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Case Name:

## **Cooper v. Cooper**

Between

David J. Cooper, and  
Nancy Cooper

[2004] O.J. No. 5096  
Court File No. D36720/98

**Ontario Superior Court of Justice**  
**Snowie J.**

Heard: September 14-17, 21-24, 28, 2004.  
Judgment: December 9, 2004.  
(64 paras.)

### **Counsel:**

Paula Bateman, for the Petitioner

Nancy Cooper, self-represented

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### ENDORSEMENT

¶ 1 **SNOWIE J.** (endorsement):— This has been a very litigious file that has been before the court for approximately seven years. The parties have attended on multiple motions and approximately 15 interim orders have been granted to date.

¶ 2 The parties were married in August of 1973 and separated on January 29th, 1998, at which time Mr. Cooper left the matrimonial home at the request of Mrs. Cooper. Mr. Cooper has been unable to have access visits with his daughters since the separation. Recently, Teresa (now 25) has sought out contact with her father.

¶ 3 The parties have three children, Teresa Cooper, born July 1, 1979 (she is no longer a child of the marriage); Julia Cooper, born October 6, 1983, she is 21 years of age and attending the University of Guelph in her fourth year of an Arts program and the youngest child Barbara Cooper, born May 31, 1988. Barbara is 16 years of age and is in Grade 11 attending Mayfield Secondary School.

¶ 4 Mr. Cooper is 53 years of age and Mrs. Cooper is 52 years of age.

Support (Child and Spousal)

¶ 5 Mr. Cooper is employed as a pilot for Air Canada. He is an aircraft Captain. Since December 2002, Mr. Cooper has been off work having been diagnosed with major depression. This depression has

developed in part as a response to the alienation he experienced from his children. From December 2002 to December 2003, Mr. Cooper was on short-term disability through Air Canada. This entitled him to approximately 75% of his average salary. During this time he was prescribed anti-depressant medication. Mr. Cooper is not allowed to fly while on such medication for safety reasons. He continues on this medication. Since December 2003 Mr. Cooper has been in receipt of long-term disability benefits which entitle him to 60% of his average salary. This long-term benefit will continue to be available to him until mid 2006 at which time, if he has not been able to return to work, he will retire. His current annual income at 60% is \$115,908.00 per year or \$9,659.77 gross per month. Mr. Cooper's 2002 income tax return shows he had an (original) income of \$196,744.79. His 2003 income tax return shows that he had an income of \$142,084.00 (75% of his average salary).

¶ 6 The Interim Order in effect at the time of the trial with respect to child and spousal support is that of O'Connor J. dated November 13, 2002. In that Order, spousal and child support were based on the 2002 income of the petitioner - being \$196,744.79. In the Order of November 13, 2002, it was ordered that Mr. Cooper pay child support for the youngest child Barbara in the amount of \$1,389.00 per month. Mr. Justice O'Connor also ordered \$1,000.00 per month payable for the child Julia. This \$1,000.00 per month was a global amount to include the "Table" amount for child support and Mr. Cooper's contribution towards Julia's university expenses. Further, it was ordered that the sum of \$2,500.00 per month be paid by Mr. Cooper to Mrs. Cooper with respect to spousal support. It is the undisputed evidence before this court that Mr. Cooper, despite the reduction in his income is current with respect to all support payments. There are no arrears. The total amount being paid by Mr. Cooper at this time for both child and spousal support is \$4,889.00 per month. The petitioner is requesting, among other relief sought, that the child and spousal support paid and payable by him for the years 2003 and 2004 be reduced retroactively and proportionately because of the decrease in his income during those years based on an inability to pay.

¶ 7 Counsel for the petitioner argued that Mr. Cooper experienced a 27% reduction in his annual income as of December 2002 through to January 2004 when he was on short-term disability. Their position therefore is that as of January 2003 the monthly child support payable for Barbara should have been \$1,054.00 per month only, based on an annual income of \$142,000.00 rather than the approximate \$196,000.00. This resulted in an over-payment in 2003 of \$335.00 for each month or for a total of \$4,020.00 over payment with respect to Barbara.

¶ 8 The petitioner's counsel further argued that as of January 2004, the petitioner's child support payments for Barbara should have been based upon annual income of approximately \$116,000.00. This would then correspond to a monthly "Table" amount payable of \$879.00 per month. This amount calculates to an over-payment of \$510.00 per month, which if annualized over nine months to bring it current to September 30, 2004 totals \$4,590.00 for 2004. I accept that the total over-payment for Barbara for 2003 and 2004 is \$8,610.00.

¶ 9 With respect to the child support paid by the petitioner for the support of Julia pursuant to the Order of O'Connor J. dated November 13, 2002, it is the petitioner's position that the 27% decrease in his income for the year 2003 would result in a proposed adjustment from \$1,000.00 a month to \$730.00 per month. That would result in a monthly difference of \$270.00 per month or an over-payment for 2003 in the amount of \$3,240.00. For the year 2004, the percentage decrease from the \$192,000.00 that Mr. Cooper was earning in 2002, to the income he received from long-term disability benefits in the year 2004 (being \$116,000.00 a year) is a 40% decrease. A proportionate decrease in the quantum of child support would result in a payment of \$600.00 per month from the original amount that was awarded. A proportionate decrease in the quantum of child support would result in an over-payment in 2004 of \$400.00 per month being  $400.00 \times 9 = 3,600.00$  from January to September 30, 2004. Therefore, the over-payment claimed by the petitioner with respect to the child support payments for Julie is a total of

\$6,840.00 from 2003 until September 30, 2004. I accept this argument and his inability to pay child support at the higher level taking into effect all of his financial commitments, including spousal support and the post-secondary education costs. This amount combined with the over-payment made for Barbara for 2003 and 2004 (being \$8,610.00) would produce an over-payment of child support paid by the petitioner for both of his daughters in the quantum of \$15,450.00 for 2003 and 2004 to September 30, 2004.

¶ 10 I find that the husband has been generous and conscientious about the needs of his family since separation. He has paid the full amount of child and spousal support to the present date at the original Order's level. Additionally I accept that he has voluntarily paid for the education of Teresa an additional \$22,000.00 in after tax dollars and for Julia an additional \$19,300.00 in after tax dollars. He is to be commended for his voluntary and generous spirit. It is clear that he loves his children and is concerned for their welfare.

¶ 11 I agree with the calculations and argument of the petitioner's counsel with respect to the issue of retroactive child support and the reductions for the years 2003 and 2004. This is based on the petitioner's inability to pay and the respective percentage decreases in the husband's annual income and the appropriate corresponding amounts dictated by the Federal Child Support Guidelines. I accept that there has been an over-payment of child support for the child Barbara in the amount of \$8,610.00 for the period 2003 and 2004 to September 30, 2004; and an over-payment for the child Julia in the amount of \$6,840.00 for the years 2003 and 2004 to September 30, 2004.

¶ 12 The petitioner argued that the quantum of spousal support should also be reduced from \$2,500.00 per month based on an annual income of approx. \$196,000.00 per year to approximately \$1,500.00 per month effective January 2003. The petitioner's position was that this reduction would be a "partial needs-based reduction" and would maintain a similar ratio vis-à-vis the petitioner's reduced income. This also would produce a similar percentage of disposable income that the petitioner would have (being 55.8%) to that of the November 13, 2002 order (being 55.7%). Additionally, the petitioner has maintained that the respondent/wife has the ability to earn some income of her own from full-time employment.

¶ 13 The petitioner's position was that there has been an over-payment of approximately \$1,000.00 per month paid on spousal support for the period 2003 and 2004 (to September 30, 2004) for a total over-payment of \$21,000.00. The petitioner suggested reducing this amount by 35% for the tax benefit received by the petitioner. This then produced an alleged overpayment of \$13,650.00 to September 30, 2004.

¶ 14 It is clear from the evidence and the previous court orders that the issue of the wife's ability to obtain employment was taken into consideration with the awarding and maintaining of the original modest quantum of spousal support. The petitioner's original income on which the spousal support quantum award was based was \$196,000.00 per year. I am not satisfied that there should be a reduction for the period of 2003 and for 2004 to September 30, 2004 with respect to the quantum of \$2,500.00 a month spousal support. Interim spousal support was determined on the basis of need, ability to pay and modest imputed income to Mrs. Cooper.

¶ 15 The issue of Mrs. Cooper's obligation pursuant to the Divorce Act to use her best efforts to obtain employment or work towards self-sufficiency is an issue that has been argued at this trial. Mrs. Cooper is a graduate registered nurse. She graduated in 1972 and worked as a nurse for approximately 7 years prior to the birth of the parties' first child in 1979. Since Teresa's birth the respondent has been a stay-at-home mother. Further, the parties separated some seven years ago and, despite the fact that the children at the time of separation were 9, 13, and 18, the respondent chose not to return to the workforce

and has since not made any serious effort to seek employment or further education or retraining. At the time of the separation the respondent was only 45 years of age. O'Connor J. stated on November 13, 2002 as follows:

... Husband currently earns \$192,000 per year. Wife does not and has not worked outside the home during or since the marriage, the parties separated in 1998. She was trained as a registered nurse. Her skills are now outdated. However she has made no efforts to seek any employment since separation. Ms. Bateman suggests she could have sought employment with VON, Red Cross, or similar organizations. I agree. I impute income to her of \$12,000 per annum ...

¶ 16 O'Connor J. believed that Mrs. Cooper had the ability to work and in fact should be working in 2002. As such he imputed a modest income to Mrs. Cooper of \$12,000.00 per year. It was the husband's position at trial that Mrs. Cooper is fully capable of working on a full-time basis and that an income in the range of \$25,000.00-\$30,000.00 would be more appropriately imputed to her. I agree and am imputing income to the wife of \$25,000.00 per year. There is no evidence before this court that would support the fact that the respondent has been or is unable to work or retrain. The respondent's evidence with respect to her attempts to find employment was vague and unsupported by any documentation, specific dates, or relevant details. This imputed income of \$25,000.00 per year will be considered in determining the quantum of spousal support, her claim for continued spousal support, and dividing any extraordinary costs that Mrs. Cooper claims on behalf of the children.

¶ 17 This Court orders that:

- (i) The petitioner shall pay child support for the child Barbara in the amount of \$879.00 per month based on an annual income of \$115,908.00 per year. This amount shall be paid at the first of each and every month commencing on October 1, 2004 pending further order of this Court.
- (ii) With respect to the child Julia, the petitioner shall pay a global amount of child support in the amount of \$600.00 per month which shall include contribution to her university education. That amount shall be paid directly to Julia on the 1st day of each and every month, being the 1st of October, 2004 and payable on each 1st day of the month hereafter until the child completes her undergraduate degree.
- (iii) The wife shall provide to the husband forthwith Julia's present address and phone number in Guelph.
- (iv) The petitioner shall pay to the respondent spousal support in the quantum amount of \$1,500.00 per month commencing October 1, 2004 and payable on the 1st day of each month until he retires (which is expected to be in 2006) at which time spousal support shall be stayed pending the return for review of the issue of ongoing spousal support (if any) before this Court.

¶ 18 I have imputed income to the respondent in the amount of \$25,000.00 per year. I am doing so on the basis that I have heard no evidence that would lead me to believe that there is any physical or mental reason that the respondent could not be working in some capacity on a full-time basis, and in fact the respondent should have been so working over these past number of years. I contemplated awarding a lower quantum of spousal support at this point in time; however, the respondent needs to have this

income for the next short period of time to either re-train or obtain full-time employment in order that she can gainfully contribute to her support. The evidence is that the petitioner will likely retire in 2006. If that is the case there will be a double-dipping argument arising as much of the petitioner's pension was acquired during the marriage and it will have been divided already. The spousal support being paid between now and 2006 is meant to give the respondent a last opportunity to get herself back into the workforce.

## Pension

¶ 19 Throughout the first seven days of the trial the parties, through their separately retained actuaries, kept the court informed that they were trying to sort out the terms of a draft agreement surrounding Mr. Cooper's pension division. The parties had agreed by way of Minutes of Settlement filed at trial that an "if and when" approach would be utilized. That agreement was subject to working out terms through their respective actuaries. By day seven of the trial those terms still had not been finalized and the court then heard the evidence of each party's actuary. Mr. Ben Dibben, the petitioner's actuary, produced a draft agreement that had been agreed upon as a final agreement between the parties save and except for the addition of one additional term that the respondent was asking this court to add to Section II(D)(iii) Life Insurance. The draft agreement is as follows:

### DRAFT AGREEMENT

#### Introduction

- (a) The parties acknowledge that the Husband has entitlements under the pension arrangements for pilots of Air Canada, hereinafter referred to as the "Plan".

Such entitlements consist of those provided under the Air Canada Pilot Pension Plan which are subject to the maximum that is permitted to be paid by the Income Tax Act from a registered pension plan and of any supplementary benefits in excess of that maximum.

The former shall be referred to in this Agreement as the "Registered Plan" and the latter as arising under the "Supplemental Plan".

- (b) SECTION I of this Agreement provides for benefits payable to the Wife corresponding to those payable under the Registered Plan, while SECTION II provides for benefits due to her under the Supplemental Plan.
- (c) The Wife is willing to accept her entitlement to a share of the Husband's benefits under the Plan by way of receiving a portion of his benefit payments therefrom as and when they are paid.
- (d) Any amount due to the Wife shall be paid from the Plan to the Wife by the administrator of the Plan to the extent that the administrator is permitted to do so by the terms of the Plan and legislation to which it is subject.

If, at any time, the Wife's entitlement pursuant to this Agreement and Appendix cannot be paid in full directly to her from the Plan, any shortfall shall be paid to

her by the Husband or, if he is deceased, by his estate or as provided in paragraph D of the Appendix.

Except to the extent that it is paid to the Wife by means of a transfer to her of a tax shelter such as a registered retirement savings plan or is deemed to represent a support payment, the amount of any such shortfall payment shall be reduced by the Husband's estimated average rate of tax at the time of payment or, if he is deceased, at the date of his death.

Notwithstanding the above, any such remaining payments due after the death of the Husband may, subject to the mutual consent of the Wife and the executors of the Husband's estate, be commuted for a lump sum of mutually acceptable amount.

- (e) After finalization of this Agreement, the Husband shall forthwith provide a copy of the Agreement to the Plan administrator and shall draw the administrator's attention to the provisions in this Agreement dealing specifically with the Plan benefits.
- (f) The Husband shall direct the administrator to release to the Wife all information concerning the Plan available to the Husband including, without limiting the generality of the foregoing, that information particularly respecting the Wife's interest in or claim to payments from the administrator as provided herein.
- (g) The Husband shall endeavour to obtain the administrator's consent to proceed in accordance with this Agreement, and the Wife shall provide the administrator with her current mailing address and such other information as the administrator may reasonably require from time to time for purpose of this Agreement.
- (h) The terms of this Agreement shall continue to apply if the benefits accrued to the Husband become payable under a plan established as a successor to the Plan or under a reciprocal agreement involving the transfer of the Husband's benefits from the Plan to another plan participating in such reciprocal agreement.

\* \* \* \*

## SECTION 1 (Registered Plan)

### 1. Retirement Pension

- (a) Upon the Husband's receipt of a pension instalment under the Registered Plan, the Wife shall be entitled to a corresponding pension equal to 50% of the following percentage of the instalment payable in respect of the Husband's participation in the Registered Plan:

period of credited service accrued during marriage

total credited service

- (b) Such amounts shall be payable to the Wife or, after her death before that of the Husband, to her estate for as long as the Husband is in receipt of pension from the Registered Plan.
- (c) The Wife may, when instalments are due to commence and to the extent that such a conversion is permitted by the terms of the Registered Plan, elect to receive corresponding instalments, of equal actuarial value, payable for her lifetime and independent of the Husband's survival.

## 2. Death Benefit

- (a) Should the Husband die before the Wife starts to receive her share of the pension instalments under the Registered Plan, the Wife shall, subject to paragraph 3 of this SECTION I, be entitled to a lump sum equal to the amount determined according to 2(c) following.
- (b) If the Wife has not made an election under 1(c) above and if, on the death of the Husband after he has commenced to receive his pension, a lump sum is payable under the Registered Plan or would have been payable if he had not had a surviving eligible spouse at the date of death, the Wife shall be entitled to a lump sum determined according to 2(c) following.
- (c) The amount of lump sum to which the Wife would be entitled under 2(a) or 2(b) would be calculated by multiplying any lump sum benefit that is payable under the Registered Plan or would have been payable if the Husband had not had a surviving eligible spouse at the date of his death by 50% of:

the period of credited service accrued during marriage

total credited service to date of death

## 3. Termination Benefit

- (a) Should the Husband's active participation in the Registered Plan terminate and he is then eligible to transfer a lump sum amount to a registered retirement savings plan or other authorized instrument in settlement of his entitlements thereunder, the Wife shall, subject to any legislation to which the Registered Plan is subject, be entitled to transfer a lump sum from the Registered Plan to her registered retirement savings plan or other authorized instrument.

The amount of such lump sum shall be equal to one-half of the total amount transferable in respect of the termination multiplied by the ratio of the Husband's credited service accrued during the marriage and his total credited service at the date of his termination of employment.

- (b) If, upon termination, the Husband is not eligible for such a transfer, the Wife shall be entitled to benefits determined according to and paid in the manner provided in paragraphs 1 and 2 of this SECTION I.
- (c) The preceding clauses of this paragraph 3 shall also apply if the Registered Plan is wholly terminated or, alternatively, to a partial extent affecting the Husband's participation therein.
- (d) Application of the foregoing paragraphs of this paragraph 3 shall be in full satisfaction of any and all entitlements of the Wife in respect of the Husband's pension under the Registered Plan.

\* \* \* \*

## SECTION II (Supplemental Plan)

### Retirement Pension

- (a) Upon the Husband's receipt of a pension instalment under the Supplemental Plan, the Wife shall be entitled to a corresponding pension equal to 50% of the following percentage of the instalment payable in respect of the Husband's participation in the Plan:

period of credited service accrued during marriage

total credited service

- (b) Such amounts shall be payable to the Wife or, after her death before that of the Husband, to her estate for as long as the Husband is in receipt of pension from the Supplemental Plan.

\* \* \* \*

## APPENDIX

### A. Elections

- (i) The Husband shall not make any elections, designations, nominations or other directions under either Plan that would in any way affect the Wife's share of the benefits payable thereunder without first obtaining her written consent.
- (ii) Should the Husband be required by relevant pension legislation to make such an election, designation, nomination or other direction, he shall thereafter pay to the Wife any reduction in her benefit that may be caused thereby, less tax at the Husband's average rate in the year of payment. At

the discretion of the Wife, such reduction may, if it consists of a reduction in her share of subsequent monthly pension payments, be commuted as of the date of such election, designation, nomination or other direction and the Husband shall pay to the Wife the commuted value, as determined by an actuary jointly appointed by the Husband and the Wife, less an actuary's estimate of the Husband's average tax rate during receipt of the aforesaid pension payments.

- (iii) It is agreed that the Husband will be at liberty to make any decisions unilaterally regarding his continued employment and retirement in respect of which benefits are provided under the either Plan, subject to any conditions that might be imposed on him in that respect by one or other of the Plans or relevant pension legislation.

#### B. Tax Liability

The Wife or the Wife's estate shall be personally liable for any tax liability which may be incurred on account of payments received by the Wife or her estate from the Registered or Supplemental Plan under the provisions of this Agreement and Appendix and shall indemnify the Husband or his estate against any tax liability incurred by him with respect to such payments made to the Wife or her estate and hold him harmless therefrom.

#### C. Death of Wife before Death of Husband

Upon the Wife's death prior to that of the Husband, this Agreement and Appendix shall be replaced by a successor Agreement between the Husband and the executors of the Wife's estate dealing with the division of any benefits that may subsequently become payable.

#### D. Life Insurance

- (i) (a) The Husband shall maintain the Wife as beneficiary under a policy of insurance on his life to the extent of the amount specified in paragraph 2 of SECTION 1 as may apply from time to time, less tax at the Husband's estimated rate thereof during retirement.
- (b) The amount payable to the Wife under such policy upon the death of the Husband shall be as specified in (a) immediately preceding, less the actuarial value of any future benefit to which the Wife may become entitled under the Registered or Supplemental Plan following the death of the Husband.

The actuarial value referred to in the immediately preceding paragraph shall be determined after deducting therefrom tax at the estimated average rate of the Wife in subsequent years.

- (ii) If such insurance is not available to the Husband, the parties will negotiate appropriate security for the Wife's interest in the Husband's benefits. If the parties are unable to agree upon the security, then either party may apply to the Court for a determination of this issue.
- E.
  - (i) If the administrator fails to send to the Wife copies of any correspondence relevant to this Agreement and Appendix, the Husband shall provide her with such copies within thirty days after receipt thereof.
  - (ii) If, at any time, any provision herein regarding the Plan is declared null and void or is unenforceable, then the parties agree that this Agreement and Appendix shall be construed as not having dealt with the issue of benefit rights under the Plan.

No reliance will be placed on any Statute of Limitations, and this Agreement and Appendix shall be replaced by a successor Agreement between the Husband and the Wife dealing with the division of any benefits that may subsequently become payable.

¶ 20 This Court orders that:

- (i) an Order shall go pursuant to the terms of the above draft agreement.

¶ 21 The respondent has argued that the following clause should be ordered and included in Section II (Supplemental Plan Life Insurance)(D)(iii) and called evidence to support it:

D. Life Insurance ...

- (iii) The husband shall maintain in force a policy of life insurance for the sum of \$50,000.00 upon his life for the period prior to commencement of the pension from the Supplementary Plan, and for ten years after such commencement with the wife as the irrevocable beneficiary of the life insurance policy. In the case of default with respect to payments from the Supplementary Plan on the part of Air Canada, this insurance need not be maintained. In the case of partial default, it shall be maintained in the same proportion as the supplementary pension still being paid.

¶ 22 I decline to include this clause in my order as the parties have agreed to deal with the petitioner's pension(s) in an "if and when" manner. Also, the evidence that there is no death benefit that would accrue to the petitioner's estate on his death. Therefore, I find that there should be no death benefit created to benefit the respondent through insurance in the case of the petitioner's death.

Property Division

¶ 23 I accept the Net Family Property Statement of the petitioner filed with this court as representing

the fair market value of all assets and liabilities save and except for the following amendments:

- (i) I accept the value of the jointly owned cottage at Point Clarke, Ontario which is presently the residence of the petitioner as being the value provided to the court by Mrs. Cooper in the amount of \$250,000.00. This results in an allocation of \$125,000.00 to each party's portion of the net family property. I find that the Letter of Opinion provided to the court by the wife is the best evidence before the court on this issue. The Municipal Assessment Value is not a true fair market value. The Letter of Opinion did reference the assessed value as a factor to be taken into consideration only. I agree.
- (ii) I accept that the value of the works of art retained by the wife was \$5,000.00 rather than \$10,000.00 as alleged by the petitioner. Additionally I accept Mrs. Cooper's addition of another \$1,300.00 of inherited antiques. Both these items will be contained in general household items and vehicles and will then be excluded as part of the value of property excluded under subsections 4(2) of the Family Law Act.
- (iii) With respect to the alleged \$9,000.00 entry by Mr. Cooper being monies that the wife removed from the joint bank account at the time of separation, I am disallowing \$5,000.00 of this amount. The evidence is that \$5,000.00 was used for Teresa's tuition and was placed in a GIC. The remaining \$4,000.00 will be attributed only to money removed by the wife at the time of separation.
- (iv) With respect to value of debts and liabilities on the valuation date, I am content to accept the tax reduction on the RRSPs held by the husband and the wife. With respect to the husband, I accept a 35% tax rate and with respect to the wife, I accept a 10% tax rate. These figures are reasonable based upon the evidence.
- (v) During the course of this 9-day trial the parties have agreed to remove from their respective Net Family Property Statements the contents of the matrimonial home. This includes on the Wife's Net Family Property the sum of \$26,200.00 under the husband's column. On the Husband's Net Family Property Statement under the wife's column is the quantum of \$11,600.00, and under the husband's column tools: \$1,250.00, tractor and equipment - \$750.00, fishing tackle equipment - \$750.00, and trailer - \$300.00. Each party will simply keep those items in their respective possession save and except the items that each party agreed to provide to the other during the course of the trial.

¶ 24 Therefore, the new calculation on the Net Family Property Statement determines that an equalization payment is owed by the husband to the wife in the amount of \$24,680.40.

¶ 25 The parties consent that the husband will purchase the wife's interest in the jointly owned cottage at Point Clarke, Ontario. Therefore, the husband will owe an equalization payment of \$24,680.40 plus \$125,000.00 (on account of the cottage). The total owed is \$149,680.40 less the \$30,000.00 that was admittedly advanced by the petitioner to the respondent in July of 2003. This was an advance on the equalization payment owed for a subtotal of \$119,680.40.

¶ 26 Additionally, I have found the overpayment of child support for Barbara for 2003 and 2004 to be \$8,610.00 and the overpayment for Julia for 2003 and 2004 up to and including September 30, 2004, to be \$6,840.00. Therefore, the total of the child support overpayment is \$15,450.00 which will be

subtracted from \$119,680.40 owing.

¶ 27 This Court orders that:

- (i) The sum of \$104,230.40 is to be paid by the petitioner to the respondent as full and final equalization between the parties and settlement of the aforementioned issues.
- (ii) The jointly owned cottage located at Point Clarke shall be transferred from joint ownership to the husband's name alone.
- (iii) The parties each have some personal items in the possession of the other.
  - (a) The husband shall return to the wife forthwith the following items:
    - (i) the corner cupboard
    - (ii) the rope bed.
  - (b) The wife shall deliver to the husband all of the family's photographic negatives forthwith. The wife shall retain the photographs.

#### Custody/Access/Contempt

¶ 28 The most distressing and most litigious issue in this case is custody and/or access by the petitioner to the children. This issue has a history of seven years of litigation. The petitioner to this date has had no access to his children since the date of separation, except to the oldest child (25) who has now sought out her father on her own. A contempt order is being sought by the petitioner against the respondent.

¶ 29 In an admirable effort, Justice Belleghem of this court seized himself of this matter for a period of two years in an effort to try to facilitate contact between the children and their father. Counselling was ordered, court moratoriums were ordered, psychiatric assessments were ordered, meetings were ordered, but access has never taken place. This is a sad situation as these children have been the true victims of this litigation. The children have not had the benefit of a two-parent home life, nor have they had the benefit of a relationship with their father. Their father clearly loves them, has made his best efforts to secure a relationship with them, and has taken care of them financially to the best of his ability from their births.

¶ 30 There have been 15 interim orders made over the course of the last 7 years, that have addressed the petitioner's access to his three children. It is the petitioner's position that the respondent has denied him access to his daughters since the date of the separation despite the various court orders. Further, it is the petitioner's position that the respondent has been manipulative, calculating, deliberate, and has been successful in alienating the children from him.

¶ 31 The petitioner's position is supported by the court ordered assessor's report that was filed early in this litigation. Debra Rodriques completed her assessment and filed it with this court on or about the 10th day of December, 1998. Ms. Rodriques testified at trial. I found her evidence clear and credible. Her 1998 report was extremely thorough. Ms. Rodriques had interviewed the parties and the children.

She also had interviewed and/or obtained information from: the family doctor, Dr. Debbie Zeni; Ms. Maureen Klie, a teacher; Mr. John Lanthier, the respondent's mental health therapist; Ms. Tina Hinsberger of the Peel Children's Aid Society; Dr. Stephan Cooper, the father's brother; Marie and Jack Cooper, the paternal grandparents; Dr. Dan Dalton, the father's psychiatrist; Ms. Higgins, the vice principal of Alloa Public School; Mr. Don Campbell, Barbara's teacher; Ms. Pamela Young, Barbara's former teacher; and Ms. Cathy Lou Newhouse, the school social worker. As well she obtained the Caledon O.P.P. incident report dated November 3rd, 1998.

¶ 32 Her assessment, page 19, reads as follows:

#### ASSESSMENT

On the surface, the parties and this family appear to have many strengths. Mr. Cooper has done well in his career and has provided for his family a financially comfortable existence. Ms. Cooper has helped the children with their homework, school activities, lessons, and has been there for special occasions. The children are achievers in the academics and place incredible emphasis on their school performance. On the surface it seems they are doing well.

However, at the present time, the children are firmly entrenched in their position not to have access with their father. Julie hinted at telephone access once per month if she had to have any at all, and Barbara hinted that she would consider access within a year if her father leaves her alone in the meantime. There is potential for access but it appears limited at present if the children's verbalized wishes are to be heard. Often though, what children say they want and what they need, fantasize or unconsciously wish for can be something entirely different. It is interesting that the two youngest children left the door to access slightly ajar.

Further, the children are firmly entrenched in their views of the family dynamics and issues as they have presented. They see their mother as completely devoted as a parent should be in their view, and in summary, their father as neglectful and self-centred. They have come to take responsibility for initiating the separation either voluntarily, or, perhaps through years of subtle [subtle], direct or indirect pressure, claiming that they decided they wanted their father out of their life and that they approached their mother on the issue. They may have done this in order to protect or appease their mother.

The girls and their mother are not about to consider any other view point. They clearly blame their father for any suffering that has occurred by them or their mother. They seemed determined to protect her and each other. The siblings are very enmeshed in their relationships as well. Unfortunately this kind of situations occur after years of relationship dysfunction, and now with the refusal to attend access, any answer to this issue is a complicated one.

These children have very high expectations in relation to how people should behave towards them and quite clearly demand respect. They were irritated by the questioning and as previously mentioned somewhat hostile in presentation. They indicated that they do not respect "authority" figures like CAS, assessors and the Court, and said they would refuse to attend access or run away if it was Court ordered.

The children did have a mother completely devoted to the point of enmeshment (the collateral resources were concerned about the enmeshment). They see her as a role model and do not appear to recognize any problem's associated with the degree of

symbiosis in their relationships. However, enmeshment to this degree usually has its price. For example, there is usually less room for critical thinking beyond the acceptable perspective as prescribed by the dominant caregiver. We saw this in relation to Teresa's comment on how the money for the assessment was to be used for her education and therefore, her father had failed her in this regard. She even went as far as to say her mother told her this. Barbara, as another example, indicated that it was her father's fault that she was hospitalized. This all or nothing thinking seemed prevalent. They also expressed as previously mentioned, the expectation that their father should meet the same level of involvement as their mother, as Teresa put it, her father should have done fifty percent of the parenting. This would have been impossible since he was the sole provider in the financial sense. This is not to say that he should not have been more involved with the children but it seems to demonstrate their rigid, exaggerated thinking. Enmeshment can also create problems that can last a lifetime for children who cannot developmentally separate from their caregiver. The message is that Ms. Cooper does not have a life outside of the children. How well she copes with their need to be independent of her is crucial to their future.

Ms. Cooper became enmeshed with the children, quite possibly because of the emotionally distant relationship with her husband, Mr. Cooper played the complimentary role of the disengaged. Mr. Cooper is struggling with these realizations in hindsight, as he himself has indicated to the assessor and is evident in his affidavit. There is some truth to the allegation of neglect even though he has his reasons for it, as Ms. Cooper has her reasons for her over involvement.

This family would not likely be in this state had one parent been dispositioned in personality and coping differently than they are. If Mr. Cooper had not been so passive the children would not likely see him as neglectful, and Ms. Cooper may not have had the same opportunity or felt the need to become so enmeshed and overly involved to the point of exclusion of other significant persons in the children's lives. Alternatively, if she had not been inclined to become so enmeshed whether it be because of sexual abuse victimization or a combination of issues, Mr. Cooper might have felt that he had more room to develop a close nurturing relationship with the children despite the fact that he worked. At the very least, he would have liked to have seen them have more independence apart from their mother (i.e. to be more involved with him, friends, extended family and the community).

The most unfortunate thing about this case, is that the children only view the matter from one position. They are currently not able to digest the big picture in part because of their age and level of development. Further, with their mother as their primary and only caregiver on a daily basis at present, it is not likely they will jeopardize this arrangement. They have not been able to count on their father in the past to protect them from enmeshment and to take an active role in their lives (in their view even if he had to work to support the family). They have no one else to physically and psychologically turn to if they were to see their mother's role in relation to their father's. The realization of her role could be devastating.

Should the children be forced to attend access? Forcing them to attend without a gradual increase in acceptance of the big picture would not likely work. The children have indicated they will run away and feel that their feelings and wishes are not being heard. It could be detrimental to the children's well-being. The children have real issues to work out with their father should access be to their benefit. Only over time, as they grow older and have less reason to rely on their mother, with a competent therapist

involved, could they begin to see the big picture and maybe forgive their father or accept him in their life on limited terms. Perhaps then, they can be gently confronted about their rigid boundaries and interpretation. In the meantime, it is advisable that Mr. Cooper have some way of reaching out to his children. Perhaps he can do some of the things he did not or could not do before, like invite them to talk about or do things that he knows they enjoy. Perhaps he could keep the channel of communication going through a Court order for telephone contact or supervised access. He may want to develop his communication skills at the start. It may be imperative that he not give up.

Finally, given that Ms. Cooper is the primary caregiver and the children are quite isolated, it should be said that this assessor has some concern about Ms. Cooper's history. The information sought from the CAS about Barbara's condition at the age of four as failure to thrive is very concerning. That is not to say that Mr. Cooper did not play a contributing role but it seems from the collateral resources, and from the degree of enmeshment between her and the children, that a psychological or psychiatric assessment would be warranted to determine the degree of pathology in her personality and parenting. This information should be used in such a manner as to update the Court. If it indicates pathology that may be currently harmful to the children [then] that information may be important in relation to Ms. Cooper having custody on an ongoing basis. If the information does not present harm in the [present] tense, [then] it is unlikely that any change in custody should be considered.

¶ 33 Ms. Rodrigues' recommendations were as follows:

## RECOMMENDATIONS

The Court may want to consider the following:

1. That the mother undergo a psychiatric/psychological assessment by an expert in the field of custody and access that would explore parenting capacity, enmeshment issues and any psychiatric concerns that would impact upon current parenting. It would be important for the psychiatrist/psychologist to interview the children and their father in order to obtain a comprehensive understanding of the dynamics. The Court may wish to consider the services of Dr. Peter Sutton (Psychiatrist in Toronto experienced with custody and access matters) or the Clarke Institute.
2. That this report be sent to the psychiatrist/psychologist chosen to further assess Ms. Cooper's functioning along with the Court order.
3. That Mr. Cooper maintain connection with the children through telephone contact and/or supervised access.
4. That the children attend counselling with a competent therapist who specializes in reintegration, and who has a copy of this report and the Court order. That the therapist work towards reintegrating the children's father into their lives as it benefits them to do so, while fostering the development of a better relationship between the parties.
5. That Ms. Cooper maintain her role as primary caregiver until the results of the psychiatric/psychological exam are reviewed for relevance to her

maintenance of this role. A final order should be made at that time.

¶ 34 The details of this assessment completed six years ago are as real and disturbing today as they were then. Teresa is now 25 years of age. She has completed university and is married. It is only since her marriage that she has felt comfortable enough on her own to make contact with her father. Julia is still a student and living independently. The petitioner accepts that Julia will, like Teresa, have to make the decision with respect to access for herself. It is the petitioner's belief that the respondent continues to alienate Barbara (16) from him. Barbara is the only child who continues to reside with the respondent.

¶ 35 After the report of Ms. Rodriques was filed with this court, there were heroic efforts on the part of therapists, counsellors, and Justice Belleghem to try to reintegrate the three children with Mr. Cooper. Despite all of these efforts, the respondent successfully manipulated the situation to sabotage all contact between the children and the petitioner over and over again. Various court orders were made to address each level of sabotage. These were only to be sabotaged in some new and different way through interpretation, the respondent's refusal to attend with a psychiatrist/psychologist, etc., etc.

¶ 36 On December 17, 1998, Mr. Justice Belleghem seized himself of this case and made the following order having reviewed among other things the assessment of Debra Rodriques. Both parties were represented by counsel at that time. His order read as follows: (note "\*" contempt alleged)

- \*1. THIS COURT ORDERS that counsel for the mother shall arrange counselling of both parents and all of the children to commence by January 18, 1999, or so soon thereafter as may be demonstrably reasonable. For this purpose, as long as her counsel establishes the counselling process through someone who is properly qualified, to deal with the issues raised in the assessment report by January 18, 1999, or within a reasonable time thereafter, this term of the order shall be deemed complied with.
- \*2. THIS COURT FURTHER ORDERS that in the event that counselling arrangements through a properly qualified counsellor are not in place by January 18, 1999, or shortly thereafter, then an order will issue to take effect on January 31, 1999 that the mother shall submit herself for a psychiatric examination by a psychiatrist of her choice, on the basis set out in the recommendations of the assessment report of Debra Rodriques dated 10th December 1998. The psychiatrist shall be one [one] who is demonstrably properly qualified to deal with the issues as set out in the assessment report. (Emphasis by Belleghem J.) The report shall be prepared by February 21, 1999 and immediately made available to counsel for the father and a copy filed with the court.
3. THIS COURT FURTHER ORDERS that in the event that the counselling clause has not been complied with and, in addition, the mother has not filed the report of the properly-qualified psychiatrist of her choice as set out in the previous paragraph, by February 21, 1999, then an order will issue requiring the mother to submit herself to examination by a psychiatrist properly qualified to deal with the same matter, such psychiatrist to be chosen by counsel for the father and which appointment shall result in the preparation and filing of a report to be made available to counsel for the mother and filed with the court on or before March 15, 1999.
4. THIS COURT FURTHER ORDERS that for the purpose of assisting the

- counsellor referred to in the first paragraph of this order, counsel for the mother and counsel for the father shall jointly prepare a synopsis of the "presenting issues" for the counsellor, around which issues the counselling is to focus. Provided that counsel are able to agree on such a synopsis to be provided to the counsellor, then the assessment report of Debra Rodrigues dated December 10, 1998 shall not be provided to the counsellor.
5. THIS COURT FURTHER ORDERS that in the event that counsel are unable to agree on the wording of such a synopsis, then the assessment report shall be provided to the counsellor to enable the counsellor to glean therefrom the "presenting issues" around which the counselling is to focus.
  - \*6 THIS COURT FURTHER ORDERS that with respect to access, counsel shall agree on the terms of telephone access to be enjoyed by the father in relation to the children. Upon failure to reach such an agreement, a default order shall issue that the father have telephone access of one-half hour Sunday evenings at 7:00 p.m. To facilitate access, the mother shall make the children available for the telephone call by the father.
  - \*7 THIS COURT FURTHER ORDERS that in the event that any of the children are unavailable at that time, then the mother shall, through her counsel, provide in writing to counsel for the father a comprehensive explanation as to why the child was unavailable for telephone access and setting out a minimum of ten reasonable half-hour periods during the ensuing week for the father to exercise telephone access at his choice with the same proviso to attach, namely: that if the child becomes unavailable for telephone access, a written explanation and alternative reasonable times shall be forthwith provided in writing to counsel for the father.
  8. THIS COURT FURTHER ORDERS that the mother shall continue to retain Dr. Zeni as the children's doctor and shall not change the children's doctor without further order of the Court.
  9. THIS COURT FURTHER ORDERS that in view of the need for consistent involvement of the Court in this matter until such time as progress justifies otherwise, Justice Belleghem shall remain seized of all custody and access matters relating to the children of the parties.
  10. THIS COURT FURTHER ORDERS that Justice Belleghem may be spoken to by counsel via a chambers appointment to resolve any outstanding issues arising out of this order.

#### Breach of Orders and Finding of Contempt

¶ 37 Eight other orders were made between the order of December 17, 1998 and the Order of October 15th, 1999, of Justice Belleghem. The Order of October 15th, 1999 reads as follows: (note "\*" contempt alleged)

1. THIS COURT ORDERS that the Petitioner, Respondent and children of the marriage shall participate in a therapeutic plan offered by H. Joan Harewood,

M.S.W. and Dr. Dan Dalton consisting of six months of discussions and consultations to resolve the issues of paternal access, uninterrupted by the legal process.

2. THIS COURT ORDERS that Dr. Dalton and Ms. Harewood are to be jointly vested with the right to set the agenda for all therapy sessions and to determine what is therapeutically appropriate for the parties. The parties will be ordered to follow the agenda set by the therapists jointly and to comply with all of the therapists' reasonable requests directed towards implementation of the plan ordered in paragraph 1 of this Order.
- \*3. THIS COURT ORDERS that failure to comply with any reasonable direction jointly recommended by the therapists on the part of either party will be considered a breach of this order which may be relied upon by the other party in support of an application to court for whatever legal redress may be considered by the court to be appropriate in all the circumstances.
4. THIS COURT ORDERS that the Petitioner and Respondent are mutually restrained from molesting, harassing or annoying each other.

¶ 38 It is with respect to these two orders that this court is being asked to find the respondent in contempt.

¶ 39 Specifically with respect to the Order of December 17, 1998, counsel for the petitioner argued that the respondent is in breach of paragraphs 1, 2, 6 and 7.

¶ 40 With respect to paragraph #1, I cannot find the respondent in contempt of this paragraph as the Order is clear on its face that the court was ordering counsel for the respondent (not the respondent) to make the said arrangements. Although I accept that counsel take instruction from their client, I am not satisfied beyond a reasonable doubt that the respondent knowingly breached paragraph (1) of the December 17, 1998 order.

¶ 41 With respect to paragraph 2 of the order of December 17, 1998, counsel for the petitioner argued that since the respondent failed to make the proper arrangements for counselling of both parents and all the children with one counsellor, she then should have submitted herself for psychiatric examination by a psychiatrist of her choice. Again, I am not satisfied beyond a reasonable doubt that the respondent knowingly breached paragraph #2 of this Order. The evidence is that the respondent and the 3 children were in counselling with one counsellor. The Petitioner was also in counselling but with another counsellor. Ultimately the two counsellors got together. Unfortunately the children were never made available by the respondent to the petitioner and his counsellor. This arrangement of the two counsellors was acquiesced to by all parties. Unfortunately this allowed for the children to slip between the cracks.

¶ 42 With respect to paragraph 6, it is clear that in any event, the father would have telephone access of one-half hour on Sunday evenings at 7:00 p.m. and that the mother would facilitate this access by making the children available for the telephone call each Sunday. I find that the respondent is in breach of this paragraph. I am satisfied beyond a reasonable doubt that the respondent knowingly breached this paragraph repeatedly. Her testimony to this court was that she made the children available by having the children at home but she did not pick up the telephone nor did she, in her words, put the telephone to the children's ears. The respondent left the issue of whether the phone should be answered up to the

children. I find that in shirking her responsibility and obligation directly, and by indirectly conveying to the children her disapproval of telephone access, she wilfully and deliberately sabotaged this telephone access. As such the respondent was able to sabotage the ordered telephone access while she played the game of "making the children available for the telephone call by their father". The respondent is a very bright, articulate woman. There is no question in my mind that she was well aware of the intent of this paragraph but has hidden behind the dissection of the words. It was a word game to her.

¶ 43 I find beyond a reasonable doubt that the respondent was knowingly in breach of paragraph 7 of the aforesaid order as well. Paragraph 6 and paragraph 7 must be read in reference to each other. The fact that the respondent engaged in "game-playing" around the telephone access eliminated any possibility of compliance with paragraph 7 as well. I do not accept the respondent's argument that it was up to the children to decide whether or not they would answer the phone. The youngest child was only 9 years of age. It is clear that the respondent was doing nothing to encourage the children to have contact with their father.

¶ 44 With respect to the Order of Bellegem J. dated October 15th, 1999, it is paragraph 3 of this Order that the petitioner alleges the respondent breached. I concur with the petitioner. I am satisfied beyond a reasonable doubt that the respondent knowingly breached paragraph 3 in that she failed to comply with the "reasonable direction jointly recommended by the therapists". Dr. Dalton and Ms. Harewood in accordance with the October 15, 1999 Order, this behaviour is to be considered a breach of the Order. The petitioner can rely on this breach in support of an application to this court for a finding of contempt. The particulars of the breach follow.

¶ 45 In a letter dated January 25th, 2000, addressed to each counsel and subsequently filed with the court, the two therapists working together wrote the following:

... However, we think that real progress in the area of paternal access cannot be made without direct contact with the children on a regular basis. Their perspective is necessary to determine the process to be followed in the future. Therefore, if one of the therapist has not met with the children by February 29th, 2000, we plan to meet with both the petitioner (David) and respondent (Nancy) to discuss alternative methods to settle the paternal access matter.

This letter was co-signed by Dr. Dan Dalton, a psychiatrist and therapist for the petitioner, and Ms. Joan Harewood, M.S.W. and therapist for Ms. Cooper and the children.

¶ 46 On May 26th, 2000, Dr. Dalton and Ms. Harewood wrote directly to Justice Bellegem stating the following:

We have met with David Cooper and also with Nancy Cooper on five occasions since our report to you dated September 1st, 1999, in order to pursue the agreed upon counselling concerning paternal access to the three Cooper children. Although this process has produced some results in communicating the children's needs to Mr. Cooper (who has responded appropriately) and in lowering the level of hostility and apprehension felt by Mrs. Cooper and the children, it has not and is not likely to move forward the paternal access issue. Therefore, we recommend that alternative avenues be chosen if the parties wish to pursue this further.

¶ 47 This letter was written as the "reasonable direction jointly recommended by the two therapists"

in their letter of January 25th, 2000, that had not been facilitated by the respondent. The children were never made available to the father's therapist, Dr. Dalton, despite the fact that both Dr. Dalton and the children's therapist, Ms. Harewood asked that this take place.

¶ 48 A further letter was sent from Dr. Dalton and Ms. Harewood to Justice Belleghem on July 31st, 2001 stating:

At the last meeting on April 24th, 2001 of Dr. Dan Dalton and Joan Harewood with David and Nancy Cooper, Nancy indicated that she was no longer willing to participate in this process to deal with paternal access. We all agreed that progress had been very slow and is now in fact negligible. We see no reason to continue so we have ended our consultations.

### Contempt

¶ 49 Rules 60.05 and 60.11 of the Rules of Civil Procedure are the source of the jurisdiction of this court with respect to a contempt proceeding. Rule 60.05 states:

60.05 An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by contempt order under Rule 60.11.

¶ 50 The relevant portions of Rule 60.11 are as follows:

60.11(1) A contempt order to enforce an order requiring a person to do an act ... may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

(2) The notice of motion shall be served personally on the person against whom a contempt order is sought ... unless the court orders otherwise.

(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

¶ 51 Justice Quinn states at page 4 of *McMillan v. McMillan* (1999), 44 O.R. (3d) 139:

I state the obvious when I say that a finding of contempt must be made on evidence. Furthermore, even with civil contempt, the criminal burden of proof prevails. No doubt this is due, at least in part, to the fact that the sanctions for civil contempt include a fine or imprisonment.

...

It is unnecessary to prove that the alleged contemnor intended to put himself or herself

in contempt. However, it must be established that he or she deliberately or wilfully or knowingly did some act which was designed to result in the breach of a court order.

¶ 52 In this case, the failure of Mrs. Cooper to follow the two court orders of Belleghem J. was obvious, knowing, deliberate and wilful.

¶ 53 The respondent has made excuses before this court, none of which I accept. She denies that she breached the court orders. She testified that she has done her best to follow the orders and that the evidence before this court is all hindsight and false assumption. She argued that she had different interpretations of the court orders despite the many counsellors, the many judges, the many documents, and many letters that spelled out clearly what was expected of her in these court orders over the last seven years.

¶ 54 I find that her sabotaging actions have been knowing, wilful, and deliberate with respect to the telephone access that has been ordered. As noted earlier, she testified that she made their daughters available for telephone access but she "did not force the phone to the children's ears".

¶ 55 With respect to the counselling that was to include the parties and the children, she testified that she did not "throw in the towel", that it was the counsellors who were frustrated and gave up. I accept that the counsellors were frustrated. They were frustrated by Mrs. Cooper's continual breach of the court orders. She argued at trial that the court could not legislate the children's feelings and that she would not force the children against their wills to go to the counsellors.

¶ 56 Ms. Cooper argued that she followed along every step of the way doing what her lawyer and counsellor instructed. She claimed that she was faultless. Her position and testimony is completely contradictory to all other evidence before this court. She further testified that it was the children who were not interested in having contact with their father. However, the children had no opportunity to make this decision themselves, having been emotionally alienated from their father by their mother from the point of separation and possibly before. I accept the evidence of the various professionals who recognized as early as 1999 that there was a very unhealthy enmeshment that the respondent had nurtured with respect to all three children and herself. She had written knowledge of her destructive behaviour in the 1999 report of the assessor and chose to ignore the same.

¶ 57 I am satisfied beyond a reasonable doubt that Mrs. Cooper's actions and lack thereof constituted the offence of civil contempt. It is also clear that the actions of the respondent were contrary to the best interests of all three children. These children, as all children do, needed a mother and a father. It is the right of all children to have a relationship with their mother and their father. There is no evidence before this court that would indicate that Mr. Cooper was anything but a good father, a loving father, and a father who throughout the last seven years wanted to be involved in any capacity in his children's lives. He has admirably and heroically been before this court on at least 15 separate occasions trying, unsuccessfully, to obtain access with his children. He still continues valiantly to attempt to have a relationship with his children.

¶ 58 The respondent is found to be in contempt of the Orders of Belleghem J. dated December 17, 1998 and Belleghem J. dated October 15, 1999.

¶ 59 There are broad powers given to the court under Rule 60.11(5). Rule 60.11(5) reads as follows:

60.11(5) In disposing of a motion under sub-rule 1, the judge may make such an

order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned if he or she fails to comply with a term of the order;
- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and
- (f) comply with any other order that the judge considers necessary, and may grant leave to issue a writ of sequestration under Rule 60.09 against the person's property.

¶ 60 This Court orders that:

- (i) The respondent shall pay a fine of \$10,000.00 to the Treasurer of Ontario forthwith.
- (ii) The respondent shall arrange immediately and be supportive of counselling for the child Barbara. Said counselling to be for the purposes of reintegration of the petitioner/father into Barbara's life. The counselling will be paid for by the respondent in the first instance and the petitioner shall reimburse the mother at the end of each month upon being sent the paid receipts by the respondent from the counsellor. The respondent shall be responsible to ensure that Barbara gets to and from these appointments twice per month without exception. Said counselling shall take place at a minimum of twice a month for the next six months. This counselling will provide a safe place for Barbara to work out her feelings and for the petitioner to work out his feelings about their estrangement. Their estrangement is through no fault of either one of them. The petitioner shall choose the counsellor and the counsellor shall be within a 50 mile radius of the respondent's home. The petitioner shall be worked into these sessions at the counsellor's discretion.
- (iii) If the respondent breaches paragraph (ii) of this Order for any reason directly or indirectly, this will be considered a contempt of court and shall pay a fine in the amount of \$15,000.00 to the Treasurer of Ontario on or before October 30, 2005.
- (iv) If the respondent continues to be in breach of this Order six months after October 30, 2005, the wife shall be imprisoned for a period of 30 days, which shall be in addition to any custodial sentence which might be imposed for the conduct which constitutes the breach.

¶ 61 The behaviour of the wife in this file has created a travesty. As a result of the respondent's behaviour the children have little or no relationship with the father who loves them, who has tried to be a good father, and who has been a good provider throughout their lives. If it were not for the age of Barbara and the fact that she now is a young woman who is clearly attached to her mother and who will

shortly be leaving home to make her way in the world, I would be looking to the father as the appropriate custodial parent. However, given Barbara's age, her attachment to her mother, and the fact that she will soon be on her own, it would be inappropriate in these circumstances to make such an order.

¶ 62 I, however, decline to grant in the best interests of Barbara a sole custody award to the respondent.

¶ 63 This Court orders that:

- (1) the parties shall share joint custody of the child Barbara. Barbara will spend reasonable and generous time with both parents.
- (2) a divorce judgment shall issue and shall become final 31 days from this date.

¶ 64 The parties may submit written arguments up to 5 pages in length on cost on or before January 14, 2005.

SNOWIE J.

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