. If the parents are unable to agree, then they shall refer the matter to mediation.

19. The mother must consult with the father regarding any change of the child's school and the parties must agree upon that change before it may be made. If they are unable to agree, then they shall refer the matter to mediation.

20. The mother must consult with the father regarding any major medical decisions for the child, including the administration of nutrient and vitamin supplements and medication and the parties must agree on any such decision. If they are unable to agree, then they shall refer the matter to mediation.

21. A copy of this Order, once filed, shall be provided by the mother to W.'s current professional team at CHEO, and to any of his future professional caregivers or teachers, so long as W. is considered a "child of the marriage" as defined in the *Divorce Act.*

22. The father will have the right to review any decision made by the mother about the child's care and upbringing, if such a decision is not in an area already identified in this Order, to determine whether the decision is the child's best interests. The father shall apply to this Court for such a review.

23. There will be no denial of access by the mother unless the child is ill. In the event that access by the father or the paternal grandparents is denied or missed, for whatever reason, there shall be a make up of that access within the following two months, or as the parties may otherwise agree. If they are unable to agree, they shall refer the matter to mediation.

24. Any peace officer or officers in whatever jurisdiction the child may be in, or their delegate, may take such reasonable steps as they deem necessary to enforce the terms of this Order. In particular, upon it appearing to a peace officer that either party is in breach of any of the terms of Order, then the peace officer shall be authorized to arrest that party, restrain and bring that party at the earliest possible time before a Justice of the Supreme Court of the Yukon Territory to show cause why the party should not be cited for civil contempt.

25. The father shall pay to the mother the sum of $24,862.67 for her one half interest in the family home. The father will make this payment to the mother forthwith upon filing of this Order. Pursuant to s.12(2)(a) of the *Family Property and Support Act*, RSY, 2002 c.83, upon the filing of this Order, title to the family home may be transferred from the father and mother, as the current joint tenants, to the father alone, without the need for the mother's signature on the transfer.

26. The father shall pay to the mother the further sum of $15,346.40 for the mother's one half interest in the fishing business, less the sum of $5,274.09 owing from the mother to the father for the equalization of the parties' interests in the joint bank account and the moveable property, and also less any net court costs owing from the mother to the father.

[160] Either party may apply to me in the event that this judgment or Order needs clarification and I will remain seized of this matter in the meantime.

GOWER J.