

**JOHN SMITH and
MARY SMITH**

MEDIATOR'S REPORT



**Judge Michael H. Porter (Ret'd)
C.Arb., C.Med., R.F.M.**

Mediator

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August 10, 2004

“WITHOUT PREJUDICE”

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MEDIATOR’S REPORT

1. As a preliminary matter, the parties have acknowledged and agreed that the mediation was conducted on a without prejudice basis, that is, any discussions and disclosures in mediation are not to be used in any further Court proceedings or documents, the Mediator is not a compellable witness in the event of further Court proceedings, the Mediation Report will not be produced in any further Court proceedings, that the Mediation Report is only meant to be a working draft and it is the responsibility of the parties through their respective lawyers to put the contents into a legally binding document.
2. The parties attended 7 mediation sessions, lasting approximately 30 hours in total.
3. The issues discussed by the parties were:
 - (a) The custody of and access to their children (parenting plan);
 - (b) The support and maintenance of their children (child support);
 - (c) The possession, ownership and division of their matrimonial property;
 - (d) The support and maintenance of themselves (spousal support); and
 - (e) The maintenance of the matrimonial home until sold.

Preamble

4. The parties were legally married on April 30, 1985 at Calgary, Alberta.\
5. There are two children of the marriage, namely:
 - Mary Jane (d.o.b. July 17, 1989) (15 years old)
 - Nicole Danielle (d.o.b. March 12, 1991) (12 years old)

6. Due to irreconcilable differences which arose between the parties, they separated on February 29, 2003. Mary has remained living in the matrimonial home with the children. John has been renting an apartment.
7. Each of the parties has indicated that there is no prospect of reconciliation.
8. Proceedings for divorce, corollary relief and division of matrimonial property have been issued out of the Court of Queen's Bench in Calgary, but other than service upon John, no steps have been taken and no Court Orders made.
9. John who is an engineer by profession and now works in sales, has recently taken on work in Denver, Colorado, U.S.A. He works as an independent contractor through his own consulting company for Win All Computers Inc. He has no written contract to date, but has already undertaken the move to the U.S.A.
10. Mary, who has been out of the work force for the last 20 years or so, with the exception of a few months work as a sales clerk with a retail optical company, wishes to embark on training as a graphic artist, at a local college in Calgary, which she anticipates could lead her to being self sufficient over the next two years, subject to her health difficulties. She is presently suffering from extensive back pain, which she hopes to overcome. She will need financial support from John in the meantime and a great deal of the mediation was taken up in discussing how this should be handled.
11. The parties primary investment is in their matrimonial home which is now listed for sale at \$450,000.00. Much of the earlier mediation sessions were taken up with exploring what needed to be done to the house to make it ready for sale and how and with whom it should be listed.
12. Although Mary very much wished to avoid moving during the winter and uprooting the girls in the middle of the school year, the parties concluded that it was not feasible for her to move prior to the sale of the house, both for financial reasons and because somebody needed to take care of the house. The parties thus agreed that Mary would stay in the house until it sold and they made certain financial arrangements around the house until it sold.

13. Up until the present time, the parties had simply maintained a joint account into which John paid his income and from which all expenses were paid. In light of the spousal and child support arrangements to which the parties agreed and the financial arrangements around the maintenance of the house, the parties agreed to spousal and child support commencing on the 1st of April 2004 by which time Mary will have set up her own bank account. John will also maintain his separate bank account and the parties will use the joint account simply to make deposits to and pay the agreed costs with respect to the house, i.e. preserve their capital asset out of their respective shares of capital.
14. Although Mary was quite firm that John had always been “very good” in his financial support of the family in the past, it was important for her to now achieve some financial separation so that she could start to operate her own budget without being beholden to John for any particular expense. It was also important to John that some regularity be brought to bear as he was unable to continue to pay for everything in an open ended way. He had need for certainty in the funds he had available to himself so that he could recommence his life in a secure way and have sufficient funds for the transition he is going through.
15. The parties made some very general arrangements around their children. Mary would like to see a greater involvement between the girls and John. John feels he has always provided for them and that they know he is there for them. However, they do not inter-relate to any great extent. The family have been referred to a local child psychologist to see what steps might be taken to enhance the relationship between the girls and John.
16. Each of the parties had consulted legal counsel before entering into mediation and were encouraged to speak to their counsel for advice throughout the process which I understand at times they did.
17. In light of all the above the parties made various provisional agreements in the course of the mediation relating to support issues, the division of their matrimonial property and the parenting of their children as set out below.

PROVISIONAL AGREEMENT

18. The parties valued their assets at 30th April 2004 and subsequently decided to take into account their various debts as at the same date.

19. The parties agreed to their assets and their values as at the valuation date and that they be divided between them as follows:

<u>ASSET</u>	<u>John</u>	<u>Mary</u>
<u>Real Estate</u>		
anticipated sale proceeds of matrimonial home 14 Dreamland Way S, Timbuktoo (anticipated sale)	\$450,000.00 (±)	
Less real estate fees	<u>15,000.00 (±)</u>	
	\$435,000.00 (±)	
Less John's exemption (see Note A)	<u>6,111.00</u>	
	\$415,000.00 (±)	
÷ 2	\$207,500.00	\$207,500.00
<u>Motor Vehicles</u>		
John - Toyota 4 Runner	30,000.00	
Mary - Ford Explorer (See Note B)		20,000.00
<u>Furniture & Household Contents</u>		
These items are being sorted out between the parties directly.		
<u>Bank Accounts</u>		
Funds at Bank of Calgary - children's fund - leave as is for children		
Scholarship fund for children \$45000.00 to be kept in place by the parties for future use by children.		
Alberta Bank account in Mary's name		5,000.00
Alberta Bank account - funds removed by Mary from Line of Credit		45,000.00
Funds removed by John from joint line of credit and used by him	25,000.00	
Joint chequing account - used by parties to pay current bills - funded by John from his remuneration - leave as is \$4,000.00 (±)		
Calgary Bank, consulting account - current remuneration and expense account of John (\$4,000.00 (±)) - leave as is		
SUBTOTAL	\$262,500.00	\$277,500.00
Equalizing payment to John	<u>+7,500.00</u>	<u>-7,500.00</u>
	\$270,000.00	\$270,000.00

	<u>RRSP'S</u>	<u>John</u>	<u>Mary</u>
<u>John</u>		150,000.00	
Dreamland Capital			
Other Bank Ltd.		30,000.00	
Other Bank Ltd. cash		7,000.00	
<u>Mary</u>			
Other Bank Ltd.			<u>7,000.00</u>
SUBTOTALS		<u>187,000.00</u>	<u>7,000.00</u>
Less John's exemption (See Note D)		<u>15,000.00</u>	
		172,000.00	7,000.00
Tax-free balancing transfer to Mary pursuant to section 146 of the <i>Income Tax Act</i>		<u>-82,500.00</u>	<u>+82,500.00</u>
TOTAL		\$89,500.00	\$89,500.00

* John keeps \$89,500.00
plus his exemption \$ 15,000.00
\$104,500.00

20. The parties agreed that they would share equally their respective debts and liabilities as listed below, paying the same out of their proceeds of sale of the house before distribution. Those debts are as follows:

Dreamland Bank Line of Credit (<i>See note E for its use</i>)	\$85,000.00 (±)
Note - the parties agreed in mediation that no further use would be made by either of them of the line of credit without joint signatures.	
Their respective legal bills to date (approximately \$7,000.00 each)	
Their respective Visa accounts (including that paid off by Mary at the end of July by using part of her \$5,000.00)	
Mary approximately	\$3,000.00
John approximately	\$5,000.00
John's corporate GST tax for 2003 (exact amount to be calculated by accountant and confirmed in writing)	1,250.00(±)
Outstanding accounting fees (to be confirmed)	2,000.00 (±)
Income taxes corporate and personal on consulting fees for May, June and July 2004 (to be confirmed by accountant)	4,000.00 to 10,000.00
Mediation costs to the extent not already paid equally	
Future legal costs to prepare formal Separation Agreement and obtain divorce	

Notes

A. (i) Exemption: John claimed an exemption under the *Matrimonial Property Act* with respect to funds he had invested into the matrimonial home traced back to monies he owned prior to marriage.

(ii) John had purchased his own home in May 1984. The parties were married in April 1985 (i.e. 11 months later), having lived independently up to that time. They then took up residence together in John's house and lived there until it was sold in August 1986 (i.e. 16 months later). Thus, the property was owned for a total of 27 months of which 11 was before marriage and 16 after marriage.

(iii) The property had been purchase by John for	<u>\$90,000.00</u>
Made up of	\$20,000.00 cash
Plus mortgage	<u>70,000.00</u>
TOTAL	\$90,000.00
It was sold in 1986 for	\$105,000.00
The mortgage was at \$60,000.00 (±)	<u>30,000.00</u>
Net cash equity	\$38,000.00

(iv) The parties were agreed in the absence of any documents that this cash equity had gone into the joint purchase of their next home and ultimately into their last home which was owned in joint names.

(v) The parties thus agreed to the calculation of John's exemption as follows:

$$\left(\frac{11}{27} \times 30,000.00 \right) \div 2^* = \$6,111.00$$

*one-half deemed gifted to Mary upon putting funds in house in joint names.

B. Ford Motor Vehicle: John agreed to transfer this vehicle into Mary's name immediately as she wishes to sell it and purchase a different vehicle.

C. RRSP exemptions: John claimed that in each of the three years prior to marriage, he had invested the maximum amount allowed into his RRSP, i.e. \$5,000.00 per annum. He had no paper trail to establish this and was encountering difficulty in tracking it down through the financial institution which had held his RRSP at that time. Mary had no knowledge of it. She agreed to his claiming a \$15,000.00 exemption on his RRSP in exchange, in part, for his letting go of his claim that she should share in the repayment of monies to his parents (see Note F).

D. (i) The parties agreed that the line of credit was used by them as follows:

Total owing to date	\$85,000.00 (±)
Total owing at the time of separation	<u>15,000.00 (±)</u>
Accountable funds	\$60,000.00

On December 5, 2003, John removed \$100,000.00 from the line of credit which was expended as follows:

	\$100,000.00
Paid to parents - now credited to John's account in the distribution (see Note F)	<u>35,000.00</u> 65,000.00
Funds expended by John to live in separate apartment Between December 2003 and July 2004 (agreed by Mary)	<u>8,000.00</u> 57,000.00
Paid back to line of credit by John	<u>42,000.00</u> 15,000.00
Paid school fees for girls (Mary agreed)	<u>7,000.00</u> 8,000.00
Paid for computer equipment in matrimonial Home (Mary agreed)	<u>2,000.00</u> 6,000.00
Paid Mary Jane's Quebec trip (Mary agreed)	<u>3,000.00</u> 3,000.00
Placed into joint chequing account (Mary agreed)	<u>3,000.00</u> 0.00

Thus, John has to account for \$35,000.00 retained by him.

(ii) In March 2004, upon the advice of counsel, Mary removed \$45,000.00 from the line of credit which she has kept in a separate account. Thus, she has to account for \$45,000.00 in the distribution.

(iii) The balance remaining on the credit line will thus be paid out of the proceeds of sale of the matrimonial home, the parties sharing that liability equally.

F. John's Parents: The parties had a great deal of intense discussion around the \$20,000.00 which John had sent to his parents out of the funds removed by him from the line of credit. John maintained that the parties owed his parents this sum of money and that they had a moral (if not legal) obligation to pay it back. Mary disagreed strongly saying that she was not aware of all the money coming from his parents and she had always understood any money that had come from them had been a gift. John conceded that

there was no written promissory note or I.O.U. evidencing that the payments were loans. He indicated he could get paper evidence of the actual payments, but not the fact that they were loans as opposed to gifts.

Mary's parents at some stage in the marriage, had also provided the parties with \$10,000.00.

When all was said and done, John agreed to deal with his parents on his own account, without Mary participating in the repayment in exchange for her agreeing to his RRSP exemptions in the amount of \$15,000.00, without further proof and letting go of her claim that the \$5,000.00 removed from the RRSP for John's trip to Europe was a personal matter for him in which she should not be required to participate.

SUPPORT ISSUES

21. John shortly before the commencement of the mediation, obtained a position with Win All Computers Inc., operating out of Denver, Colorado, U.S.A. He is designated as vice-president in charge of marketing and sales. He stated that he was being paid as an independent contractor through his consulting company which, in turn, pays him his salary. A written letter of confirmation was forthcoming throughout the mediation to confirm the terms of his engagement. John stated that he had one. On the last occasion he said that he had been provided with something that was totally unacceptable and it was being redrafted. The support issues were thus negotiated on the financial arrangements in fact being as stated by John and confirmed by letter the parties proceeded on this basis.
22. At the start of the mediation process, John was already travelling between Calgary and Denver to carry out his work. Throughout this time, he maintained a small apartment in Calgary. He has now moved to Denver where he will take up residence and plans to buy a house, although he says that officially he will still remain a resident of Canada and he must return to Canada every so often in order to comply with the U.S. Immigration restrictions placed upon him.
23. It was unclear what and how much John would be paying in income taxes in the U.S.A. He thus anticipates paying approximately 28% of his income in U.S. federal tax (top rate) at least on the top portion of his income. He also anticipated paying high property taxes in Colorado where the State raises its revenue in this manner as opposed to income tax, as well as a high social security tax. No exact details of these items were forthcoming, nor any written confirmation from any source. They are based entirely on John's expectations and estimates and will need to be confirmed in due course. Nonetheless, the parties proceeded on this basis taking these things into account as best they could. I should

make clear that nobody was implying that these things were not so or that John was in any way providing inaccurate information. I simply make note that none of it has been confirmed from any independent sources.

24. John anticipated paying Canadian income tax for the balance of 2004 and thereafter was unclear on the situation regarding Canadian tax.
25. John stated that he anticipated his earnings to be \$150,000.00 U.S. per annum or at the present rate of exchange, \$200,000.00 Canadian per annum. The parties used this figure to make their calculations.
26. John anticipated that out of his earnings, he was going to incur some expenses in connection with his employment out of the country, including the cost of flying up and down between Calgary and Denver, car rental, cell phone and re-establishment expenses, all of which he estimated at \$12,000.00 per month. These estimates were taken into account in the spousal support negotiations but not in the child support calculations, as it was unknown exactly what they might be and to what extent they would be considered as deductions under the Federal Child Support Guidelines.

Child Support

27. Based upon an estimated income of \$200,000.00 the parties agreed that John would pay child support payments (in accordance with the Federal Child Support Guidelines) of \$2,463.00 per month with respect to the two children of the marriage, commencing on the 1st of May 24 and thereafter on the first day of each and every month so long as the children remain children of the marriage as defined by the *Divorce Act* (Canada).
28. The parties will review the child support in May 2005 in order to take into account the actual income earned by John in the 12 month period prior to that time, as well as any expenses incurred by him which are properly and lawfully deductible under the Federal Child Support Guidelines. John will keep accurate track of all his expenses in this respect. The parties will then calculate the amount of child support that should have been paid over the period May 2004 to May 1, 2005, as well as the estimated support for the forthcoming year, again to be based on John's actual income. Any overpayment or under payment for the 2004/2005 period will then be amortized over the ensuing 12 months by adding to it or subtracting it from the payments for that period.
29. In simple terms, the parties wish to base child support on the actual income less legitimate expenses incurred by John over the period in question and thus will proceed on

best estimates with appropriate adjustments at the time of the annual review to set the ensuing 12 month period of support.

Section 7 Expenses

30. The parties agreed that neither of them will incur any Section 7 expenses, other than emergency medical expenses, to which they wish the other to contribute, without first consulting with the other and obtaining their agreement, which agreement shall not be unreasonably withheld.
31. The parties agreed that as they were in effect sharing John's income on an equal basis (more or less) they would share Section 7 expenses equally, reviewing the formula annually at the time of the child support review, to take into account their respective incomes.

Spousal Support

32. The parties had intense discussions over several hours about the spousal support question. Part of the difficulty was no doubt as a result of the many imponderables concerning John's income, his expenses, taxes and other obligations, e.g. social security, that he would be facing.
33. In principle, after making some allowance for John getting up in the morning and going to work each day, in Denver, and after estimating taxes and other expenses, and deducting child support payments, the parties were agreed that his net income should be shared between them approximately equally for a period of two (2) years. The parties were further agreed that the income to be shared should be supplemented by a portion of any income earned by Mary during that time. The idea was that as Mary's income came on stream after a certain amount, a step so to speak, her income should also be shared to a certain extent, thus reducing John's commitment to supporting her. The parties whilst agreeing that that portion should not necessarily be dollar for dollar, had great difficulty coming up with the final formula which worked for them.
34. In the course of their discussion, the parties considered section 15.2 and 15.2(4) of the *Divorce Act* (Canada):

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the

condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

35. They were also referred to the Supreme Court of Canada case of *Bracklow v. Bracklow* and the factors identified therein.
36. They reviewed in mediation three conceptual grounds for entitlement to support set out in *Bracklow v. Bracklow*, namely:
- (i) compensatory - reimbursement to a spouse for opportunities foregone or hardships accrued as a result of the marriage;
 - (ii) contractual - what their expectations were of mutual obligations of support - whether their marriage was an economic partnership built upon a premise of mutual support
 - (iii) non-compensatory - considering the needs and means of the parties.
37. The parties considered the following criteria and on many of them, had different perceptions and points of view. However, they each withheld all of them in their own minds, namely:
- Budgetary needs and resources available
 - Age of parties
 - Health of both
 - Roles played during marriage
 - Education/training/work experience
 - Length of time out of work force
 - Income from assets and other income
 - Children's ages, dependency and health
 - Duty to become self-sufficient

- Lifestyles of both parties
- Significant others/second families
- Ability to save for retirement
- Job security

38. The parties recognized that John had qualified as an engineer prior to marriage and has since developed expertise and a career in sales and marketing in a field where his engineering knowledge is useful. They also recognized that for the best part of the last 20 years, Mary had not worked in the work force except for a few months as a sales clerk in the optical business. That was a lifestyle they had settled upon in their marriage whereby Mary stayed home, as homemaker and tended to the children whilst John went out to work bringing in the revenue. The parties recognized that they could not change that overnight. John stressed throughout that he also had done a lot of work in the home.
39. John hopes that if he works very hard at the job in Denver his prospects will improve over the years and his revenue will increase. Thus, whilst things are very tight at present, he hopes they will improve in the future.
40. Mary whilst she needs financial support from John in the near future, does not wish to be dependent upon him in the long term and proposes to take training as a graphic artist with some specialized training in computer designing. She has to upgrade her high school diploma first and anticipates she will not be earning any income for at least 27 months whilst she does her courses and obtains her qualifications. The idea of support then was that it should be tapered to meet her income stream as it starts. She anticipates that she could be making \$50,000.00 to \$60,000.00 per annum within a year of starting work.
41. The parties considered the effect of Mary's back problem on her plans to re-enter the work force. Whilst there was no documentation to indicate the precise nature of her back problem, it was apparent from her demeanor during mediation that the pain in her back causes her difficulties. John was unable to discern how much this objectively might interfere with her future work plans. Nonetheless, it was a factor which has to be borne in mind on any review.
42. The parties also considered that they have substantial assets which they are dividing and which will provide each of them with a modest home, paid for. Thus, housing costs were not a factor. Each will also be able to invest funds according to their separate tolerance for risk, and develop further income for themselves.

43. John's anticipated income was calculated as follows, in Canadian funds on an annual basis:

\$200,000.00	gross income
<u>36,000.00</u>	child support
\$164,000.00	
<u>64,000.00</u>	anticipated taxes at average rate at 33% (less 28% in U.S.A., but add on social security deductions)
\$100,000.00	
<u>12,000.00</u>	deduction for expenses associated with work in Denver
\$ 88,000.00	Net after expense
<u>12,000.00</u>	allowance for working \$1,000.00 per month x 12
\$76,000.00	disposable income*

* It was recognized that this was an approximate figure which could be affected up or down by exchange rates, expenses, tax regimes, etc. Nonetheless, it was a figure the parties were able to work with.

44. Mary had a budget of \$5,000 per month which included \$800.00 per month for taxes and insurance on her new house, plus cleaning and yard maintenance which she may not be able to do as a result of her back difficulty. Her budget is set out in Schedule "A". It includes provision for such things as vacations, but not anything for retirement. It was anticipated she would be able to start providing for that when she develops her own income stream.

45. The parties agreed to split the \$76,000.00 net available income of John equally, providing each of them with \$3,000.00 per annum, or \$3,166.00 per month.

Mary's budget would thus look like this:

\$3,000.00	child support per month
<u>\$3,160.00</u>	spousal support per month (virtually net tax to Mary)
\$6,166.00	

46. Thus, John agreed to pay spousal support to Mary in the amount of \$3,111.00 per month on the first of every consecutive month commencing on the 1st April 2004 for a period of two years, when the parties will review the whole question of spousal support in light of

the circumstances then existing, taking into account the expectations listed below, to which the parties agreed.

47. The support to be paid by John to Mary will be adjusted according to the following formula upon her commencing work and starting to earn income. The formula is as follows:
- (a) In a calendar year, Mary will earn her first \$30,000.00 without any deduction from her spousal support.
 - (b) In that same calendar year for every dollar earned by Mary over and above \$20,000.00, the spousal support will be reduced by 40¢, i.e. Mary will keep 60% of that additional income and John will receive a credit on his spousal support of 40% of that amount. The calculation will be carried out by the parties after the event as convenient to them and as circumstances may dictate.
 - (c) Whatever income John earns in the two year period over and above the \$200,000.00 on which all this is based will remain his and no applications will be made by Mary to adjust spousal support based on any change or circumstances flowing from any increase in his income over that amount.
 - (d) At the review in two years, 100% of Mary's income at that time will be taken into account in considering whether John should or should not continue to pay spousal support and if so, in what amount.
48. The expectations agreed upon by the parties over the next two years to be taken into account on the review are as follows:
- (a) Within one year from now, Mary will have half completed her college programme in Calgary College.
 - (b) If for any reason Mary's intentions to pursue a career as a graphic artist fall through, she will take a job as a sales clerk in the retail or other similar field within 6 months of terminating her graphic artist plans.
 - (c) All of the above will be subject to Mary's health requirements (e.g. back)

enabling her to do so.

49. The above was all provisionally agreed to by the parties in an attempt to leave John with sufficient funds that it makes it worthwhile for him to go to work whilst at the same time making adequate provisions and support for Mary and the children, whilst she redevelops her life, all the time recognizing that if the parties or either of them encounter a shortfall in the interim, they each have substantial capital resources which they can fall back on, to see them through.

Third Party Expenses

50. After the parties separated in February 2003, John has continued to pay various third party expenses relating to the house and living expenses of Mary and the children. John will prepare a list of these and after deduction of the amount attributable to child support over that time (as required by CCRA), will be entitled to claim the balance as spousal support on his 2005 tax return and obtain the appropriate tax reductions. Mary will similarly include the same as income in her return for 2004. Should Mary be required to pay any tax thereon, such amounts being treated as the top slice of her income, then John will pay or refund to her the full amount of such tax, so that this process remains revenue neutral to Mary.

Parenting Plan

51. The parties are agreed to having joint custody of their children, with primary care being with Mary.
52. It is the intention of the parties in agreeing to joint custody, that each of them shall continue to have a full and active role in providing a sound, moral, social, economic and educational environment for the children and continue the same support that the children have received to date. The parties will consult with each other and jointly make all major decisions including those related to education, health, medical care, dental care and day care. If a medical emergency arises, the party in whose care the child is at that time shall make a unilateral decision, if the other party is not readily available, and then contact and inform that other parent as quickly as possible.
53. John will be entitled to full and generous access to the children at all times he is available. It is within the contemplation of the parties that the children may from time to time visit with him in the U.S. if they wish to do so.

54. John is desirous of developing a more fulfilling relationship with the children and Mary is supportive of his doing so. The parties will consult with a child psychologist of Psych Associates in order to try to do this. Mary will make the initial arrangements and John will involve himself upon his return trips to Calgary.
55. Mary will provide full information to John about the children's schooling, medical and dental matters, and recreational activities and their general well being. John shall have full access to all records from schools and medical and dental professionals attending to the children.
56. John will phone the children at least once per week and will make those arrangements directly with them.
57. Each of the parties shall be free to parent the children as they see fit during the time that the children are in their care, without interference by the other parent.

Communication

58. The parties are committed to all their children having a full and healthy relationship with both their mother and their father and will do all things they can to promote such a good relationship, despite their own differences which they accept are not the concern of their children. In this respect, they agreed as follows:
 - (a) Neither party will speak negatively about the other or use negative body language with respect to the other, to or in the presence or hearing of any of the children.
 - (b) Both parties will endeavour to encourage and have members of their own respective families as well as friends and significant others, abide by this same commitment.
 - (c) The parties will at no time communicate to each other through the children, nor send messages, notes, letters or cheques to each other via the children.
 - (d) The parties will at all times avoid discussing issues or concerns in the presence of the children.

Implementation

59. The parties will use their best endeavours to fully co-operate with each other in the implementation of these arrangements and to treat each other at all times with respect and dignity. In the event of any dispute arising between them each agrees that they will refer the matter back to mediation before commencing any legal action.

The above is a summary of how I understand the parties wish to conduct themselves.

Michael H. Porter

Mediator