D.L.S. v. D.E.S., 2001 ABQB 562

Date: 20010628
Action No. 4803 97388

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

D.L.S.

Petitioner

- and -

D.E.S.

Respondent

MEMORANDUM OF JUDGMENT
of the
HONOURABLE MADAM JUSTICE J.C. COUTU

APPEARANCES:

Ms. L. Bubel
for the Petitioner

Mr. K. Alyluia
for the Respondent

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INTRODUCTION:

[1] D.M.S. is 13 years of age, and her brother, A.J.S., is 8 years of age. Their parents, Mr. D.S. and Mrs. D.S. (Ms. W.) separated on October 27, 1994. A five-day trial was held. I am to decide which parent should have custody of D.M.S. and A.J.S.

PRELIMINARY COMMENTS:

[2] Throughout this trial, there was much conflict in evidence and both parents showed considerable bitterness and resentment toward the other. The S's have been embattled for a long time. There are high levels of mutual distrust.

[3] I realize that what I say at times will be emotionally difficult for the parents to hear. However, I have to decide what is in the best interests of the children and I need to explain my reasons. In doing so, I may have to say unpleasant things about the parents. These comments are not meant to be a personal attack, but only an explanation for my reasons in this difficult case.

[4] Section 16(8) of the ***Divorce Act***, *R.S.C. 1985, c.3* directs that in making a determination about custody the court should take into consideration only the best interests of the children, as determined by reference to the condition, means, needs, and other circumstances of the children.

[5] Section 16(10) of the ***Divorce Act*** directs that I should give effect to the principle that a child of a marriage should have as much contact with each parent as is consistent with the best interests of the children, and for that purpose, the court shall take into consideration the willingness of the person who seeks custody to facilitate as much contact with the other parent.

[6] Also of relevance is s. 16(9) of the ***Divorce Act*** which directs that the court should not take into consideration the past conduct of the parents unless the conduct is relevant to the ability of that parent to act as a parent of the child. This requires me to eliminate in my consideration conduct that may have aggrieved a parent if it has no bearing on the ability to parent.

[7] The positions of the parents and their wishes to have their rights enforced are not paramount. The focus is on the children.

[8] D.M.S. and A.J.S. have experienced unusual difficulties due to the bitter and continuous battle over custody and access that the S's have waged in front of them for the better part of their lives. Irrespective of all of these difficulties, D.M.S. and A.J.S., at this time, are pleasant and well-adjusted children. However, I have no doubt, that if the conflict between the S's continues, the children will eventually be affected, as has already occurred with one of the older children, S.S.

[9] In 1996, a psychologist, Dr. H., did an assessment in this case. Unfortunately, his predictions regarding S.S. have come true. At p. 9 of his report he stated:

> In the final analysis the one undisputed conclusion to be drawn from a review of the history of this matter is that these children have been exposed to instability, marital discord and family disruption all of their lives, and the psychological damage which they have sustained thus far will become increasingly apparent in the years to come.

[10] In December 2000 another psychologist, Dr. C., did an assessment. His report suggests that now it is D.M.S. and A.J.S. who are beginning to suffer the effects of the S's battle. At p. 4 of his report he states:

> At this point both parents show exceptionally negative attitudes toward one another. The children are also aware of these behaviours in their description of both parents fighting whenever they are together. The parents both have made many serious allegations regarding each other. . . .
>
> While D.M.S. and A.J.S. are seen to be basically healthy emotionally at this point, ongoing tensions will gradually wear away at both children's feelings of safety and at their feelings of self-esteem. . . .
>
> The tension between their parents is taking a toll on the children, with them showing signs of either insecurity or of not fitting into either family.

DECISION:

[11] For the reasons outlined below, I am of the view that it is in the best interests of D.M.S. and A.J.S. that sole custody be granted to Mrs. S. and that their principal residence be with Mrs. S. Mr. S. will have access as specified.

[12] I did consider whether I should award joint custody with the principal residence of the children with Mrs. S. However, based on the evidence that I have heard, the S's, and in particular Mr. S., have not shown the ability to make joint decisions and communicate concerning the children. Therefore, I have not ordered joint custody as I do not believe it would be in the children's best interest. In my opinion, based on the history of this case, it would "fuel" the disputes. There is a high level of mutual distrust and joint custody will lead to continuing disagreement on decisions concerning the children, which is not in their best interest.

THE HISTORY OF THIS ACTION AND THE EVIDENCE AT TRIAL:

[13] The evidence at trial demonstrated that many of Mr. S.'s allegations in Affidavits, filed in the last six years, turned out to be unsubstantiated or false which impacted on his credibility.

[14] In this judgment I will not refer to all incidents and allegations that I heard about at trial, as that would be a monumental task.

[15] When Mrs. S. was 12 years of age she met Mr. S. who was 17 years of age. Shortly after they met, he rented a motel room, a sexual encounter took place, and a sexual relationship ensued. Eventually, Mrs. S. became pregnant and on February 7, 1981 the S's married. At that time Mrs. S. was 17 and Mr. S. was 22. Their first child, N.S., was born three months after the marriage, on May 14, 1981.

[16] Subsequently, three other children were born, S.S. - March 11, 1983; D.M.S. -June 19, 1988; and lastly, A.J.S. September 21, 1993.

[17] Throughout the marriage there were difficulties. Mrs. S. left the marriage approximately seven times prior to leaving for good on October 27, 1994. Mrs. S. maintains that Mr. S. was controlling and domineering and that she had no say in anything. She was not allowed to work outside the home. Mr. S. decided who her friends could be and he did not like her to visit her family as he did not like them. Mr. S. denies these allegations but agreed that Mrs. S. left the marriage seven times.

[18] On October 27, 1994 Mrs. S. left the matrimonial home with the children and went to her sister's home in W. On November 1, 1994 Mrs. S. filed for divorce seeking custody of the children with access to Mr. S. At that time, N.S. was 13, S.S. 11, D.M.S. 6, and A.J.S. 15 months.

[19] It appears that custody and access problems arose from the very beginning. On December 3, 1994 Mr. S. refused to return the three children to Mrs. S. after an access visit. (S.S. had remained with Mrs. S.). Although throughout the marriage, Mrs. S. stayed home and was the primary caregiver for the children, Mr. S. maintained that Mrs. S. could only have access supervised by him. (*He continued to maintain that position over the years and at trial.*)

[20] On December 7, 1994 Mr. S. counter-petitioned for divorce and sought custody of the children.

[21] On January 10, 1995 Mrs. S. filed an Affidavit for custody and deposed that she had asked Mr. S., on many occasions, to see the children, but Mr. S. refused unless her visits were supervised. Even at Christmas of 1994 she was denied access. (*At trial, Mrs. S. testified that for years she did not have access at Christmas, Easter or extended periods in the summer.*)

[22] On January 10, 1995 Mr. S. filed an Affidavit contesting Mrs. S.'s custody application. Mr. S. deposed that on December 3, 1994 when he went to pick up the children at the residence of Mrs. S.'s sister; her sister's husband assaulted him. Mr. S. went to the R.C.M.P.

demanding that an assault charge be laid. (*This is the first of many requests by the S's for R.C.M.P. involvement.)*

[23] On December 3, 1994 Mr. S. called the R.C.M.P. again, this time, alleging that Mrs. S. refused to give him the children's diabetic logbooks.

[24] In para. 7 of his January 10, 1995 Affidavit, Mr. S. deposed that on November 28, 1994 he was advised by N.S. that Mrs. S. was working late at a video store and that "the children and their cousins had no adult supervision for approximately four hours". (*It turns out that the children in fact had a 16 year old babysitter*.)

[25] In a January 16, 1995 Affidavit Mr. S. maintained that Mrs. S. "has trouble coping with the stress of attending to the children's medical concerns". (*This was to be a recurring theme over the next seven years.*) Both S.S. and D.M.S. are diabetic. Mr. S. stated "over the last couple of years it has been I who has attended to their medical concerns." (*At trial, Dr. F. testified that prior to the S's separation it was always Mrs. S. who brought the children to see him. Further, Mrs. S. attended all of the course training for diabetic children, whereas Mr. S. attended only part of one session.*)

[26] On February 2, 1995 an Interim Interim Order granted custody of N.S., D.M.S. and A.J.S. to Mr. S. and custody of S.S. to Mrs. S. The Order provided that Mrs. S. was to have access to the children, every second weekend, from 6:30 p.m. on Friday to 5:00 p.m. on Sunday. Mr. S. was to have access to S.S. every second weekend from 6:30 p.m. on Friday to 5:00 p.m. on Sunday. Further, the Order provided that Mrs. S. was to make her home as smoke-free as possible. The interim application for custody was set for February 17, 1995.

[27] On February 17, 1995 Mr. S. swore an Affidavit and attached a handwritten note by S.S., who was 11 years old at the time, alleging that the children wanted to live with him.

[28] Prior to the February 17, 1995 application, Mrs. S. moved back to Edmonton (from W). She testified that she did so on the advice of her lawyer as she did not want to jeopardize her custody application.

[29] On February 17, 1995 the court granted Mrs. S. interim custody of D.M.S. and A.J.S. The court granted the S's interim joint custody of N.S. and S.S. and ordered that N.S. and S.S. could choose whom they wanted to live with. (N.S. chose to live with Mrs. S. and S.S. chose to live with Mr. S.) Mr. S. was granted access to D.M.S. and A.J.S., every second weekend, from Friday, 6:30 p.m. to Sunday at 5:00 p.m. The court ordered that if Mrs. S. was working, Mr. S. should babysit the children. (*This clause became a source of contention as Mr. S. later alleged that on occasion he found out the children were at their grandmother's when Mrs. S. worked.*) The court ordered that the children's diabetic glucometer readings were to be given to the other parent on access visits.

[30] On May 16, 1995 Mrs. S. swore an Affidavit in support of an Order to revisit the terms of the February 17, 1995 Order and to require Mr. S. to give her the children's clothes and crib. She deposed that Mr. S. refused to provide S.S.'s glucometer readings; was consistently late in picking up the children and returning them which required her to call her mother to babysit so she could get to work on time; Mr. S. kept his voice mail on at all times and would not return calls; Mr. S. refused to give her the crib for A.J.S. and the children's clothing; and Mr. S. after being evicted from his rental residence for failure to pay rent refused to provide her with a new address or telephone number. (*Mrs. S. testified to all of these matters at trial. Since 1995 most of the matters Mrs. S. complained about in the Affidavit continued to cause problems between the S's.)*

[31] In a May 16, 1995 Affidavit Mrs. S. deposed that S.S., who at the time was living with Mr. S., was not getting to school on time. Exhibited to her Affidavit was a May 2, 1995 letter from the school principal at M.C.S. which stated:

> I am viewing S.S's late arrival at school with increasing concern. She has now accumulated nine late arrivals and has only to acquire three more lates and she will be put on official probation.

(*This is noteworthy, as Mr. S. maintains S.S. had no problems while in his care and that all of S.S.'s later problems were due to Mrs. S.'s lack of discipline.)*

[32] In the May 16, 1995 Affidavit Mrs. S. deposed that Mr. S. was convicted of driving without a driver's license on April 18, 1995. (*At trial, Mr. S. agreed he had been convicted but said that on appeal the conviction was set aside.*) Mrs. S. also deposed that Mr. S. was charged with break and enter and theft as a result of an incident, in early May 1995, in her home. (*At trial, Mrs. S. testified that Mr. S. entered her residence and took a statue which was located on a shelf by the door. Mrs. S. testified that, after the court proceedings, the police returned her statue. Mrs. S. testified that Mr. S. was angry that she would not return some of the household goods she took upon separation and she believes, to retaliate, he took her statue. Mrs. S. said N.S. would have to testify at the trial so she dropped the matter. Mr. S. testified that he was acquitted of the charge*.)

[33] On July 12, 1995 Mr. S. swore an Affidavit in support of an Order to have Mrs. S. cited in contempt of court and to vary the interim custody of D.M.S. Mr. S. maintained, based on D.M.S.'s "self-monitoring diary" that, since February 17, 1995, when D.M.S. went to live with Mrs. S., on many occasions her blood-sugar levels were in the danger range. Mr. S. deposed that Mrs. S. denied him access on different dates and that she did not always allow him to babysit when she was working. (*Mr. S. from 1995 - 1997 was babysitting as he was on social assistance as he said he could not work due to injuries sustained in a car accident.)*

[34] Mrs. S. stated that the reason for the denial of access on the various occasions from early May 1995 to the end of June 1995 was the bail condition relating to the theft charge prohibiting contact between the S's. (*The conditions were changed at the end of June 1995.*)

[35] In the July 12, 1995 Affidavit Mr. S. deposed that D.M.S. was "expected to share a bed with her half-brother, Sean Haddow, a 23 year old man with a criminal record for assault who is an abuser of drugs and alcohol." (*Mrs. S. testified that D.M.S. did not share a bed with Mr. Haddow.*)

[36] On July 24, 1995 the court adjourned Mr. S.'s application for variation of custody of D.M.S., pending examination of D.M.S. by Dr. Cr. The court ordered Mr. S. to provide his phone number to Mrs. S. so that she could communicate with the children.

[37] On June 3, 1996 Dr. H. provided his assessment report. He recommended Mr. S. have custody and Mrs. S. have access every second weekend. I will address this report later.

[38] On September 10, 1996 Mrs. S., without a court order, agreed that the children, with the exception of S.S., could reside with Mr. S. Mrs. S. returned to W and accepted a promotion offered by her employer. (*At trial, Mrs. S. explained that there was constant fighting over the children. Mr. S. had the right to babysit if Mrs. S. was working so their contact was frequent. She said that on every occasion he would berate her. Mrs. S. said "this bouncing back and forth and fighting was hard on the children so I decided I may as well let the children live with Mr. S.". Mrs. S. testified that Mr. S. said she could have access every second weekend and she thought she would. Mrs. S. frankly admitted that after the separation she was suffering from depression and was in counselling.*)

[39] On December 13, 1996 Mrs. S. swore an Affidavit in support of a Motion for custody. In her Affidavit, she deposed that Mr. S. had agreed that she could have access to the children every second weekend. However, Mr. S. now insisted she could not pick up the children at his home and the little access she did have was arranged at a mall. Mrs. S. deposed that Mr. S. had refused access five weekends in a row and she had not seen the children for ten weeks. (*At trial, Mrs. S. testified to these access problems*.)

[40] On December 20, 1996 Mr. S. filed an Affidavit in support of a Motion for custody and maintenance. He denied that he had refused access. He maintained that on different occasions he told Mrs. S. to pick up the children from soccer practise or the mall and she did not show up. In para. 16 Mr. S. alleged: "the abandonment by the Petitioner of the children while she is gone for days to a week leaving the children alone." (*At trial, I heard no evidence of abandonment.)* Mr. S. deposed that on one occasion D.M.S. was hospitalized for the "flu" therefore there was no access. *(At trial, Mr. S. made a big deal out of D.M.S. being hospitalized for the "flu" while in Mrs. S.'s care and he suggested it was due to lack of medical care. Yet, it appears, D.M.S. had the "flu" while in his care.*)

[41] On January 13, 1997 Mr. S. filed a Motion to cite Mrs. S. in contempt and for custody of S.S. and maintenance.

[42] On January 14, 1997 the court granted Mr. S. custody of N.S., D.M.S. and A.J.S. Mrs. S. was granted access every second weekend from 8:00 p.m. on Friday to 5:00 p.m. on Sunday. It was ordered that, during her access, Mrs. S. could not leave the children in the care of any other person if she worked; rather the children were to be returned to Mr. S.

[43] Two weeks later, on January 31, 1997 Mr. S. filed an Affidavit in support of a Motion to have Mrs. S.'s access supervised. Mr. S. maintained that Mrs. S. was not looking after the children's health. Further, Mr. S. complained that on occasion Mrs. S. worked and did not return the children to him.

[44] On February 11, 1997 Mrs. S. filed a Motion to cite Mr. S. in contempt for denial of access and seeking custody. On February 12, 1997 Mr. S. filed a Motion to cite Mrs. S. in contempt and for an Order directing Mrs. S. to accept his collect calls when he phoned the children. Both of them filed Affidavits by others saying they waited at the drop-off point to exchange the children and no one came.

[45] On April 7, 1997 Mrs. S. called Mr. S. to come and get S.S. to reside with him. Apparently, on April 1, 1997 S.S. ended up in the hospital with a serious diabetic reaction. S.S. was using drugs and alcohol and was not following her diabetic diet. (*At trial, Mrs. S. was honest. She admitted S.S. was out of control and was involved with teenagers who were not a good influence. Mrs. S. testified that she hoped Mr. S. would help and she thought that Mr. S.'s strict discipline may be what S.S. needed.)*

[46] *Mr. S. wasted no time using this new information*. On April 11, 1997 he swore an Affidavit in support of a Motion to cite Mrs. S. in contempt and to give him custody of all the children. (*Apparently, after Mrs. S. called Mr. S., S.S. refused to go to her dad's. S.S. alleged in the past Mr. S. had molested her and that he hits her and her siblings with a belt. S.S. and Mrs. S. met with a social worker in an attempt to address S.S.'s problems.*)

[47] On April 15, 1997 Mr. S. filed another Motion to deny Mrs. S. access to D.M.S. and A.J.S. until his application for variation of custody of S.S. was heard. On April 21, 1997 the court denied Mr. S.'s applications for contempt, for custody of S.S. and to vary access to D.M.S. and A.J.S.

[48] On September 1, 1998 Mrs. S. filed an Affidavit in support of a Motion that a case management judge be appointed. In her Affidavit Mrs. S. deposed to continuing problems she had in exercising access and deposed that she had only seen the children on only four occasions since the April 17, 1997 Order despite her entitlement to access every second weekend. (*At trial, Mrs. S. testified to the access problems.*)

[49] On September 17, 1998 a case management judge was appointed. The case management judge ordered a medical report on S.S. On November 3, 1998 Mrs. S. filed a Motion for an updated custody assessment by Dr. H.

[50] On November 18, 1998 Mr. S. filed a Motion seeking an Order that Mrs. S. have supervised access; that she have no overnight access; that he have custody of S.S. and he contested the request for an updated assessment.

[51] On December 19, 2000 Mr. S. sought the court's permission to take D.M.S. and A.J.S. on a vacation to California, from December 28, 2000 to January 9, 2001. Mr. S.'s Affidavit deposed that he had purchased airline tickets and accommodations to go to Disneyland, California. Mrs. S. contested the application as she was concerned about the children missing school, as D.M.S. had missed quite a few days due to sickness. The court granted Mr. S.'s application. (*At trial, Mr. S. admitted the children did not go to California. Nevertheless, Mr. S. did not return the children to school until January 9th. Mr. S. did not inform Mrs. S. that the children were in Edmonton. Mr. S. maintained the trip was cancelled as his employer would not allow him to take time off work. Mr. S. did not explain why the children did not go with Ms. D. (Mr. S.'s girlfriend) and her children who apparently took the trip. Nor did Mr. S. explain why he did not get approval from his employer before he bought the tickets.*)

[52] Mrs. S. was continuing to have problems with S.S. and she told S.S. if she did not follow her mother's rules she would have to live with her father or go to a foster home. Mrs. S. called Mr. S. to come and take S.S. to live with him. S.S. lived with him from January 7, 1999 to February 11, 1999.

[53] On February 17, 1999 Mr. S. filed an Affidavit in support of a Motion for interim sole custody of all the children and to have S.S. put in a secured facility. Mr. S. deposed in his Affidavit:

> On February 11, 1999 Child Welfare had to become involved as the child was being lured by her past to run to Winnipeg, Manitoba. The involvement in drugs and sex by these males were as a result of the lack of care by the Petitioner. . . .

(*The evidence at trial was that S.S. was removed from Mr. S.'s residence by Social Services. Apparently, S.S. called Social Services alleging that Mr. S. was using the belt on A.J.S. and her. S.S. was placed in a foster home but shortly thereafter returned to live with Mrs. S.*)

[54] On February 18, 1999 the court dismissed Mr. S.'s applications. The court ordered an updated assessment; ordered Social Services to become involved; and ordered Mr. S. to facilitate access.

[55] On February 16, 2000 Mr. S. filed a Motion for child support and for an Order that Mrs. S.'s access be limited to daytime access. In Mr. S.'s February 15, 2000 Affidavit, in paras. 5 - 10 he deposed:

> . . .The Petitioner has consumed excessive amounts of alcohol during access rendering her incapable of providing adequate supervision for the children. (*At trial, there was no evidence whatsoever to substantiate that allegation.*)

> The Petitioner, of her own choosing, has not exercised alternate weekend access to D.M.S. and A.J.S. since June 1999. (*At trial, evidence was that Mr. S. would not give Mrs. S. unsupervised access.*)
>
> . . .The Petitioner has lived in approximately 15 different homes, she has held at least 7 different jobs and been unemployed at various times, and she has had several relationships and lived with several different men at any given time. (*The evidence at trial establishes that Mr. S.'s allegations were exaggerated.*)

[56] In that same Affidavit, in para. 9, Mr. S. alleged that Dr. H.'s updated assessment was not completed due to Mrs. S.'s not contacting Dr. H. Further, Mr. S. alleged that Mrs. S. had requested the update merely to delay the divorce. (*At trial, evidence established that Dr. H. declined to do an update as Mr. S. refused to pay his share of Dr. H.'s account for the original assessment. Dr. H. was concerned he could be accused of lack of objectivity due to this nonpayment.*)

[57] On March 24, 2000 the court ordered Mrs. S. to pay $225 per month to Mr. S. for the maintenance of D.M.S. and A.J.S. Her request to have Mr. S. pay maintenance for S.S., who was 17 and attending school part-time, was denied. The court ordered that Mrs. S. would have access to D.M.S. and A.J.S. two weekends per month from Saturday noon to Sunday 5:00 p.m. Mrs. S. was to provide written notification to Mr. S. by ordinary mail, by the 10th of each month, as to which access weekends she selected in the following month. (*This clause later became problematic*.) The court also ordered that Mrs. S. have telephone access, two evenings per week, and unlimited telephone access at the children's initiative. An updated assessment was ordered.

[58] Pursuant to the above Order, Mrs. S. gave notice on March 24, 2000 that she wanted her access weekends to be April 8th & 9th and April 15th and 16th, 2000. Mr. S. immediately contested these chosen dates as he maintained that on April 8th and 9th the children were attending a youth concert and that on April 16th at 1:00 p.m. A.J.S. had a graduation ceremony. (*At trial, the evidence disclosed that at that time A.J.S. was six years old and this was a "graduation" from some club that he belonged too.*)

[59] Another court application was required. Mrs. S.'s Affidavit of April 5, 2000 deposed that she tried many times to phone the children but no one answered the phone. Mrs. S. deposed that the weekends she had selected were the weekends she could get off work.

[60] On April 7, 2000 the court *reiterated* that Mrs. S.'s access weekends were to be those which she chose and that Mr. S. was to abide by those dates. The court set specific times for Mrs. S. to call the children. The court ordered that on April 16th, 2000 Mrs. S. was to return the children by 11:00 a.m. so that A.J.S. could attend the graduation at 1:00 p.m. The court ordered the S's to attend the Parenting After Separation course. (*At trial, the evidence was that Mrs. S. attended but Mr. S. refused to attend.*)

[61] On May 25, 2000 the S's were divorced. Mrs. S. agreed not to appeal so Mr. S. could remarry, on May 27, 2000. He did remarry on that date. (*Two weeks later Mr. S. and his second wife, Ms. D., separated. Later they reconciled for a couple of months and separated again.*)

[62] Mrs. S. exercised her access in June and at least one weekend in July. Thereafter, Mrs. S. did not have access and was unable to contact Mr. S.

[63] On September 7, 2000 Mrs. S. filed an Affidavit in support of an Ex parte Order that Mr. S. be cited in contempt or that she be given custody. She deposed (and testified at trial) that she became aware that after Mr. S.'s marriage in May 2000 he moved. She asked him for his new address so she could mail her notice of her selected access weekends. Mr. S. refused to give her his address. Mrs. S. asked her lawyer to write Mr. S.'s lawyer for the address. Mr. S., through his lawyer, provided an address of RR #2, Edmonton, Alberta. Mrs. S. telephoned Canada Post and they told her the address was incomplete and there was no such address. The only telephone number that Mrs. S. had was Mr. S.'s old telephone number which was voice-mail only. Mrs. S. left numerous messages for Mr. S. to call her so she could exercise access. He never returned her calls.

[64] *At trial, a letter was entered showing Mr. S.'s lawyer provided the RR #2 address. Further, a copy of that letter was sent to Mr. S. Mr. S. maintained that he had no idea where his lawyer got that address. He said he did not provide that address. Mr. S. acknowledged that his phone number was only a voice-mail number and that Mrs. S. could not speak to him. Phone records entered at trial establish that Mrs. S. called Mr. S. many times in August. Mr. S. maintained he called Mrs. S., however, phone records do not establish this.*

[65] Mrs. S. continued to try and contact Mr. S. Mrs. S. testified that at one time she had Ms. D.'s phone number. However, after placing some calls there Mr. S. or Ms. D. blocked Mrs. S.'s number. Mrs. S. borrowed a friend's cell phone and got through to Ms. D. It was then that Mrs. S. discovered that two weeks after the marriage, Mr. S. and Ms. D. had separated and Mr. S. and the children were no longer living at Ms. D.'s residence. Mrs. S.'s lawyer wrote to Mr. S.'s lawyer for a new address and telephone number. None was provided. Mr. S.'s lawyer filed a Notice of Ceasing to Act on July18, 2000. (*Over the six years many lawyers acted for Mr. S. and many ceased to act for him.*)

[66] In Mrs. S.'s September 7, 2000 Affidavit, she deposed (and at trial she testified) that she had not seen the children since July 2000. She deposed that on four different occasions she went to Tim Horton's to pick up the children but Mr. S. did not show up. She did that as she said she sent notice to the RR #2 address and is certain the previous month she also hand-delivered her notice, as she did both procedures in the previous months.

[67] On September 7, 2000 an Ex parte Order was granted giving Mrs. S. custody of D.M.S. and A.J.S. The Order provided that the R.C.M.P. could assist in enforcing the Order.

[68] Mrs. S. continued to try and locate Mr. S. She phoned the church and school that the children attended. She was told the children were not returning to M.C.S. but would be attending V.S. (*Mrs. S. testified she understood their school fees had not been paid so the school asked the children to leave. Mr. S. maintained the children were going to change schools as their new school would be closer to his new job.*)

[69] On September 10, 2000 Mrs. S. went to V.S. to see if the children were there. By chance, Mrs. S. ran into Mr. S. and the children. Mr. S. was registering the children (the children had not yet started school.) Mrs. S. served Mr. S. with the September 7, 2000 Order and demanded he give her the children. Mr. S. took off in his vehicle with the children. From September 10, 2000 to October 1, 2000 the children did not attend school. Mrs. S. tried to locate them. She and the police finally located Mr. S. and the children at church on October 1, 2000.

[70] On October 1, 2000 when the children were returned to Mrs. S. they only had the clothes on their backs. Mrs. S. repeatedly asked Mr. S. to send the children's clothing. Mr. S. refused to send the clothing (except for two shirts and a pair of sweat pants for D.M.S.). Mrs. S. had to purchase new clothing for the children, from underwear to winter boots and outwear. She could not afford it so her sister paid for most of the clothes.

[71] On October 20, 2000 Mr. S. filed a Motion and Affidavit to set aside the September 7, 2000 Order. Mr. S. maintained that Mrs. S. did not give him written notice of her request for access for the month of August. Mr. S. deposed and denied that Mrs. S. left numerous messages on his answering machine. (*At trial, phone records show that Mr. S.'s statement is false.*) In his Affidavit Mr. S. contested Mrs. S.'s allegation that in 1993 he went to jail for embezzling $53,000 from his employer. Mr. S. deposed: "The charge was theft for $10,000." (*At trial, the evidence established that it was $53,000 that Mr. S. stole.*)

[72] In his October 20, 2000 Affidavit, Mr. S. deposed "the Petitioner is presently in her seventh live-in affair since the breakdown of the marriage. . . " (*At trial, this allegation was shown to be false. Mrs. S. lived with one man prior to her current common-law relationship*.) Mr. S. deposed that Mrs. S. gained illegal access to his home between March 18 - 30, 2000 and took documents. (*At trial, Mr. S. said it was a Crown Prosecutor's information sheet that Mrs. S. stole. At trial it was established that it was Mrs. S.'s lawyer who obtained the information from the Crown. Further, there was no evidence that Mrs. S. gained illegal access to Mr. S.'s residence.*)

[73] In the October 20, 2000 Affidavit, in para. 20, Mr. S. deposed: "The Petitioner has long been associated with individuals involved with drugs and alcohol." (*At trial, there was no evidence whatsoever to substantiate this allegation.*)

[74] In the October 20, 2000 Affidavit, in paras. 28 to 30, Mr. S. deposed that the children's school had been M.C.S. for many years and it would be detrimental for them to change

schools. (*At trial, it was established that Mr. S. deceived the court, as on September 10, 2000 Mr. S. had registered them in a new school, V.S.*)

[75] In Mr. S.'s October 20th, 2000 Affidavit, para. 32, he deposed that: "On October 1, 2000 the children were forcibly removed from my care by Edmonton Police Services at our church which undoubtedly traumatized the children." (*Mr. S. fails to appreciate that had he abided by the court Order police assistance would not have been necessary.*)

[76] On October 26, 2000 Mr. S. filed another Affidavit. In para. 5 he admitted that on February 22, 1999 he was charged with stealing money (between September 1998 to October 1998) from his employer the Alberta Association for Community Living. However, he said he was acquitted and that "the incident resulted from an employer/employee disagreement." He admitted that on May 6, 1999 he was charged with failing to attend court, however, he said he was acquitted.

[77] On October 26, 2000 Mr. S. applied to set aside the Ex parte Order that had changed custody to Mrs. S. The court ordered that Dr. S.C. should mediate and do an assessment. The matter was to return to court on November 29, 2000. In the meantime the court ordered that the children would remain with Mrs. S. and that Mr. S. would have specified access commencing October 27, 2000 at 7:00 p.m. The Order provided that Mr. S. was to pick up the children at Robin's Donuts in W and that Mrs. S., after the access, would pick up the children at Tim Horton's in Edmonton.

[78] The first access visit was problematic as Mr. S. did not abide by the times set out in the court Order. Mrs. S. testified that on October 27, 2000 at 7:00 p.m. she brought the children to Robin's Donuts in W and waited for Mr. S. They waited until 7:50 p.m. and Mr. S. did not show up. Mrs. S. telephoned the R.C.M.P. to tell them she was at the location as she wanted the police to know that she was not in breach of the Order. Mrs. S. returned back home at 8:00 p.m. Shortly thereafter, Mr. S. called from Robin's Donuts and wanted to pick the children up. Mrs. S. had to return to Robin's Donuts.

[79] Further, on Friday, October 27, 2000 it was D.M.S.'s first school dance at her new school and D.M.S. really wanted to go. Mrs. S. telephoned Mr. S. and asked whether D.M.S.'s access could be on Saturday, as she wanted to go to the dance. Mrs. S. even offered that A.J.S. go on Friday with Mr. S. and that she would drive D.M.S. to Edmonton on Saturday morning. Mr. S. refused. Mrs. S. testified that D.M.S. was disappointed she could not go to the dance.

[80] That same weekend, on October 29, 2000, Mrs. S. drove to Edmonton to the Tim Horton's location to pick up the children. She testified that the children had not had supper and D.M.S. had not had her 6:00 p.m. insulin injection. D.M.S., being diabetic, is supposed to eat at 6:00 p.m. Mrs. S. had to delay her return to W to get something for the children to eat and do the insulin injection. (*At trial, the evidence was that this occurred on more than one occasion. Yet, Mr. S. was the one constantly alleging Mrs. S. neglected the children's health.*)

[81] The second access visit was also problematic. On the morning of Friday, November 10, 2000 Mrs. S.'s lawyer phoned her to tell her that Mr. S.'s lawyer called as Mr. S. wanted to change the terms of the court Order. He wanted Mrs. S. to deliver the children to Edmonton and he would return them to W. Mr. S. said he could not pick up the children due to work commitments. Mrs. S. told her lawyer she could not drive the children into Edmonton as she was scheduled to work. Mrs. S. suggested that Mr. S. have his father pick up the children. Alternatively, Mrs. S. suggested that Mr. S. pick up the children on Saturday morning. Then, just prior to Mrs. S. leaving for work, Mr. S. called and said that he would pick up the children at 9:15 p.m. Mrs. S. said that she was leaving for work and as the drive to Edmonton was two hours, it was too late to pick up the children. Mrs. S. again suggested that Mr. S. pick up the children on Saturday. Mr. S. did not pick them up on Saturday.

[82] On November 29, 2000 the matter came back to court. The Interim Order was renewed until December 19, 2000. In the meantime, the Order provided that Mr. S. would have specified access. The S's were to meet for the last mediation session with Dr. C. on Friday, December 15th at 4:15 p.m. Therefore, the plan was that Mrs. S. would bring the children to Dr. C.'s office as Mr. S.'s access commenced at 5:30 p.m. on December 15th.

[83] Mr. S. refused to attend the last scheduled mediation session. Therefore, Mr. S. told Mrs. S. to bring the children to the Tim Horton's location in Edmonton at 5:30 p.m. on December 15th. Mrs. S. and the children arrived at 5:30 p.m. and waited until 6:30 p.m. Mr. S. did not show up nor did he call. Mrs. S. had a free pass for golf at the West Edmonton Mall so she took the children to the Mall. As she and the children were walking toward the mini golf, by pure chance, she ran into Mr. S., Ms. D. and her two children. Mrs. S. asked Mr. S. why he did not come to pick up the children. He told her that he had sent "someone" to pick them up but he would not say who that person was. The children went with Mr. S.

[84] On December 17th the children were to be returned at 5:30 p.m. Mr. S. never returned the children until 7:30 p.m. Mrs. S. testified that again the children had not eaten.

[85] On December 19, 2000 the matter came back to court. The court ordered that until trial, the S's would have joint custody of the children but they would live with Mrs. S.

[86] On November 18, 1998 the court dismissed Mr. S.'s applications and ordered that Dr. H. update his custody assessment. Mr. S. alleged that smoking was particularly detrimental to D.M.S. due to her diabetes; he alleged concern that the children were being introduced to Mrs. S.'s different boyfriends and he insisted if Mrs. S. worked he should be allowed to babysit the children. Pending the updated assessment the court ordered that Mrs. S. have access to D.M.S. and A.J.S. every second weekend but during access Mrs. S. could not have any boyfriends present, could not work and could not smoke in her home. Further, the court ordered that Mrs. S. had to drive from W to Edmonton for both pick-up and drop-off of the children.

[87] After December 19, 2000 Mr. S.'s counsel ceased to act. On January 23, 2001 Mr. S. was self-represented and he filed an Affidavit in support of a Motion to set aside the previous

court Order. He wanted sole custody and he wanted Mrs. S. to exercise her access in Edmonton.

[88] Mr. S.'s January 23, 2001 Affidavit is again telling of Mr. S.'s attitude. Some paragraphs of that Affidavit are as follows:

> #7. The Respondent at this time commenced a relationship with the first of seven affairs with different men.
>
> #8. The Respondent had further conducted a litany of malicious and criminal prosecutions that continues against the Petitioner through the courts, my employers, finances, and the breaking into the homes of the Petitioner stealing documents and mail. (*Mrs. S. testified she never called Mr. S.'s employer as he always withheld information about where he worked, so she never knew where he worked.*)
>
> #9. . . . On January 21, 2001 A.J.S. was complaining of pain in his penis. Upon taking him into the bathroom and having him pull down his pants I discovered that his penis was severely swollen and affected. . . . We took A.J.S. to the hospital for an examination and treatment. . . . The child's personal hygiene and care were not being maintained while in the care of the mother as A.J.S. had indicated he is bathed once a week. (*Mrs. S. testified that A.J.S. is not circumcised and the doctor told her that sometimes this creates problems. At trial, a letter from the doctor was produced wherein he recommended that A.J.S. be circumcised.*)
>
> #11. As a result of Mrs. D.L.S. refusing to disclose the serious nature of the problem of the child (S.S.) and her involvement in alcohol, drugs and sex by teenage and adult males with my daughter. S.S. has been left alone to live in the mother's residence or running the streets as the Petitioner has been living with other adult males.
>
> #15. The children were placed into and environment for which she is shacked up with a 25 year old man who lives with his parents and the Respondent is 38 years old. I am also informed by the children that the Respondent is three months pregnant. The Respondent has been involved in seven different live-in relationships and has resided in more than 15 different residences through four different cities in the past seven years. (*At trial Mr. S. seemed to think it was significant that Mrs. S.'s boyfriend is younger than her. Yet, Mr. S. was five years older than Mrs. S. Further, I never did hear how old Ms. D. was. Many of Mr. S.'s other allegations were not substantiated at trial.)*
>
> #16. I continue to maintain and court records support my grave concerns over her ability to care for the medical, welfare and the fears the children have expressed by the men she keeps company. (*At trial, I never heard any evidence of any fears the children expressed about the men in Mrs. S.'s life.*)

[89] On January 23, 2001 the court dismissed Mr. S.'s application to change custody. Specified access was set out for Mr. S. which included an extended period of four days during the teacher's convention and a ten-day period during Easter/Spring break. The court ordered that Mrs. S. was to drive the children to Edmonton at the start of the access period and Mr. S. was to return the children to Robin's Donuts in W at the end of his access. Mr. S. maintained the D.'s (Mrs. S.'s common-law husband, R.D., and his parents) smoked around the children. Mrs. S. denied this. The court ordered the D.'s to provide Affidavit evidence as to their smoking.

[90] On January 31, 2001 the D.'s' all filed Affidavits. Both Mr. and Mrs. D. Sr. deposed that they do not smoke. Mr. D. deposed that he does smoke but not in the presence of the children and that when he does smoke it is outside on the deck.

[91] Since January 2001 S.S. has been living on her own in W. She has upgraded from grande 9 to grade 11 through the H.H.S. program, while working part-time at a restaurant. She plans on returning to school in January 2002. Both Mrs. S. and S.S. testified that S.S. was hurt by Mr. S.'s rejection of her when S.S. decided to live with Mrs. S. Mr. S. no longer had anything to do with S.S. S.S. testified that she was unable to visit her sister and brothers as Mr. S. said "that I was a bad influence on them". S.S. testified that her father told her many times that "you are like your mother's family - trash". S.S. testified that Mr. S. never telephones her and refused to support her financially.

[92] S.S. testified that when she was living with Mr. S. if she did anything to displease him she would get a spanking - many times with the belt. (*Mr. S. denies using physical discipline.*) In cross-examination of S.S. it was suggested she must have some positive memories of things she did with her father such as picnics or going to the movies. S.S. testified that movies were not allowed, that most TV shows were not allowed and she did not recall any activities - outside of church activities - that she did with her father. In S.S.'s words: "I had an unhappy childhood."

[93] S.S. frankly admitted that when she was 15 and 16 she would not listen to her mother. Mr. S.'s counsel suggested that Mrs. S. did not discipline her. S.S. said that although her mother did not physically discipline her she "did not just let us do what we wanted – she had her own way of disciplining". S.S. confirmed that her mother told her that if she did not follow her mother's rules that she would have to move to her father's or to a foster home. S.S. would not listen and eventually Mrs. S. followed through on her threat. S.S. testified that now her relationship with her mother is much better. They meet for coffee on a regular basis. S.S. regularly sees A.J.S. and D.M.S. S.S. said she gets along well with R.D., Mrs. S.'s common-law husband.

[94] On January 29, 2001 Mrs. S.'s counsel served a Notice to disclose financial information upon Mr. S. He refused to disclose and continued to refuse to disclose up to trial. (*Even during the trial the court had to order Mr. S. to produce financial information by the next day*.) Further, in pre-trial conferences Mr. S. was warned that he was to provide copies to Mrs.

S.'s counsel, prior to trial, of any documents he wanted to introduce at trial. (*Mr. S. produced several documents at trial that were not shown to Mrs. S.'s counsel prior to trial.*)

[95] On March 9, 2001 Mr. S. filed an Affidavit which in part stated:

> The week of February 7, 2001 D.M.S. and A.J.S. were to different homes to stay for several days while in Mrs. S.'s care. A.J.S. while in the home with several individuals was assaulted and had his head shaven bald. The incident has been reported to the W R.C.M.P. for investigation and criminal charges. (*At trial, there was no evidence that the children were staying in different homes. The shaving of A.J.S.'s head was explained by S.S. S.S. testified that Mr. S.'s allegations to the police, that she shaved A.J.S.'s head while two other teenagers held him down, were false. With tears in her eyes, S.S. testified that she was hurt that her father would think that of her. S.S. said she was supposed to give A.J.S. a trim and the one side was crooked and she kept trying to fix it and could not so she decided she would give A.J.S. a "buzz cut". She testified that A.J.S. was not upset by the haircut. Mr. S. went to the R.C.M.P. and insisted that an assault charge be laid. S.S. attended at the R.C.M.P. and gave her explanation and no charges were laid. S.S. said that when she read the psychologist, Mr. W.'s, report she noted that Mr. S. continues to make this allegation and S.S. said: "It makes me feel like crap"*.)

[96] Mrs. S. testified that on February 2, 2001 A.J.S. was with S.S. S.S. did cut A.J.S.'s hair and "it was very short but it looked fine". The following weekend was Mr. S.'s access weekend. He was to return the children on Sunday at 5:30 p.m. to Robin's Donuts in W Mrs. S. went to pick up the children but Mr. S. was not there. She found out later that Mr. S. was at the R.C.M.P. detachment in W insisting that S.S. be charged with assault for cutting A.J.S.'s hair. Later, that evening, around 7:00 p.m. Mr. S. dropped the children off about a half a block away from Mrs. S.'s house (without knowing if she was at home to let the children in).

[97] In a March 9, 2001 Affidavit, Mr. S. maintained that Mrs. S. and Mr. D. continued to smoke around the children. (*At trial, Mr. S. maintained that Dr. F. told him: "Smoking will cause further deterioration of diabetics." At trial, Dr. F. was asked about that. He said that second hand smoke is not healthy for anyone but it is not more detrimental for diabetics.*)

[98] In his March 9, 2001 Affidavit, Mr. S. deposed: "The children were ordered to be turned over for access Wednesday, February 14, 2001. The children arrived in Edmonton, Alberta at Tim Horton's at 3:15 a.m. February 16, 2001." (*Mr. S. failed to inform the court that it was at his instance that the children had to travel in the middle of the night for the access visit even though the R.C.M.P. tried to talk some sense into Mr. S. On reading Mr. S.'s Affidavit the judge would wonder why Mrs. S. is bringing the children to Mr. S. at such a late hour. At trial, I heard the reason.)*

[99] First of all, Mrs. S. testified that Mr. S. had the wrong date. It was February 8 - 9, 2000 not February 14, 2001 as this was Mr. S.'s access during the teachers' convention. Mrs. S. said she did not have a copy of the last access order as Mr. S. (who was self-represented) insisted

he would draft the Order, after confirming the teachers' convention date, but he did not. Mrs. S. understood that she was to drive the children to Edmonton and Mr. S. was to pick them up at 5:30 p.m. on February 8, 2001. She arrived at the Tim Horton's location and Mr. S. was not there. She called Mr. S. and left a message. She waited at Tim Horton's until 6:15 p.m. then she took the children to West Edmonton Mall before returning home to W She returned to W around 12:00 midnight.

[100] Upon her return there was a message for her to call Constable C. at the R.C.M.P. detachment. Constable C. told her that Mr. S. wanted her arrested and charged for not bringing the children to Edmonton on the 7th of February. Mrs. S. explained to the Constable that she was positive that she was to bring the children to Edmonton on the 8th. She explained that they just drove back (2 hours) from Edmonton. She said she would drive the children to Edmonton in the morning. Constable C. said he would check with Mr. S. if this was alright. Constable C. called back and said that Mr. S. insisted that the children be returned to Edmonton. Constable C. said that Mrs. S. had to have the children in Edmonton by 3:00 a.m. or she would be arrested. Mrs. S. woke D.M.S. and A.J.S. up and drove back to Edmonton and arrived at about 3:00 a.m.

[101] On March 4, 2001 another nasty incident took place. In his March 9, 2001 Affidavit, in para. 9, Mr. S. deposed to his version of the incident: "On March 4, 2001 upon dropping the children off at the Robin's Donuts in W, Alberta. The Petitioner with her accomplice R.D. attempted to ram my vehicle in front of the Subway location two doors down from Robin's Donuts. R.D. driving the Petitioner's vehicle missed the back door by inches as I was standing on the inside of the door leaning into the vehicle helping A.J.S. gather his belongings together. At which time Mr. D. exited the vehicle jumping me from behind and assaulting me causing injury."

[102] At trial, Mrs. S. and Mr. D. explained what happened on March 4, 2001. Mr. S. was to bring the children to Robin's Donuts at 5:30 p.m. Again, Mr. S. was late and he arrived at 6:10 p.m. Although the court Order directed Mr. S. to drop the children off at Robin's Donuts he continued to park by the Jack Pine Hotel which was a lot away from the Robin's Donuts. In the past, the children would exit and Mrs. S. would get out of her vehicle and walk to meet the children. On this occasion, Mr. S. drove up, stopped and let D.M.S. out of the car. Mrs. S. got out of her vehicle and started walking toward Mr. S.'s vehicle. Mr. S. then started driving backwards. At this point A.J.S. was still in the vehicle. Mrs. S. testified that every time she stopped walking Mr. S. stopped his vehicle. However, as soon as she started walking forwards Mr. S. would back up his vehicle. Mr. D. described it as a "cat and mouse" manoeuver.

[103] Mr. D. testified that he was concerned for Mrs. S. due to her pregnant condition. He decided to put an end to this scenario and drove his car and positioned it behind Mr. S.'s vehicle to prevent him from moving backwards. A confrontation took place and Mr. S. drove to the police station. Mrs. S. and Mr. D. followed him there. Mr. D. was charged with assault and uttering a threat. These charges will be going to trial in the near future.

[104] At trial, Mr. S. admitted that he had stopped and D.M.S. got out. He then said: "Mrs. S. approached the vehicle and I backed the car up". He maintained that he backed up to the adjacent building as "A.J.S. did not have his belongings together".

[105] While Mr. D. was testifying about this incident I observed Mr. S. grinning in a sinister manner. *In my view, Mr. S. deliberately engaged in conduct to provoke Mrs. S. and/or Mr. D. He wanted to cause trouble and he did*. I do not accept Mr. S.'s version that somehow he had to back up his car so that A.J.S. could get his things together. A.J.S. could more easily have gotten his things together, with the assistance of Mr. S., if Mr. S. remained in a stationary position. His version of the events is not credible. I accept Mr. D.'s and Mrs. S.'s evidence as I found them to be credible witnesses. Overall, concerning this incident and others, I did not find Mr. S. to be a credible witness.

[106] On March 14th, 2001 the court ordered that on returning the children Mr. S. must take the children inside Robin's Donuts and leave them seated inside. The Order further provided that, once Mr. S. exits, Mrs. S. may enter to pick up the children. (*Mr. S. has not abided by that court Order*.)

[107] Mr. S. accused Mrs. S. of "stocking" [sic] him. Mrs. S. admitted that on one occasion she did follow Mr. S. for a few blocks after he left Tim Horton's. She said she did this as she believed Mr. S. did not have a driver's license and this concerned her. (*In my view, there was no logical or valid reason for Mrs. S. to have followed Mr. S. on that occasion.*)

[108] Mrs. S. testified that during the years that Mr. S. had custody and she had access she had to drive to Edmonton from W to pick up the children and then had to drive them back to Edmonton after her access. She had to bear the cost of high fuel bills and was paying child maintenance to Mr. S. of $225 per month. (*Although she admitted, at times, she was in arrears*.) Further, she had expensive phone bills as Mr. S. would insist on calling collect to speak to the children. However, since October 2000 when Mrs. S. obtained custody she drives to Edmonton to pick up the children after Mr. S.'s access. Further, Mr. S. has refused to pay her any child maintenance.

[109] Mrs. S. started dating Mr. D. in 1999. Since October 2000 Mrs. S. and Mr. D. live with his parents. The children have their own bedroom. The arrangement is working out well as the house is large. Mrs. S. said: "There were adjustments for all of us. but the children and Mr. D. get along well." Mr. W.'s recent assessment raises no concerns in that regard. Mrs. S. hopes that in the near future she and Mr. D. will buy or rent their own place. Mrs. S. is pregnant and the child is due shortly.

[110] The current report card for D.M.S. states that D.M.S. is a quiet, co-operative student and "seems to be adjusting well". A.J.S.'s report card states that "A.J.S. has adjusted fairly well to his new school. He has made friends and seems fairly comfortable with the learning environment. . . ." Mr. W., the psychologist, at p. 7 of his report said A.J.S. told him that R.D. does "fun stuff" with him. In contrast, Mr. W. did raise concerns in his report, about Ms. D.

and A.J.S.'s relationship. At pp. 7 and 10, Mr. W. stated: "He (A.J.S.) does not get along with Ms. D. but said her spankings do not hurt. . . A.J.S. said he does not get along with Ms. D., thus they seem to have relationship difficulties."

CREDIBILITY OF WITNESSES:

[111] As I stated while reviewing the evidence in this case there are many examples of Mr. S. telling only half the truth, making unsubstantiated and false allegations and telling lies. I do not find Mr. S. to be a credible witness.

[112] Sometimes when witnesses lie it is obvious right from the start. This is not the case with Mr. S. because he was comfortable giving evidence, often lies by leaving out information and he has a good command of the English language. Another reason might be that Mr. S. has convinced himself that what he is saying is the truth.

[113] I found Mrs. S. to give her evidence in an honest and forthright manner. Mr. W., the psychologist who did an assessment in May 2001, also found Mrs. S. "to be honest and straightforward". Dr. C., a psychologist who attempted mediation in December 2000 said: "Ms. W. appeared generally honest and straightforward during her interview. In contrast Dr. C. said: "During his interview Mr. S. was somewhat vague and appeared more interested in presenting his opinion than on answering questions directly." Lastly, I (and Mr. W.) found Mr. D. to be honest and straightforward.

REASONS FOR MY DECISION:

[114] I will now go on to outline my reasons for finding that it is in the best interests of D.M.S. and A.J.S. that Mrs. S. have sole custody.

Which parent is more willing to facilitate contact with the other parent?

[115] An **overriding** factor in granting Mrs. S. custody is that Mr. S., since the 1994 separation, has clearly shown that he is not willing or able to facilitate contact between the children and Mrs. S. As I stated earlier, the ***Divorce Act*** directs judges to give weight to this factor.

[116] In contrast, since Mrs. S. obtained custody in October 2000 she has shown a willingness to facilitate access. In fact, Mr. S. agreed she has never refused him access. I realize that this may be influenced by the fact that this case was going to trial and denial of access would jeopardize her position. However, in the past, there were periods when Mrs. S. had custody of the children and Mr. S. had regular access. Further, Mr. S. had custody and was aware the case was going to trial and it clearly did not concern him that his denial of access

could jeopardize his position. Mr. S. had his chance to prove he can be an accommodating parent and he proved he is unable or unwilling to be that type of parent. *Further, the evidence shows that not only is Mr. S. unwilling to facilitate access he has shown that he is not willing to* ***abide*** *by court orders concerning access.*

[117] Mrs. S. was not working outside of the home for most of the marriage. Obviously, she spent significant time caring for the children. At separation the children were young, ranging in age from 15 months to 13 years of age. It must have been traumatic for them for Mr. S. to restrict their contact with their mother. Yet, *immediately* after separation, Mr. S. took the position that Mrs. S. could not have unsupervised access because he maintained she would not look after the children's medical needs. Yet, the evidence from Dr. F. was that prior to the separation it was Mrs. S. who, for the most part dealt with the children's medical needs. *I am at a loss to understand how separation suddenly rendered Mrs. S. incapable*.

[118] During the years Mr. S. had custody Mrs. S. had minimal access to the children, even at Christmas, Easter and summer holidays. The court ordered that Mrs. S. had the right to select her access weekends. The *first* weekend she selected Mr. S. said the children had plans. However, what is more revealing is Mr. S.'s respect for a court Order reflected in his statement that "these matters (the plans) took priority over any court Order".

[119] Further, the court ordered that the S's attend the Parenting After Separation course. Judges order parents to attend these courses in the hopes that this will educate parents that it is in the best interests of the children that they have maximum contact with both parents. Mr. S. refused to attend the course. This again demonstrates Mr. S.'s lack of respect for court orders.

[120] The facts concerning Mrs. S. not seeing the children in August 2000 clearly demonstrate Mr. S.'s refusal to "facilitate" access. The court ordered that Mrs. S. had to give written notice to Mr. S. by the 10th of each month as to which weekends she wanted to exercise access. Mr. S. moved and did not inform Mrs. S. of his new address. Mrs. S.'s lawyer requested an address. Mr. S. maintains that the address his counsel gave was not an address that he had provided. *Frankly, I don't believe him. Even if there was an error, the fact of the matter is that if Mr. S. was interested in "facilitating" Mrs. S.'s access he would have voluntarily notified her of his change of address as he knew she needed it to give the required notice.*

[121] Further, Mr. S. maintains that Mrs. S. did not give him the required written notice for August access. Mrs. S. said she did give notice. Again, even if Mrs. S. failed to give notice, if Mr. S. was "willing to facilitate access" he would have called Mrs. S. about the access. He knew she was interested as she had exercised access in April, May, June, and July. Further, Mrs. S. left numerous telephone messages on Mr. S.'s answering machine and he never returned her calls.

[122] What is really revealing about Mr. S.'s willingness to abide by court orders is that in September 2000 he took off with the children when he was served with the court Order. I can

understand, although I do not condone, some delay to seek legal advice. However, that is not what Mr. S. did. For over one month he hid the children from Mrs. S. In fact, the children missed one month of school because Mr. S. was hiding the children.

[123] In December 2000 Dr. C. attempted to mediate a resolution between the S's. Mr. S. refused to attend the last session. At trial, Mr. S. said that the meeting would not be fruitful because "due to the malicious and criminal behaviour of Mrs. S., there is no resolution for such nonsense." He made these same comments to Dr. C. This clearly shows Mr. S. does not have a genuine desire to resolve the issues.

[124] Prior to trial Mrs. S. tried to settle and agreed Mr. S. could have custody so long as she had unsupervised access. Mr. S. refused to allow unsupervised access. At trial, Mr. S. maintained he should have custody and that Mrs. S. should have access but subject to conditions (that she could not work during her access weekends and that her relationships with men "would have to be looked at.")

[125] Frankly, I am concerned that no matter what the court orders Mr. S. will continue to wage war with Mrs. S.

[126] The following comments in my judgment are bolded and they are bolded for a purpose. **I want to emphasize to Mr. S. that if he continues to refuse to abide by the times and other terms set out in the access order; and if he continues to engage in conduct to deliberately cause access problems (such as the "cat and mouse" game on March 4, 2001), the court, in the future, will have to assess whether his access is consistent with the best interests of the children.**

Religion and Morality:

[127] Throughout the trial Mr. S.'s position was that he should have custody as he was more "religious and moral" than Mrs. S. Mr. S. is currently a member of the V.C., (before it was B.A. and before that F.E.M.C.), and regularly attends church. Mrs. S. does not regularly attend any church.

[128] As one author stated "Religion is what you do when the sermon is over with". Mr. S.'s conduct after the sermon is over with is not better than Mrs. S.'s. It is Mr. S. who has the criminal record: 1978 - false pretences; 1978 - fraud; 1993 - theft ($53,000); and 1996 - fraud. It is Mr. S. who refuses to abide by court orders. In fact, the church is where the police finally found him with the children to enforce the court Order in September 2000.

[129] I am not discounting there may be a positive effect from the children attending church with Mr. S. Mr. S. will have access every second weekend, and he will be able to take them to church on those weekends.

[130] Mr. S. has maintained, and he told every expert involved in this case, that Mrs. S. had seven common-law relationships. This allegation is false. She had one common-law relationship before her current one. It appears that Mr. S. was counting every one of Mrs. S.'s dates as a "relationship". If there was evidence that Mrs. S. was introducing new companions to the children too often and too quickly this would cause me concern. I never heard such evidence. In fact, Mrs. S. testified that the children may have met one "date", besides her first common-law husband, because from 1996 to 1999 (when she started dating Mr. D.) she could not get the access she was supposed to have so the children were not around much.

Ability of parent to consider the best interests of the children:

[131] The ability of a parent to, in the best interests of the children, call a "truce" in the war with the other parent is another important factor.

[132] In my opinion, Mr. S. is a controlling, calculating and domineering individual who has used the children to "punish" Mrs. S. for having left the marriage**.** That is the only explanation for his denying Mrs. S. access to the children right after separation even though she was the primary caregiver for these young children before the separation. As I stated earlier, this must have been traumatic for these young children and clearly was not in their best interest.

[133] On many occasions, Mr. S.'s "battle" with Mrs. S. blinded him and he could not see what was in the best interests of the children. For example, insisting that the children be roused out of bed to bring them to Edmonton in the middle of the night; keeping the children out of school for one month while he was hiding the children; putting the children through the trauma of that ugly incident on March 4, 2001; making unjustified allegations; refusing to respect court orders relating to the children; withholding access for all of August 2000 based on his position that he had not received written notice from Mrs. S.; insisting that S.S. be charged for cutting A.J.S.'s hair; refusing to pay child maintenance since October 2000; refusing to send the children's clothing after the change of custody; refusing to resolve the issues by mediation; refusing to attend the Parenting course; and regularly making the children wait at pick up and drop off locations because he does not abide by the court Order. *These are just a few examples.*

[134] In the past, there were also come occasions when Mrs. S. did not keep the best interests of the children in mind, but this did not occur as often as it did with Mr. S. For example, on separation in October 1994, it would have caused less disruption to the children's education and stability if Mrs. S. had remained in Edmonton. On occasion she refused to give Mr. S. the children's diabetic logbooks. She did not always refrain from referring to Mr. S. in a negative manner in front of the children. Mr. S. alleged that at times Mrs. S. had a boyfriend, Mr. D. or R., present when she had the children contrary to the court Order. This was never established as there were many access orders and not all of them incorporated this clause so it is unclear if at the time these individuals were present the Order was in effect.

Ability of parent to look after the medical needs of the children:

[135] At trial, and throughout this lawsuit a considerable amount of time was devoted by Mr. S. to convince the court that Mrs. S. is not capable of looking after the medical needs of the children. There was no medical expert evidence to substantiate these allegations.

[136] What struck me on this issue was that Mr. S. never once complained Mrs. S. was incapable of looking after the children's medical needs during the marriage. Yet, suddenly, right after separation he alleges she was incapable. Further, Mr. S. himself has not shown the concern for D.M.S.'s diabetes as on many occasions Mr. S. did not give D.M.S. her 6:00 p.m. supper or injection.

[137] Mr. S. alleges that all of the children's medical problems are due to Mrs. S.'s lack of care. He fails to recognize that, even if the S's had remained married the children would have medical concerns due to their diabetes.

[138] I accept that when S.S. was a teenager her diabetes was out of control due to S.S.'s conduct. However, Dr. F. stated that teenage children are harder to manage when it comes to their diabetes – just as they are harder to manage or control in many other aspects. A teenager who refuses to take responsibility for his or her own health will suffer the consequences as a parent cannot be with an older child at all times.

[139] Dr. F. also testified that S.S.'s diabetes is of a more serious type than D.M.S.'s. Further, I accept Mrs. S.'s evidence that it was harder to control S.S.'s diabetes as she was diagnosed at eight years of age and before that she could eat candy and sweets. In contrast, D.M.S. was diagnosed under the age of two years and has always had a restricted diet. Lastly, Dr. F. testified that stress will exacerbate diabetes. This was likely a factor with S.S.

[140] In conclusion, I am satisfied that Mrs. S. is just as capable as Mr. S. to look after the medical needs of the children.

Ability of parent to provide for financial needs of the children:

[141] Mr. S. suggested that if Mrs. S. separated from Mr. D. she, would not be able to financially support the children on her own. Currently Mrs. S. and Mr. D. have separate bank accounts but they do share in some of the expenses. Mrs. S. said if she was living on her own she could get subsidized housing and could support the children. I have no concern about Mrs. S.'s ability, on her own, to provide financial support. It appears she did that from 1994 to 1996.

[142] Further, Mrs. S. only has a grade 9 education and was a homemaker until the separation. However, she is industrious and was promoted in her job. Mrs. S.'s past income is as follows:

2000 - $19,500; (employment)
1999 - $17,000 ($11,500 employment and $5,000 EI);
1998 - $14,672 ($14,258 from employment and $414 EI);
1997 - $14,250 (from employment);
1996 - $16,133 ($8,568 employment, $6,875 social assistance, $690 EI).

[143] In contrast, Mr. S. with a partial university education, has earned less than Mrs. S. His earnings in the past were:

1991 - $5,960;
1992 - No income reported;
1993 - No income reported;
1994 - $6,000;
1995 - $9,894 (business income);
1996 - $11,437 (social assistance);
1997 - $15,252 ($13,671 social assistance, $1,581 employment);
1998 - $18,744 ($12,997 employment, $2,241 EI and $3,506 social assistance);
1999 - $11,523 ($5,976 EI, $4,819 employment).

[144] In the past, Mr. S. has not proven to be adept at finances. While the S's were married the financial information shows they lived on a low income. The house the S's rented on a rental/purchase basis was taken back by the owner. In 1994 Mr. S. filed for bankruptcy. Mr. S. went to university, but never completed a degree. Later, he was evicted from his rental condominium for failure to pay rent. He said his brother had to pay the children's outstanding private school fees.

[145] In conclusion, this is not a case where one parent's financial ability to support the children far exceeds the other's.

Discipline considerations:

[146] I have some concern whether Mr. S.'s allegation that Mrs. S. is too lax with discipline is justified. The inference that Mr. S. urged, throughout the trial, was that if S.S. had remained with him she would not have gone "out of control" as she did with Mrs. S. However, as I noted earlier, in 1995, *when S.S. was living with Mr. S.* the school warned S.S. that if she continued to be late coming to school she would be placed on probation. It is clear there were problems developing with S.S. at that time.

[147] Further, in Dr. H.'s June 1996 report he referred to a conversation he had with the principal of the W.E.C.S.: "He was of the opinion that when Mr. S. came to the school over the lunch hour, as he frequently did, he frequently "blew things out of proportion" and was felt to be "overbearing". . ." He noted also that there had been several "overt conflicts" between S.S. and her father at school. . . . He was also concerned that S.S. had recently had a number of "rather intense" conflicts with peers." Therefore, in 1996, Mr. S. and the school were also having difficulty with S.S. In fact, in 1996, Dr. H. recommended that S.S. should remain with Mrs. S.: ". . . as to force her to live with her dad would create more problems than it would solve. . . . It must be stated, however, that N.S. appears to be doing relatively well thus far, which S.S. is not."

[148] In my opinion S.S., being older than A.J.S. and D.M.S. at the time of separation, was already affected by the bitter conflict between her parents. Even if Mr. S. had retained custody of S.S. I am not convinced that he could have "controlled" her.

[149] However, I will reiterate that I have some concern whether Mrs. S. is too "lax" with discipline. It appears that Mr. D., at times, thought Mrs. S. should be firmer with A.J.S., who by all accounts, can be rambunctious. Mr. W., the psychologist, said he is a "handful" and wondered whether he may have Attention Deficit Disorder. I suggest to Mrs. S. that it may be helpful for her to attend a couple of community courses on effective discipline. I am satisfied she will follow up on this suggestion.

[150] I am similarly concerned about Mr. S.'s use of physical discipline. At first, Mr. S., testified that he does not believe in physical discipline. Later, he admitted he "spanked" but only with his hand - not a belt. I accept S.S. and Mrs. S.'s evidence that Mr. S. does use a belt.

[151] In Dr. C.'s December 14, 2000 report he said that A.J.S. reported his father "spanked him about a million times" but his mother "just sends me to my room." In Mr. W.'s May 2001 report D.M.S. described her father as a strict disciplinarian and liked her mother's discipline better. She said it was "quieter and more relaxed" at mom's.

[152] Mr. W. testified that time out is a better form of discipline as physical punishment "leads to more anger". In Mr. W.'s report he said: "He was concerned about Mr. S.'s rigid, authoritarian, controlling manner which I can see negatively affecting the child as they get older and try to establish greater independence." Lastly, my concern is Mr. S.'s denial that he uses physical discipline because it is difficult to convince someone that there are more effective ways of disciplining than the use of force if they deny the use of force.

Ability of parent to provide for stability in the children's lives:

[153] For the reasons mentioned later, in my review of the expert reports, I am of the view that Mrs. S. is just as capable of providing stability in the children's lives.

Children's preference:

[154] In Mr. W.'s May 2001 report he said: "D.M.S. definitely wants to continue living with A.J.S. and wants to stay with her mother." Mr. W. said A.J.S. "wants to continue living with D.M.S. and wants to be with his mother and play with his baby brother when he is born. . . He finds it more relaxing at his mother's house as she is not involved in as many activities as his father."

[155] The courts have recognized the futility of ignoring the wishes of children over the age of 14 years. (***Payne on Divorce***, 4th edition, p. 397) D.M.S. is approaching that age, (she is now 13) and I take into account her wishes, although it is not a decisive factor. A.J.S. is only 8 years of age and I do not place much, if any, reliance on his expressed preference.

Extended family considerations:

[156] The evidence shows that Mrs. S. is close to and has the support of her extended family, who all live in W. The children have benefited from this. Mrs. S.'s mother is available to babysit on a last minute basis (for example, when Mr. S. did not show up on time to pick up the children); and she regularly babysits after school. Mrs. S.'s sister helped her buy clothes for the children (when Mr. S. refused to give Mrs. S. the children's clothes). In addition, both D.M.S. and A.J.S. have cousins very close to their age and they travel to school with the cousins, attend the same school and go for sleepovers with them.

[157] Mr. S. may have a close relationship with and support from his extended family but no evidence was presented to that effect. Further, there was no evidence of the children's relationship with Mr. S.'s extended family, except that, after October 2000, Mr. S.'s dad sometimes picked up the children for him.

Minimal Disruption of Children/Preservation of status quo:

[158] Since October 2000 D.M.S. and A.J.S. have lived in W, have made new friends and have adjusted well to their new school. In this case, the preservation of the status quo is not an overriding factor as the children have only been with Mrs. S. since October 2000. However, in my opinion, there is no reason to disturb a situation that is working well for the children. Further, for the other reasons already outlined, I find it is in their best interests to remain with Mrs. S.

The Courts consideration of the expert testimony:

Mr. W.'s Report

[159] On May 2, 2001 Mr. M. W., a chartered psychologist, prepared a custody assessment. He recommended that there be joint custody and that Mr. S. be the custodial parent. It is the ultimate role of the judge to assess and weigh the evidence. Having done that I do not accept Mr. W.'s recommendation.

[160] In all fairness to Mr. W. he did not have the advantage I had of listening to witnesses being cross-examined. He did not get to compare allegations in Affidavits with the actual evidence at trial. He did not have the benefit of hearing, over a five-day period, the history of the S's custody/access dispute. Lastly, Mr. S. did not always tell Mr. W. the truth. On many issues Mr. W. did not ask Mrs. S. or Mr. D. for their version of events, whereas I heard their version.

[161] I will now refer to one instance in which Mr. S. did not tell Mr. W. the truth. Mr. W. appeared to be impressed with Mr. S.'s and Ms. D.'s relationship and impressed with the stability of their relationship with A.J.S. and D.M.S. Mr. W. then attended at the residence for a second interview. Ms. D. refused to interview. At that time, Mr. W. did not know and Mr. S. did not tell him that they had separated, neither did they tell him, in their first interview, about their first separation two weeks after their marriage.

[162] Mr. W., at p. 5 of his report, said Mr. S. told him that Ms. D. did not want to interview because she was fearful. Her fear arose from the incident in which Mr. D. allegedly assaulted Mr. S., the receipt of harassing phone calls and the alleged stalking of Mr. S. by Mr. D. and Ms. W. At trial, Mr. S. did not testify that that was why Ms. D. refused to interview. At first he said he forgot to tell Ms. D. that Mr. W. was coming to interview. Later, Mr. S. changed his story, saying that Mr. W. just appeared unannounced without an appointment and this was why Ms. D. refused to interview. (*At trial, Mr. W. admitted that had he known about these separations it would have affected his comments about the stability of this relationship.*)

[163] At p. 5 of his report, Mr. W. stated that Mr. S. told him "his home was founded on moral conviction in 1981 but because of conflict and Ms. W.'s rejection of Christian principles their relationship ended in 1993." (*Mr. W. was not aware of how the S.'s relationship started; he was not fully aware of Mr. S.'s criminal convictions; he was not aware of Mr. S.'s refusal to abide by court orders. Mr. W. admitted that the fact that Mrs. S. did not have a criminal record is "one of the hallmarks of stability"*.)

[164] At p. 9 of his recommendations, Mr. W. noted that Mrs. S. appears to have had numerous relationships. (*Mr. S. told him Mrs. S. had seven common-law relationships. Mr. W. never asked Mrs. S. if this was true.*)

[165] Mr. W. stated if Mr. D. left, Mrs. S. will be in a "bind" to support the children. (*Mr. W. was not aware of the respective earnings or job history of the S's.*)

[166] Mr. W. stated in his report that: "In the past, Ms. W. apparently left the children with inappropriate babysitters and A.J.S. was assaulted by S.S. and her two friends who held A.J.S.

down and shaved his head." (*Mr. W. admitted he never asked Mrs. S. or S.S. for their version of these allegations.*)

[167] Mr. W. stated that he was concerned about Mr. D.'s apparent anger problems which led to him stalking and assaulting Mr. S. (*Mr. W. admitted he never asked Mrs. S. or Mr. D. for their version of these events.*)

[168] Mr. W. said he did not know that Mr. S. kept the children out of school for September 2000 and he said "I would be surprised by that."

[169] Mr. W. commented in his report that: "Mr. S. has had legal concerns in the past and these incidents were especially exacerbated by Ms. W.'s apparent vendetta against him. (*The court record of motions shows otherwise.*)

[170] I do share some opinions with Mr. W. especially his concern about Mr. S.'s personality and his ability to facilitate access. "My concerns are with his rigid, authoritarian, controlling manner which I can see negatively affecting the children as they get older and try to establish greater independence. His rigidity and controlling behaviours have also played havoc with Ms. W. in her attempts to see the children and have regular telephone access. I also agree with Mr. W.'s opinion that "Ms. W. would be somewhat more willing to allow access than Mr. S."

[171] At trial, Mr. W. admitted that Mrs. S., since the separation, "has made good strides emotionally and financially".

[172] Lastly, I heartily agree with Mr. W.'s final statement: "It is also my feeling that no matter what I recommend or what the court decides, this will not be the end of the conflict between Mr. S. and Ms. W."

Dr. H.'s Report:

[173] Counsel gave me a copy of Dr. H.'s assessment dated June 3, 1996. At that time he noted that Mrs. S. had custody of the children, however, the Order provided that if she worked Mr. S. was to babysit. Mr. S. was not working from 1995 - 1997. He was on social assistance, whereas Mrs. S. was working to support herself and the children. As a consequence, as Dr. H. noted, the children were in Mr. S.'s care a lot of the time. It was one factor which led Dr. H. to recommend that Mr. S. have custody.

[174] Also, Dr. H. recommended Mr. S. have custody as there would be more stability for the children. I accept that in 1996 these were relevant factors supporting Dr. H.'s recommendations. Mrs. S. had moved back and forth from W; had moved residences several times and had changed jobs several times. Also, at that time Mrs. S. was suffering from depression.

[175] Mr. W. also testified that Mrs. S. has made good strides over the last five years. After 1997/1998 Mrs. S. was no longer suffering from depression; she has remained with the same employer for several years and has been promoted; she has a new common-law relationship with someone who appears to give her love and emotional support and she has financially provided for herself and the children since October 2000.

[176] In the meantime, in the last five years, Mr. S. has not had a stable job history; (since 1998 four different employers); he has had criminal charges; he has changed residences several times; his earnings have been low, and he has remarried and separated.

[177] In conclusion, the factors have changed since 1996 and changed in favour of Mrs. S.

[178] In reviewing Dr. H.'s report I noted he did personality tests on Mr. S. and stated: "The validity scale configuration of the MMPI-2 indicates levels of defensiveness, denial and rigidity such that the validity of the clinical profile is questionable. (*The history of this action confirms this assessment.*)

[179] Lastly, in 1996, Dr Hindmarch recommended joint custody because he was concerned about Mr. S. not allowing the children to be with their mother.

> Ms. S. has often complained of Mr. S.'s "need to control" and of the fact that he has refused to communicate with her in regards to the children, and it is felt that her complaints in this regard are not without substance. It is felt that while the stability of the children would be best ensured if they were to remain with their father, to afford him sole custody would empower him to further excise their mother from their lives, which would be damaging to them. (*Subsequent to 1996 the history of this action has shown that Mr. S. has done everything in his power to "excise the children's mother from their lives."*)

Maintenance:

[180] Commencing July 1, 2001, Mr. S. shall pay maintenance to Mrs. S. for the children based on his current pay. I did not hear argument from counsel on medical or s. 7 expenses or when the Maintenance Order should start. If there is no agreement on these issues counsel can contact me to arrange a date to argue these issues. In the meantime, on a "without prejudice" basis I order that the payments commence on July 1, 2001.

[181] There will be the usual Maintenance Enforcement clause. If there is any difficulty in the enforcement of maintenance due to Mr. S. not providing his social insurance number (he blacked them out on the documents he produced) Mrs. S. can apply to the court for disclosure.

[182] Each year, by June 1st of that year, Mr. S. shall provide a copy of his tax return and Notice of Assessment to Mrs. S.

Terms of Access for Mr. S.:

[183] Mr. S. shall have the following access: every second weekend, commencing two weekends from his last weekend access, from Friday, at 5:30 p.m. to Sunday, at 5:30 p.m. If the access weekend falls on a weekend when there is a statutory holiday the access will be extended to 5:30 p.m. on Monday.

[184] Mrs. S., or her designate, shall deliver the children to the Tim Horton Donuts location in Edmonton, Alberta, at the start of access.

[185] Mr. S., or his designate, shall return the children to Robin's Donuts located at W, Alberta, at the conclusion of access. Mr. S., or his designate, shall take the children **inside** the Robin's Donuts and shall leave them seated inside. Mr. S. shall then exit and once he has exited, Mrs. S. shall then enter to pick up the children.

[186] Either party shall have the assistance of the R.C.M.P. or Edmonton City Police in enforcing the terms of day to day residency and access.

[187] Mr. S. shall have reasonable telephone access with the children, **at his expense**.

[188] D.M.S.'s insulin supplies and testing materials shall travel with her, and neither parent shall withhold any of these items from the other.

[189] At all times, the S's should have each other's current address and phone number. If their address or phone number changes they shall immediately notify the other of the change **in writing.**

[190] Each year, Mr. S. shall have the children for the month of August, unless the parties come to a different agreement.

[191] Mr. S. will have access for one half of the Easter/spring break and Christmas break. For Christmas 2001 Mrs. S. will have the children on Christmas Day and Boxing Day. Thereafter, Christmas Day and Boxing Day will alternate from year to year.

COSTS:

[192] If the parties are unable to agree on costs they can arrange a date with me to argue the same.

HEARD on the 18th day of May, 2001.
DATED at Edmonton, Alberta this 28th day of June, 2001.

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J.C.Q.B.A.