
CANADA / JUDGMENT

Carrier v. Tate

2007 BCSC 1591

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 1591 Carrier v. Tate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Carrier v. Tate,

2007 BCSC 1591

Date: 20071031

Docket: E051117

Registry: Vancouver

Between:

Stephen P. Carrier

Plaintiff

And:

Marie Tate

Defendant

Before: The Honourable Madam Justice Baker

Reasons for Judgment

Counsel for the Plaintiff

James A.W. Schuman

The Defendant

Acted on her own behalf

Date and Place of Trial:

April 30, May 2, 3, 7-11, 14-18, 28-31, June 1, 4-8, 11-13, 18-20, 22

and July 9 -10, 2007

Vancouver, B.C.

- [1] Mr. Carrier and Ms. Tate began living together in September 2001, and separated in early March 2004. They have two sons. I shall refer to the children in these Reasons by their first initials only. The oldest child "S" is 5 years old and was born July 7, 2002; the younger, "R", was born July 12, 2004, and is 3 years old.
- [2] Since separation, the boys have resided with Ms. Tate, initially in a rented townhouse in Vancouver that had been the family's residence; then in a house owned by Ms. Tate in Abbotsford; and currently in a house in Abbotsford owned by Ms. Tate and her common law partner, Mr. Jean Gilbert.
- [3] Mr. Carrier is seeking an order for joint custody and guardianship of the two boys, with their primary residence to be his home, and scheduled access for Ms. Tate. Ms. Tate is seeking an order for sole custody and guardianship and proposes that Mr. Carrier have no access to the two boys, unless and until a counsellor chosen by her satisfies her that it would be in the boys' best interests to see their father at all, and then that any access by Mr. Carrier be supervised by a paid professional access supervisor. She also seeks an order that the children's paternal grandmother, Ms. Sandra Carrier-Scott, have no access to the boys at present, and that any future access by the boys by Ms. Carrier-Scott be supervised by a paid professional supervisor, or by Ms. Tate herself.
- [4] Ms. Tate is also seeking retroactive and ongoing child support, including a contribution to extraordinary expenses, and spousal support.
- [5] Ms. Tate alleges that Mr. Carrier has sexually assaulted the oldest child, S. Mr. Carrier denies all allegations of criminal or inappropriate sexual activity involving S. Most trial time was occupied with evidence relating to the allegations of sexual abuse.
- [6] Ms. Tate also alleges that Mr. Carrier is a careless parent and that his carelessness has and does expose the children to risk of physical harm.
- [7] Mr. Carrier has not had any access to the children since March 2006 as a result of the allegations of sexual abuse, and has had no telephone contact since January of 2007, because Ms. Tate and her partner Mr. Gilbert would not allow the children to receive Mr. Carrier's calls or to return those calls, and eventually Mr. Carrier ceased attempting to make contact by phone.
- [8] There was a court order permitting Mr. Carrier to have supervised access. Ms. Tate refused to allow the access to be supervised by any members of Mr. Carrier's family and refused to supervise the access herself. She eventually took the position that Mr. Carrier should pay for

the access to be supervised by a private investigation firm located in the Abbotsford area. Mr. Carrier determined that he would not be able to afford any meaningful access, and objected to the artificiality created by such a situation. I infer from his testimony that the supervision would create or reinforce an impression already fostered in the minds of his children that he needed to be watched, and he chose not to exercise access under those conditions.

- [9] Mr. Carrier's position is that Ms. Tate is committed to preventing him from having any meaningful relationship with his sons, and submits that the children will be able to maintain a relationship with him only if his home is designated as their primary residence.

CREDIBILITY

- [10] Some of the facts in this case are not in dispute but in respect of other matters, the parties have presented diametrically opposed versions of events. It is therefore necessary to comment on the credibility of the parties.
- [11] There is evidence that both parties have, in the past, lied to each other. Mr. Carrier was not honest with Ms. Tate about his communications and involvement with other women during certain stages of their relationship; and the extent of his participation in internet chat lines and telephone dating services.
- [12] For her part, Ms. Tate entered Mr. Carrier's home, after the couple were separated, without his knowledge or consent, and while in the home, stole his laptop computer. When confronted by Mr. Carrier about this, she denied having taken the computer - a deliberate and calculated falsehood. She subsequently remotely accessed, downloaded and printed his private e-mail communications from another of his computers. The intercepted communications included privileged communications between Mr. Carrier and Mr. Schuman, the lawyer representing him in these proceedings.
- [13] On several occasions, Ms. Tate consciously and deliberately ignored court orders providing for Mr. Carrier's mother, Sandra Carrier-Scott, to have access visits with S and R, and in particular, deliberately contravened an order made during the first week of this trial that she allow the boys to go for a visit with their grandmother unaccompanied by her. I am also satisfied that Ms. Tate, and Mr. Gilbert at her instigation, also deliberately thwarted Mr. Carrier's attempts at telephone access with the boys, claiming that speaking to Mr. Carrier would result in S waking up at night. They had no explanation for their failure to allow telephone access with R.
- [14] Ms. Tate stated that she disobeyed the court orders because she did not agree with the court's determination that these orders were in the children's best interests.
- [15] Ms. Tate demonstrated a firm belief that her ends justify her means, even if those means include possible contempt of court. I am persuaded that if she believed it to be in the best interests of her children, she was capable of lying under oath, and did so. In addition,

although I have concluded that in most instances Ms. Tate believed herself to be giving honest testimony, I am satisfied that her perception of certain matters is very distorted, and that this distorted perception makes her evidence inherently unreliable. She demonstrated a high degree of emotional volatility during the trial, transitioning rapidly from tears to extreme anger.

- [16] Ms. Tate appeared unwilling, or perhaps even incapable of accepting any evidence that contradicted her fixed views. This was most evident during her cross-examination of the psychologist who prepared the custody and access report for the court. In his report, and in his evidence led by Mr. Schuman, Dr. Ley stated his conclusion that Mr. Carrier has not sexually molested S, and he explained the reasons for his conclusion. Despite this, in cross-examination of Dr. Ley, Ms. Tate stated to him that she wished someone would tell her that the molestation had not occurred.
- [17] I have also concluded that Ms. Tate has exaggerated or embellished some of her testimony, particularly in relation to the number and severity of instances of allegedly negligent parenting on the part of Mr. Carrier. I have also concluded that in relation to what she says are the most recent disclosures to her by S of allegations of sexual assault by Mr. Carrier, she has actually fabricated evidence.
- [18] While both parties naturally wished to present themselves in a good light, Mr. Carrier was prepared to admit to shortcomings and was able to acknowledge Ms. Tate's strengths as a person and as a parent. Ms. Tate was committed to her presentation of herself as an ideal partner and parent, and equally committed to vilifying Mr. Carrier in every way possible, as a person, as a son and as a parent. She also found it necessary to attack the character of Mr. Carrier's mother, sister and step-father.
- [19] Ms. Tate's skewed perceptions of her own righteous behaviour and Mr. Carrier's flaws was nowhere more evident than in her decision to have the court listen to a series of recordings she made of telephone conversations between herself and Mr. Carrier, and between herself and Ms. Carrier-Scott. Ms. Tate told the court that Mr. Carrier was mean to her during these calls and made her cry, and that he threatened her. The calls do not reveal this, except to the extent that Ms. Tate perceived any suggestion by Mr. Carrier that he would be forced to take legal action as a "threat".
- [20] Instead, the conversations the court heard reveal that Ms. Tate spoke to Mr. Carrier in an insulting and vitriolic manner, swearing at him and calling him names, and interrupting him and speaking over him. In one of the tapes, during which there is evidence that S was in earshot, she called Mr. Carrier a "fucking moron". In the presence of the children she referred to Mr. Carrier as a child molester. The fact that Ms. Tate behaved in this manner when she was recording the calls, and when she either knew or suspected that Mr. Carrier might also be recording the calls, indicates that she either lacks the ability to control herself, or completely fails to perceive her own behaviour as it would be perceived by an objective listener.

- [21] Ms. Tate's evidence on certain points was contradicted by other witnesses, including witnesses called by her. In general, where the evidence of Ms. Tate conflicted with that of Mr. Carrier, Ms. Carrier-Scott, or Ms. Carrier-Denis, I found the evidence of the latter witnesses to be more credible, and I accept their testimony in preference to hers.

FACTS

- [22] Given the length of trial it is impossible, in these Reasons, to attempt to summarize all of the testimony and the more than 100 exhibits entered into evidence. I shall, instead, refer to the evidence I consider most relevant, and, where facts are in dispute on critical issues, set out my findings of fact. The parties should not assume that testimony or other evidence not referred to in these Reasons was not considered or taken into account.
- [23] Ms. Tate represented herself quite capably at trial, but frequently did introduce or attempt to introduce inadmissible hearsay evidence. She also persisted in attempting to introduce evidence of conduct on the part of Mr. Carrier, or his family that was either completely irrelevant, or so marginally connected to any issue in dispute that it did not warrant the impact on the length of trial.
- [24] Counsel for Mr. Carrier objected to this evidence, but to avoid lengthening the trial, did not object on every occasion. It became clear that Ms. Tate had discussed her testimony, or matters about which she testified, with several of the other defence witnesses, including her mother, sister, friend, and current common law partner. Mr. Carrier, his mother and sister had also discussed at least some of the matters about which they testified. While it is natural for people closely related to each other to discuss matters of significance to them, it was sometimes difficult to determine whether witnesses were relating matters about which he or she had first-hand knowledge, or whether the court was being provided with hearsay evidence. This was particularly the case when Ms. Tate was testifying and when she was examining her witnesses in chief.
- [25] I have disregarded the hearsay evidence where relied upon by for the truth of the statements related, except where I consider the hearsay evidence to have met the tests of necessity and reliability.

MR. CARRIER'S BACKGROUND

- [26] Mr. Carrier was born in Quebec on December 23, 1970 and is currently 36 years old. He is a tall man who appears physically fit and athletic. Mr. Carrier's biological father left his mother when she was pregnant with Mr. Carrier, and during his early childhood years he and his older sister, Natalie, were raised by their mother, with the assistance of their maternal grandparents. Mrs. Carrier worked outside the home to support her family. Mr. Carrier's mother met and married Mr. Ray Carrier when Mr. Carrier was a young child. Ray Carrier adopted Mr. Carrier and his sister and both regarded him as their father.

- [27] Mr. Carrier's own evidence and that of his mother and sister portray him as an active, adventurous child, raised in a happy and stable family environment. Ms. Tate testified about things she said she was told about Mr. Carrier's childhood by him or by his mother or sister. Some of this evidence was contradicted or placed in context by Mr. Carrier, his mother, or his sister - for example, a suggestion that Mr. Carrier was placed in a cage to prevent him from injuring himself; that Mr. Carrier was an unusually accident-prone child; that he verged on juvenile delinquency; or that his step-father was a much stricter disciplinarian with him than with his sister. As stated earlier, I found that Ms. Tate tended to skew, in a negative fashion, almost all information about Mr. Carrier and his family, but even if Ms. Tate's version of some of these events was accepted, the evidence does not establish that anything about Mr. Carrier's childhood or young adulthood was unusual, or likely to predispose him to the commission of sexual offences involving children. In particular, I am satisfied that he was not sexually, physically, or emotionally abused during his childhood.
- [28] Mr. Carrier became active in sports and athletics in high school. After completing high school he went to College for two years, and then moved to British Columbia with the rest of his immediate family in 1991, when he was 20 years old. He worked in a landscaping business with his step-father for a couple of years, and then moved into the hospitality industry, starting as a restaurant server and eventually working as a maitre d' and restaurant manager. For the past 10 or 11 years, with some brief interruptions, he has worked at a high-end Vancouver restaurant, latterly as a manager. He has participated in internet business ventures and the sale of consumer products through home sales, although this has not proved to be very remunerative. He was interested in a career in policing, and took some post-secondary courses related to that career, but believes that the allegations of sexual assault made against him by Ms. Tate have likely closed off that avenue.
- [29] Ray Carrier, the plaintiff's step-father, died in 1996, and some years later Mr. Carrier's mother remarried. Her husband was referred to at trial as "Scotty" - his last name is Scott - and she is now known as Sandra Carrier-Scott. Mr. Carrier has a close relationship with his mother and with his sister Natalie Carrier-Denis and her husband, all of whom live in Metro Vancouver. Ms. Carrier-Scott is very fond of S and R, who are her only grandchildren, and she and Ms. Carrier-Denis and her husband are prepared to assist Mr. Carrier with the care of S and R if Mr. Carrier's home is designated as the boys' primary residence. During the time that Ms. Tate and Mr. Carrier lived together, both Ms. Carrier-Scott and Ms. Carrier-Denis assisted the couple with child care, and also helped out when Ms. Tate was ill during her pregnancy with R.
- [30] Mr. Carrier testified that his mother has lent him money to assist with the costs of this trial. Ms. Tate submitted that Mr. Carrier is not really interested in his sons, and that it is really Ms. Carrier-Scott who is pursuing this action. I do not accept this submission. It is clear that Ms. Carrier-Scott is anxious to maintain a relationship with her only grandchildren, but it is equally obvious that Mr. Carrier loves his sons and is anxious to re-establish and maintain a relationship with them for his sake and theirs. Ms. Tate's testimony, Mr. Carrier's own

testimony and his demeanour while testifying, and recordings of conversations between Ms. Tate and Mr. Carrier that were made by Ms. Tate, all indicate that Mr. Carrier prefers to avoid confrontation, and he delayed in resorting to the courts, but eventually felt he had no alternative but to commence this action when what had been limited access became even more severely curtailed. I am satisfied that he has brought this action and maintained his claims for legitimate reasons, including responding to the allegations that he has sexually abused his oldest son.

- [31] Currently, Mr. Carrier works three weekdays each week at the restaurant where he is employed, on a split shift of 10:00 a.m. to 2:00 p.m., and then 4:00 p.m. to 10 or 11:00 p.m. On Saturday and Sunday - he works evenings only, generally from about 6:00 p.m. to 11:00 p.m. or midnight. He testified that he has a good relationship with his employer and that if necessary he can arrange to have every second weekend off.
- [32] In his spare time, Mr. Carrier plays beach volleyball and helps to manage a non-profit beach volleyball association that organizes league games and tournaments. He currently lives in a large basement suite in Vancouver rented from a friend. This man testified and confirmed Mr. Carrier's evidence about the spaciousness of Mr. Carrier's rental accommodation and his willingness to have S and R reside in the suite with Mr. Carrier.
- [33] I shall comment later in these Reasons on the evidence about Mr. Carrier's interest in internet sites featuring adult sexual activity and internet and telephone dating services and chat lines.

MS. TATE'S BACKGROUND

- [34] Ms. Tate was born in the Lower Mainland of British Columbia on December 5, 1970, and is currently 36 years old. She is a woman of average or slightly above average height who appears physically fit and athletic. I expect that most observers would consider Ms. Tate and Mr. Carrier to be physically attractive individuals.
- [35] When she testified, the defendant stated her surname as "Tate-Johnson", but as the pleadings refer to her surname as "Tate" only, I have used that name throughout these Reasons.
- [36] Ms. Tate's mother identified herself as Irene Tate. I shall refer to her in these Reasons as Mrs. Tate, in order to distinguish her from the defendant. Mrs. Tate is Canadian, but testified that she left Canada in the late 1960's, when she was only 17, and lived for a time in the Haight-Ashbury district of San Francisco, where she met Ron Tate, Ms. Tate's biological father. Mr. Tate was then a member of the United States Marine Corps. Mrs. Tate testified that they were unable to marry because she was only 17 years old and "a run-away", but they were together for about three years. Before Mrs. Tate learned that she was pregnant with Ms. Tate, Ron Tate was sent to Vietnam, and Mrs. Tate returned to Canada. She attempted to locate Mr. Tate to inform him about the pregnancy, but was unable to contact him and eventually came to believe that he was "missing in action". Until she was 20 years old, Ms. Tate believed that her biological father had died in Vietnam.

- [37] In 1973, when Ms. Tate was two years old, Mrs. Tate married Raymond Johnson. Mrs. Tate and Mr. Johnson had three children together - Rachel, Tommy and Megan. Ms. Tate also has a fourth half-sibling, Iolande, who is Ron Tate's child from a previous relationship.
- [38] Mr. Johnson had health problems that made it difficult for him to maintain employment, and he had problems with alcohol abuse, so the family's financial situation was precarious. Mrs. Tate was assisted by her mother and an aunt, and occasionally the family had to apply for social assistance, but the children's needs were met. Mrs. Tate worked outside the home for a time, but then began providing in-home daycare services, and also cared for foster children from time to time.
- [39] When Ms. Tate was 15 months old, Mrs. Tate enrolled her in a research project at a daycare at the University of British Columbia in a group of 12 children who attended the daycare on a daily basis for 18 months. Ms. Tate attended private Catholic schools for all of her elementary and secondary education. Ms. Tate described herself as an average, or even below-average student academically, but she excelled in sports and athletics. She was very active at school and socially, playing competitive sports, taking dance lessons, and involved in clubs and volunteer activities. Ms. Tate testified that her biological father is Afro-American, although this ancestry is not immediately apparent in Ms. Tate. During her teens and later years, Ms. Tate became involved with Caribbean Fest and the Black Achievement Awards.
- [40] Eventually Mrs. Tate and Mr. Johnson divorced. Ms. Tate's youngest sister stayed with her father; Ms. Tate and the other siblings apparently remained with their mother.
- [41] After graduating from high school, Ms. Tate took some college courses, but began earning money as a model and decided to discontinue her education. She met an American serviceman and moved with him to North Carolina, where they lived together on a military base for two and a half years. Although she did not have an American work permit, Ms. Tate worked part-time as an aerobics instructor. Her partner went to the Gulf area for 9 months and after he returned, his personality had changed. Ms. Tate testified that he became very aggressive and eventually assaulted Ms. Tate by holding a knife to her throat and after this event, Ms. Tate ended the relationship.
- [42] While in the United States, Ms. Tate learned that Ron Tate had not died in Vietnam. She eventually located him in New Jersey where he was employed as the manager of an apartment building. Ms. Tate contacted her father and went to New Jersey. She lived with him for about a year while she was waiting for her application for U.S. citizenship to come through. She used the time to look for work as a model.
- [43] Dr. Robert Ley prepared a custody and access report in response to a court order made in this proceeding. Dr. Ley reported that Ms. Tate told him that Mr. Tate was a binge-drinker during the time she shared his apartment in New Jersey. Ms. Tate did not use this description when testifying, and appeared to take issue with it, but she testified that her father did go out drinking with his friends and sometimes returned home in an intoxicated

state. One night she woke up to discover that Mr. Tate was in bed with her, and she felt his penis go between her legs. She was clothed and there was no vaginal penetration, but she was naturally very upset and angry with him. She left her father's home immediately and very soon after she returned to Canada.

- [44] Ms. Tate subsequently confronted Mr. Tate about this incident but he denied the event. She also told her mother about what had occurred, but testified that her mother did not seem to believe her.
- [45] Eventually, Mrs. Tate went to the United States and renewed her acquaintance with Ron Tate and the two eventually married. Ron Tate returned to Canada with Mrs. Tate, and they are still together. Ms. Tate was initially upset that her mother had entered into a relationship with Mr. Tate despite knowing what he had done to Ms. Tate. Ms. Tate was also angry that Mrs. Tate did not believe the incident had occurred. However, Ms. Tate testified that she eventually forgave Mr. Tate for what he had done, and that he has been very helpful to her, and that they now have a decent relationship, and that she has a close relationship with her mother.
- [46] Dr. Ley included references to various incidents of sexual abuse or molestation suffered by Ms. Tate during her childhood, adolescence and early adulthood. Although Ms. Tate acknowledged that she had provided the information about these events to Dr. Ley, and that the information he had relayed was accurate, Ms. Tate was upset about the emphasis she perceived Dr. Ley had placed on these incidents in his report, and his references to the fact that up to the time she met with him, she had never sought or received counselling in relation to these incidents.
- [47] Like Dr. Ley, however, I have concluded that Ms. Tate's history of and experience as a victim of physical and sexual abuse is relevant to her belief that Mr. Carrier has sexually abused their oldest son, and relevant to her response. I also believe that Irene Tate's own experience as a victim of sexual abuse, and her belief that two of her children were sexually abused, is relevant to her perceptions about her grandson's situation.
- [48] Irene Tate testified that she had been sexually molested when she was a child of 5; and that both Ms. Tate and her sister Rachel were sexually abused when they were children. Mrs. Tate testified that she knows many people who have been sexually molested, some of whom she met when she did volunteer work with abused women and children.
- [49] The incident involving Ms. Tate and her biological father when she was in her early 20's was actually the fourth time that Ms. Tate was sexually assaulted. Mrs. Tate testified that Ms. Tate was sexually molested by two strangers when she was 3 years old. This happened when Mrs. Tate was in hospital for the birth of her daughter Rachel, and Ms. Tate was staying with her maternal grandmother. I must assume from that description that Mrs. Tate's information is derived from either the grandmother, or Ms. Tate herself. Mrs. Tate testified that while Ms. Tate was in her grandmother's care, she left her grandmother's home and went to a nearby park with some other children. Some time later, two elderly women called

the police and reported having found Ms. Tate wandering in a graveyard. Mrs. Tate testified that Ms. Tate later reported to her that two girls had taken her to the graveyard and that one of them had urinated in Ms. Tate's mouth.

- [50] Mrs. Tate also testified, however, that when Ms. Tate was about 20 years old, she told Mrs. Tate that she remembered then that the perpetrators were not two girls, but rather an aboriginal woman and her brother.
- [51] Ms. Tate testified that it was Mrs. Tate who told her that the two elderly women who found Ms. Tate wandering in the graveyard said that someone had urinated in Ms. Tate's mouth. Ms. Tate testified that she actually has no recall of what was done to her when she was 3. However, she also testified that when she was about 25 years old, she suddenly recalled that the assault - whatever it had been - had actually been perpetrated not by two girls, but by an aboriginal woman and that woman's brother.
- [52] Ms. Tate also testified that when she was about 6 and visiting with her mother and sister at the home of friends, a family friend sat her on his lap and tried to put his hand inside her underwear. One of her younger sisters came into the room and Ms. Tate made an excuse to get off the man's lap, and left the room.
- [53] When Ms. Tate was 16 and sleeping over at the home of a girlfriend, the girl's father sat down on the bed where Ms. Tate and her girlfriend were sleeping and put his hand under Ms. Tate's underwear and between her legs. Ms. Tate initially pretended to be asleep, but then pretended to be talking in her sleep and calling her friend's name, and the man left.
- [54] After the incident involving her father in her bed, Ms. Tate returned to Canada. She lived with her mother for awhile, and then moved into her grandmother's rented townhouse in Vancouver to look after her grandmother, who had broken a hip. When her grandmother died, Ms. Tate took over the lease of the townhouse. The landlords are family friends.
- [55] Ms. Tate initially had trouble finding work and applied for social assistance. The Ministry paid for her to take a course in aerobics instruction, and first aid and CPR and she found work as an aerobics instructor in Burnaby. She also did modelling work, coordinated fashion shows, and worked as a movie extra. Through a stock broker she was dating, she made some money in the stock market and used it to open an agency for movie extras, and then started taking contracts to do casting and management of extras for various film and television productions. Ms. Tate continued working in the extras casting business at time of trial, but testified that she would like to get into the writing and production end of the film industry, in particular, writing and producing educational programs for children and teens. She testified about a film production course in California that she believes would assist her to break into this work.
- [56] Before and during the time the parties lived together, and for some months after, Ms. Tate lived in a rented townhouse that had previously been occupied for many years by her grandmother. Just before R's birth, Ms. Tate purchased a home in Abbotsford referred to in

testimony as the "Sidonie" house. She had two tenants in suites in that home, and eventually entered into a romantic relationship with one of the tenants, Mr. Jean Gilbert, with whom she now lives in a common law relationship. Ms. Tate sold the Sidonie house and she and Mr. Gilbert purchased the home in Abbotsford where they and the two Carrier children currently reside. Ms. Tate also owns several rental properties.

HISTORY OF THE RELATIONSHIP

- [57] In both her lengthy cross-examination of Mr. Carrier, and in her own evidence in chief, Ms. Tate referred in considerable detail to the history of the relationship between the parties back to their earliest acquaintance. Much of her evidence about their relationship, and Mr. Carrier's conduct while they were dating and during the time they lived together is irrelevant to the issues the court must address in this lawsuit. Conduct of the parties irrelevant to the issues of custody or access may not, of course, be considered. I will, however, provide a brief summary of the history of their relationship to provide context.
- [58] The parties were introduced by a mutual friend in the spring of 2000 and dated for a time. They had in common their interest in athletic pursuits, and film. After she started dating Mr. Carrier, Ms. Tate wanted a monogamous relationship, but Mr. Carrier did not wish to commit himself to dating only Ms. Tate. The couple stopped dating for a time, but later resumed their relationship. It appears that the relationship was unstable even in these early stages, with occasional break-ups, usually precipitated by Ms. Tate becoming angry or jealous about Mr. Carrier's involvement with or perceived interest in other women. Ms. Tate believes that Mr. Carrier sometimes lied to her about his involvement with other women, and I consider it likely that he was not always forthright about other relationships.
- [59] While the couple were dating, Ms. Tate noticed photographs of naked or scantily clad women in Mr. Carrier's apartment, and also icons on his computer indicating sites that had photographic material relating to sexual acts. Ms. Tate learned that Mr. Carrier was interested in viewing sexual activity on the Internet, and he showed her some pictures, suggesting that she might like it. Throughout the trial, these depictions of sexually intimate acts between adults were referred to by Ms. Tate as "pornography", and no objection was taken to the use of that term. The Concise Oxford Dictionary defines "pornography" as "the explicit description or exhibition of sexual activity in literature, films, etc., intended to stimulate erotic rather than aesthetic or emotional feelings". This description seems to aptly describe the material described by Ms. Tate in her testimony, so I shall use the term "pornography" in these Reasons in relation to sexually explicit material involving adults.
- [60] I must point out, however, that the term "pornography" in the Criminal Code of Canada is used only in relation to child pornography, and the definition of child pornography is found in section 163.1(1) of the Criminal Code. The evidence in this trial does not establish that Mr. Carrier is now, or ever has been, in possession of child pornography, or that he has ever intentionally accessed or viewed child pornography. Ms. Tate provided print-outs of what appear to be the titles of internet sites that she testified were found on the computer she

took from Mr. Carrier's home, one of which is titled "Sweet Young Boys". However, the evidence does not establish that that is a site depicting child pornography, or that Mr. Carrier accessed that site. In these Reasons, when intending to refer to sexually explicit material involving depictions of children, I shall use the term "child pornography".

- [61] About September 2001, Ms. Tate invited Mr. Carrier to move into her home with her. She was living in a rented town house that her grandmother had occupied for many years before her grandmother's death. The owners of the building were friends of Ms. Tate's grandmother and friendly towards Ms. Tate. Mr. Carrier was temporarily unemployed at the time, was unable to afford the rent on his own apartment, and was facing eviction. Ms. Tate was paying quite a low rent, because of the long relationship between her grandmother and the owners of the home, and the agreement the parties made was that Mr. Carrier was to pay half of the rent and other expenses. He remained unemployed for a few months and was initially unable to pay his share, so Ms. Tate agreed to lend him the money on the basis that he would repay her when he started working. He did repay some of the money he owed Ms. Tate during the relationship and continued to repay her for some months after the relationship ended.
- [62] After the couple were living together, Ms. Tate observed that Mr. Carrier continued to view pornography online. She was unhappy about his doing so and remonstrated with him and at times he would tell her that he would stop. At her request, he gave her the access code for his computer and every few months she checked his computer and verified that Mr. Carrier was viewing pornography, all of it relating to adult women. Despite checking regularly, she found no evidence that Mr. Carrier had been viewing sites involving rape or violence or child pornography.
- [63] The parties' relationship was strained by their differences of opinion about Mr. Carrier's interest in internet pornography; and his involvement with a computer-based sales business; and other issues relating to finances. Based on my observations of the parties during the trial and the testimony in general, as well as numerous recordings Ms. Tate made of conversations with Mr. Carrier or Ms. Carrier-Scott, it is clear that Mr. Carrier and Ms. Tate have very dissimilar personalities. Ms. Tate tends to be very verbal and assertive, and can be very confrontational, raising her voice, talking over others, and employing profanity and verbal disparagement. Her preferred approach is to discuss a subject until she can persuade others to agree with her point of view. She considers her views and opinions about most things to be reasonable and correct, and tends to believe that if people don't agree with her, it is because they were not listening.
- [64] Mr. Carrier, on the hand, appears to be someone who avoids direct confrontation or disagreement, and may acquiesce or appear to agree with propositions with which he does not actually agree, in order to avoid conflict.

- [65] Very soon after Mr. Carrier moved in with Ms. Tate, the couple learned that Ms. Tate had become pregnant. Although they had had discussions about wanting to have children eventually, this was an unplanned pregnancy. However, the parties intended to stay together and both were happy about the prospect of having a child.
- [66] Ms. Tate had met Mr. Carrier's mother, sister and brother-in-law on a few occasions before she learned that she was pregnant with S. Ms. Carrier-Scott was very excited about the pregnancy. Her daughter Natalie is married, but she and her husband are unable to have children, and Ms. Carrier-Scott was delighted at the prospect of a grandchild. Natalie Carrier-Denis was also happy about the pregnancy and both she and Ms. Carrier-Scott were supportive.
- [67] About a month before S's birth, the couple separated for a few days following a disagreement about Mr. Carrier accessing sexually explicit adult material on the internet. Ms. Tate testified that they reconciled after Mr. Carrier promised to go to counselling with her, and to stop looking at pornography on his computer. The couple did see someone at a church for several counselling sessions after S's birth.
- [68] A good deal of trial time was occupied with evidence about events taking place in the birthing room at the hospital when S was born. Although their versions of events differed in several respects, Ms. Tate, her friend and her mother are all of the view that Mr. Carrier's mother and sister were insensitive to Ms. Tate's wishes and feelings when she was giving birth to S. In my view, this evidence lacks relevance to the issues the court must decide and I do not intend to review it here, except to say that the testimony of Irene Tate about this event, and all of her testimony about Mr. Carrier's family - in particular, about Ms. Carrier-Scott - reveals that Mrs. Tate harbours an unwarranted but deep dislike, and possibly envy, of Ms. Carrier-Scott, perhaps even greater than her antipathy towards Mr. Carrier. Ms. Tate testified that from the outset of her relationship with Mr. Carrier, her family did not like him, and that was abundantly clear when Mrs. Tate testified.
- [69] Mrs. Tate's strongly held and entirely negative views have, I am satisfied, served to reinforce Ms. Tate's own views, and have contributed to the conflict between the parties. Certainly Ms. Tate has relied on and been influenced by her mother's opinions about what is or is not normal behaviour in children.
- [70] The evidence about S's birth also illustrates a view that Ms. Tate and her mother appear to share, which is that children really belong to their mothers, and their mothers' families; and that fathers, and their families, are less important and should be content to remain more in the background. Implicit in this view is a conviction that "mothers know best", however inexperienced that mother may be.

- [71] Mr. Carrier took several days off work so that he could stay at the hospital with Ms. Tate and S the night after S was born, and remain at home with Ms. Tate and S for the first couple of days after S's birth. Ms. Carrier-Scott and Ms. Carrier-Denis brought gifts for the baby and gifts of food. Ms. Tate's mother was also supportive and visited often.
- [72] Ms. Tate asked Mr. Carrier's sister and brother-in-law to be S's godparents, and they were delighted to agree.
- [73] Ms. Tate went back to work doing extras casting for a television series when S was 3 and half months old. She did not qualify for employment insurance because she was self-employed at the time, and it was difficult for the couple to survive on Mr. Carrier's income alone. In addition to working at the restaurant, Mr. Carrier was, as I said earlier, involved in a sales business involving the sale of consumer products - cleaning supplies, vitamins and health supplements. Although initially supportive of this endeavour, Ms. Tate became increasingly disenchanted with what she perceived to be the high-pressure tactics of the individuals above Mr. Carrier in the merchandising organization, and the expenditures Mr. Carrier was making to purchase the consumer products he sold, and she tried to persuade him to abandon the venture. Ms. Tate's mother was also highly critical of this business, and made her views known to the parties.
- [74] Mr. Carrier's mother and sister were happy to baby sit S, in order to assist Mr. Carrier and Ms. Tate, but Ms. Tate felt they called and visited too often and for too long, and was unhappy about their desire to keep S overnight at their homes when Ms. Tate and Mr. Carrier were out late.
- [75] S was a source of delight to both Mr. Carrier and Ms. Tate, as numerous photographs submitted by Ms. Tate illustrate, and despite the problems in their relationship, the couple decided to have a second child, and R was conceived. Almost from the outset of her pregnancy with R, Ms. Tate suffered from significant nausea associated with the pregnancy, and the nausea interfered with her ability to work and do household tasks during most of the pregnancy. Her inability to work exacerbated the financial problems the couple were experiencing. Mr. Carrier began coming home during his work breaks to care for S so Ms. Tate could rest and he took over more and more responsibility for the care of S.
- [76] Ms. Tate testified at length about concerns she has about Mr. Carrier's competency as a parent. Ms. Tate's evidence also indicates that although both she and Mr. Carrier were new parents, she considered her knowledge of child-rearing to be superior to his. Ms. Tate testified that she did not want to be a "nagging wife" but it is clear from her testimony that she frequently told Mr. Carrier how she thought he should interact with S and she was not slow to criticize his parenting.
- [77] Although Mr. Carrier was not quick to criticize Ms. Tate's parenting abilities when he testified, he did point out she also had shortcomings, and that things she did when the couple were together, and afterwards, also put S, or S and R, at risk.

- [78] I shall address Ms. Tate's concerns about what she terms the "danger issues" related to Mr. Carrier's capacity to parent later in these Reasons, and shall also comment on the evidence relating to Ms. Tate's parenting. Whatever her present concerns, however, while the parties continued to co-habit, Ms. Tate was sufficiently confident in Mr. Carrier's abilities as a caregiver to entrust S's care to him. This was particularly so when she was pregnant with R, and needed to sleep or rest. Mr. Carrier fed, bathed, changed and dressed S, and took S to the beach and to the park on his own, with Ms. Tate's knowledge and concurrence. Ms. Carrier-Denis testified that although after the separation, Ms. Tate complained that Mr. Carrier did things that were unsafe - leaving knives on the table or counter-top, driving too quickly - no complaints of this kind were expressed to Ms. Carrier-Denis before the parties separated. Ms. Tate testified that she didn't realize how dangerous Mr. Carrier's conduct was in relation to S until she was preparing an affidavit for use on an interim application in this action.
- [79] In early 2004, Ms. Tate became suspicious about Mr. Carrier and began surreptitiously checking his cell phone to see what calls he had made or received. She discovered that he had been calling a telephone chat line and dating services, and had also called some numbers found in advertisements in a local newspaper placed by women. She confronted Mr. Carrier about the calls and he lied to her, telling her he'd just been curious, and minimizing the extent of the activity. Eventually Ms. Tate contacted one of the numbers she had obtained and spoke to a woman who eventually disclosed to Ms. Tate that she and another woman had met with Mr. Carrier on one occasion and engaged in sexual acts for which Mr. Carrier paid the two women. The woman also allowed Ms. Tate to listen to a taped telephone message that Mr. Carrier had left for the woman, asking her not to tell Ms. Tate about their liaison, because he did not want to ruin his family.
- [80] Mr. Carrier initially tried to lie to Ms. Tate about his activities, or to minimize the extent of the activities, but eventually admitted to the truth. Ms. Tate subsequently learned that Mr. Carrier had posted photographs of and information about himself on several internet "dating services" (copies of several of these are in evidence), and had made numerous telephone calls to various women he had met through these dating services or in response to newspaper advertisements. She said he eventually admitted he had also frequented massage parlours on occasion.
- [81] Ms. Tate was particularly upset and embarrassed when she realized that a few of the women Mr. Carrier had communicated with had previously worked as extras for her when she ran her casting agency.
- [82] Ms. Tate attempted to suggest at trial that she was not upset for herself, but rather upset that Mr. Carrier would choose to spend time and money in this way that could better be devoted to his son. I conclude, however, that Ms. Tate was devastated and angry to learn of Mr. Carrier's liaisons with other women, and that she is still bitter about his betrayal of their relationship, and that in part her actions in limiting and denying access to S and R have been motivated by her desire to punish Mr. Carrier. After their separation she made statements to

Mr. Carrier, and to his mother and sister, that by his actions Mr. Carrier had forfeited his right to be a parent.

- [83] Very soon after Ms. Tate's discoveries - Ms. Tate testified the exact date was February 23, 2004 - but certainly by early March 2004, the parties separated. Ms. Tate packed Mr. Carrier's personal possessions and put them outside the front door of their home, and when he arrived, passed him his wallet and credit cards through the mail slot. Mr. Carrier went to his sister's home where he stayed until he found an apartment to rent.
- [84] In the days and weeks after the separation, Mr. Carrier attempted to persuade Ms. Tate to give him another chance, but, understandably, Ms. Tate was not prepared to continue the relationship. For a period of 10 days or two weeks after the separation, Ms. Tate refused to allow Mr. Carrier to see S. Ms. Tate testified that at about this time, S began waking during the night, upset and crying. These sleep disturbances have recurred throughout the intervening years, although Ms. Tate and her partner, Mr. Gilbert, testified that in recent months, the frequency has diminished.
- [85] At trial, Ms. Tate resisted suggestions that S first experienced the sleep disturbances shortly after the separation, although she had testified to that on examination for discovery. I am satisfied that she attempted to alter her testimony at trial to accord with her theory that S has sleep disturbances because he has been sexually abused by Mr. Carrier, and her theory that the sexual abuse began before the couple separated.
- [86] She also seeks to refute Dr. Ley's suggestion that it is possible that S's pattern of sleep disturbances may have been precipitated by his anxiety over his parents' separation and his father's sudden and misunderstood departure from his daily life and routine. Ms. Tate seems unwilling to accept that S could have been disturbed or anxious about his parents' separation, even though she testified that shortly after the separation she asked Ms. Carrier-Denis to baby sit S because she, Ms. Tate, had been crying continuously for two days and thought he should be away from her for a time.
- [87] Some other relevant points emerge from the evidence about the early days following separation. The first is that Ms. Tate took the position early on, as she has since, that by his conduct, Mr. Carrier had not only rejected her, but had also forfeited his right to be a parent. She stated this to him at the time and has repeated it since. She also declared that she had not had children with the intention of allowing them to spend time away from her. Most significantly, she demonstrated very early on, and in the absence of any of the evidence of S' behaviour on which she now relies, a predisposition to believe that Mr. Carrier would sexually abuse S.

- [88] Soon after the separation, Mr. Carrier told Ms. Tate that he was going to see a counsellor, Dr. Sabine, and Ms. Tate asked if she could also consult Dr. Sabine. She said she wanted advice about how to handle the separation for S. Mr. Carrier agreed, and they both went to see this person. Although Ms. Tate initially said she was going to require Dr. Sabine to testify at trial, he was never called as a witness. I have assumed that he is either a medical doctor, or a psychologist, or counsellor, but the evidence about his qualifications is unclear.
- [89] Ms. Tate testified that during her meeting with Dr. Sabine shortly after the parties separated, she asked Dr. Sabine whether he thought Mr. Carrier would sexually abuse S.
- [90] Ms. Tate explained several times during the trial that she does not believe that Mr. Carrier is a pedophile, and she testified that she told Dr. Sabine that she does not believe that Mr. Carrier is a pedophile. She told Dr. Sabine that she had never seen any child pornography on Mr. Carrier's computer or in his possession. She also explained, however, that because of Mr. Carrier's strong sex drive, his interest in viewing pornography and his other activities involving the internet and telephone-dating services, she believed he could become bored and eventually turn to sexual activity with S as a natural progression or escalation of what she regards as his addiction to sex.
- [91] According to Mr. Tate, after listening to her description of Mr. Carrier's activities, Dr. Sabine told her that he considered it highly unlikely that Mr. Carrier would behave in a sexually inappropriate way with S. This evidence is not admissible for the truth of its contents, of course, but it is relevant to an assessment of Ms. Tate's response to information that contradicts her view that Mr. Carrier is a child molester. I conclude that despite the assurances she received from Dr. Sabine, Ms. Tate had already begun to convince herself that Mr. Carrier would sexually molest S.
- [92] After the initial period following the separation when Ms. Tate was angry with Mr. Carrier and would not allow him to see S at all, she allowed Mr. Carrier to see S if he came to her house during his work breaks, and sometimes in the evenings to put S to bed. Mr. Carrier drove Ms. Tate to her pre-natal medical appointments, and continued to look after S when Ms. Tate needed to rest or sleep. Although Mr. Carrier occasionally took S out for brief outings while Ms. Tate was sleeping, Ms. Tate complained about him doing so, and generally insisted that he visit with S only in her home or in her presence.
- [93] Ms. Carrier-Scott was very upset about the breakdown of the relationship between Ms. Tate and Mr. Carrier and feared that it would result in a loss of contact with her grandson. She and Ms. Carrier-Denis continued to baby sit S and they tried to be supportive of Ms. Tate, who was well into her pregnancy with R, and to avoid becoming embroiled in a controversy between Ms. Tate and Mr. Carrier. Ms. Tate began to complain to Ms. Carrier-Scott and Ms. Carrier-Denis about Mr. Carrier; in particular, about things he did or did not do that she perceived placed S at risk, and about his driving. She asked them to speak to Mr. Carrier, and they did.

- [94] Near the end of Ms. Tate's second pregnancy, she, Mr. Carrier, Ms. Carrier-Denis and her husband, Mr. Denis, met at Ms. Tate's home for a "family meeting" that Ms. Tate had requested. Ms. Tate is a proponent of what she calls family meetings, but she appears to regard them as opportunities to vent her frustrations and concerns about Mr. Carrier and to seek the agreement of others with the opinions she holds. At this gathering, Ms. Tate told Mr. Carrier's sister and brother-in-law her views about Mr. Carrier's deficits as a parent and as a person. At some point during this meeting, she told them that she thought that Mr. Carrier would sexually abuse S.
- [95] Although it is clear that Mr. Carrier rarely demonstrates anger, (Ms. Tate described him as "quiet" and as a person who does not argue), Ms. Tate's statement made Mr. Carrier furious and his brother-in-law had to take him out of the room to calm him down. I interpret Ms. Tate's statements at this meeting as further evidence that she was predisposed to believe that Mr. Carrier would sexually abuse his son. It would also have become clear to her from Mr. Carrier's reaction that making such allegations was a method of provoking and punishing him.
- [96] A year earlier, Ms. Tate and Mr. Carrier had discussed purchasing a home. Although the couple lived in rented accommodation, Ms. Tate owned a couple of condominiums, one in Vancouver and a second in Maple Ridge that she rented to tenants.
- [97] Shortly before the birth of R, Ms. Tate purchased a home in Abbotsford. A few weeks before R was due, she moved to her brother's home in Abbotsford, and then 10 days or so before her due date, she moved to the home of a friend who had agreed to be her labour coach.
- [98] While she was staying at her brother's home, Ms. Tate advised Mr. Carrier that he could come there to visit S and he did so. He brought out a table and chairs that she wanted. His mother and sister also visited. Ms. Tate was not feeling well, and was having problems with the tenants in her Maple Ridge condo and was trying to evict them.
- [99] Ms. Carrier-Scott told Ms. Tate that she was concerned about losing contact with her grandchildren, especially given Ms. Tate's move to Abbotsford, and Ms. Tate assured her that would not happen, but Ms. Tate stopped answering some of Ms. Carrier-Scott's calls and often did not reply to messages left by Ms. Carrier-Scott. Ms. Tate complained throughout the trial that Ms. Carrier-Scott contacted her too often and expected to be called back too soon after messages were left. She interpreted this as harassment rather than concern. She also complained that Ms. Carrier-Scott would keep her on the phone too long, but having listened to tape-recordings of conversations, it is clear that it has generally been Ms. Tate who has prolonged the conversations with Ms. Carrier-Scott and Mr. Carrier. These conversations often consist of Ms. Tate revisiting matters that occurred long ago and about which there is no prospect of agreement, switching subjects when she receives an answer she dislikes and generally being argumentative.

- [100] Ms. Tate frequently referred to how tired and stressed she was as a single parent with two young children, also attempting to pursue a career, and I have no doubt she felt that way, and understandably so. However, it is also clear that Mr. Carrier, and his mother and sister were seeking to assist and support her with the two children and that by her own actions in refusing to allow these individuals to see the children when she was not present, she has made life more difficult for herself and for the children than it need have been.
- [101] After the couple separated, Mr. Carrier had been paying Ms. Tate \$1,000 a month. The parties agreed that one-half of this sum was child support and the balance was repayment of the money Ms. Tate had loaned to Mr. Carrier early in their relationship.
- [102] Mr. Carrier generally paid this sum, but was sometimes late in paying and sometimes paid in instalments. Understandably, Ms. Tate was finding it difficult to meet her financial obligations when she did not receive the payments in the amounts, or on the dates, expected, and Mr. Carrier's failure to pay the support in a timely way is reprehensible. However, Ms. Tate's response also indicates the depth of her unacknowledged anger towards Mr. Carrier.
- [103] In the first week of July, around the time that R was due to be born, Ms. Tate called Mr. Carrier and complained that he had not yet paid her for that month. He said he'd go to the bank and deposit the money, but called back shortly after to say that the bank was closed. Ms. Tate had her friend drive her from Abbotsford to the beach in Vancouver where Mr. Carrier was playing beach volleyball with other members of his beach volleyball club. Ms. Tate loudly confronted Mr. Carrier on the court in front of his friends and competitors, swearing at him and calling him names. It is clear that her intention and her goal was to humiliate and embarrass him, as well as persuading him to come up with the money. Mr. Carrier eventually persuaded her to walk with him a short distance away. He told her he was broke but he gave her the cash he had with him - an amount less than what she was owed - and she left.
- [104] When Ms. Tate went into labour with R, she did not tell Mr. Carrier. She also did not tell any member of Mr. Carrier's family, even though Ms. Carrier-Scott called when Ms. Tate was in fact on her way to the hospital. Ms. Tate did not tell Mr. Carrier about the birth of his second son for several days afterwards, although on the day after he was born she left the hospital to attend to an arbitration matter relating to the eviction of tenants from her Maple Ridge condominium. Ms. Carrier-Scott and Ms. Carrier-Denis attempted to reach Ms. Tate by telephone, but it was not until several days after R's birth that Ms. Carrier-Denis was able to reach Ms. Tate and it was during that call that Ms. Tate informed her that R had been born. Ms. Tate asked Ms. Carrier-Denis to inform Mr. Carrier.

- [105] Shortly after R's birth, Ms. Tate moved into her first Abbotsford home. She invited Mr. Carrier to visit the children at her home, but refused to allow him to take S or R out of the home, unless she accompanied them. Mr. Carrier reluctantly acquiesced, hoping that eventually the situation could be regularized and he could arrange for access visits to take place at his home.
- [106] Ms. Tate testified that Mr. Carrier did not come out as often as she wanted him to, and she attributes this to disinterest on his part. I consider it probable that Mr. Carrier did not visit the children as often as it was possible for him to do so. I also conclude, however, that Mr. Carrier did not find these interactions with his children to be pleasant or satisfying. Ms. Tate's evidence and the contents of telephone conversations between Ms. Tate and Mr. Carrier that were recorded by Ms. Tate indicate that Ms. Tate attempted to control these visits and Mr. Carrier's interactions with the children, in every way. She was highly critical of Mr. Carrier's parenting and frequently instructed him about what he should do, and when and how he should do it and pointed out what she saw as the error of his ways. She told him he should read to the children and what to read. She directed where he should sit and how he should sit and what he should do.
- [107] Ms. Tate testified that Mr. Carrier would frequently give her insufficient notice of his intention to visit, although she also testified that she told him he could come out any time he wanted to. Mr. Carrier's testimony and the telephone calls recorded by Ms. Tate and placed in evidence by her at the trial also indicate that she sometimes cancelled visits on short notice, and on at least one occasion, cancelled a visit when Mr. Carrier was already en route from Vancouver to her home, because she became angry with him during a telephone conversation. She cancelled some visits because she decided to attend to matters relating to the rental of her condominiums and took the children with her rather than allowing Mr. Carrier to have them.
- [108] After Ms. Tate moved to Abbotsford, she suggested that Mr. Carrier move back into the Vancouver townhouse that the parties had shared prior to the separation, and he did so. Ms. Tate, S and R stayed there on a couple of occasions when Ms. Tate was having dental surgery and did not want the long trip back to her home in Abbotsford. She took advantage of these visits to go through Mr. Carrier's credit card receipts and photographs she found on his desk. The last time that the children were in Mr. Carrier's home was December 2004. At that time, S was two and one-half years old.
- [109] Near Christmas that year, Ms. Tate allowed Ms. Carrier-Scott and her husband to take S to a Christmas party at Mr. Scott's club.
- [110] As time passed, Mr. Carrier continued to ask to take the boys to his home for weekends, and to establish the sort of access regime that is common, but Ms. Tate continued to insist that Mr. Carrier visit with the boys only at her home or in her company. Ms. Carrier-Scott also wanted to have the boys at her home, and invited Ms. Tate to bring the boys there. Ms. Tate asked Ms. Carrier-Scott to visit at her home in Abbotsford instead. Mr. Carrier suggested

that he would have to commence legal proceedings. Ms. Tate referred to this as Mr. Carrier threatening her, although she testified she had also consulted a lawyer and obtained legal advice and had considered commencing an action herself. In fact, she was very angry when Mr. Carrier commenced an action in the Vancouver Registry because she had intended that the action be commenced in the Abbotsford Registry of the Provincial Court.

- [111] On one occasion when Ms. Carrier-Scott wanted to take S, or S and R, for a visit, Ms. Tate told Ms. Carrier-Scott that the boys could go with her only if she signed a paper that Ms. Tate had prepared that stated that Ms. Carrier-Scott agreed that Ms. Tate was the custodial parent. Ms. Tate attempted to justify her request by reference to a story she said she had heard from a friend whose former partner had taken her children for a visit and then refused to return them. Ms. Carrier-Scott interpreted this request as an accusation that she would kidnap the children, and refused to sign the paper. Ms. Tate refused to allow her to take the children out.
- [112] Feeling that matters had come to an impasse, Mr. Carrier retained counsel and commenced this action. After Ms. Tate was served with the writ of summons in April 2005, she was very angry and refused to allow Mr. Carrier to see the boys for a period of several weeks.
- [113] Ms. Tate retained counsel but was dissatisfied with an affidavit prepared by the lawyer and eventually terminated his services. She retained a second lawyer, but they also came to a parting of the ways when the lawyer wrote a letter to Mr. Carrier's counsel that Ms. Tate did not agree with. It appears there was also a dispute over fees.
- [114] In May 2005, Mr. Carrier started paying Ms. Tate \$500 instead of the \$1,000 a month he had been paying.
- [115] At some time - the date is unclear, but I conclude it was probably after this action was commenced - Ms. Tate arranged with her former landlord to have entry to Mr. Carrier's home when he was not at home, and she removed Mr. Carrier's laptop computer and took it to her home and kept it there. This was a computer Mr. Carrier had purchased after the separation, and Ms. Tate does not claim she owned the computer or had any legal claim to it or to possession of it. When Mr. Carrier discovered the computer was missing he suspected she had taken the computer and asked her about it. She lied and said she had not taken it.
- [116] Many months later, after Ms. Tate had made her first complaint to police alleging that Mr. Carrier had sexually assaulted S, she gave Mr. Carrier's laptop to the police. The police initially planned to obtain a warrant to search the computer, but when they terminated their investigation, they returned the laptop to Mr. Carrier.
- [117] Ms. Tate also had a friend of hers illegally access, intercept, download and print e-mail communications on a computer Mr. Carrier later purchased to replace the laptop appropriated by Ms. Tate. These communications included e-mails to and from his lawyer in relation to this lawsuit. These communications would normally be considered privileged from disclosure.

- [118] In the early court proceedings, Ms. Tate took the position that Mr. Carrier was an incompetent parent. She testified that he left knives and scissors on the kitchen counter; allowed S to stand too near the stove on a chair while preparing lunch for S; drove too fast; drove around a few blocks with S seated on his lap in the car; let S play on the sidewalk in front of the Vancouver home without being close enough to grab the child if he attempted to run into the street; and left S in a locked vehicle in a loading zone at the CBC building while he went in to pick up a cheque.
- [119] Mr. Carrier disputes some, but not all of these allegations. He admitted that he did some things that in retrospect were unwise, and he has since taken various courses in parenting to improve his capacity to parent competently.
- [120] In early August 2005, Ms. Tate reported to police and to the Ministry of Family and Children that she believed that Mr. Carrier had sexually abused S. The particular incident that led to this report occurred when Ms. Tate and Mrs. Tate were bathing S and R together in a bathtub at Ms. Tate's home. S had had his third birthday about a month earlier. Mrs. Tate was bathing S and noticed that he was holding onto his penis and bending over and appeared to be trying to put his penis into his mouth. Mrs. Tate drew Ms. Tate's attention to this. Ms. Tate asked S if he was trying to put his penis into his mouth and he said no, but repeated the behaviour. When asked again, he again denied that he was trying to put his penis into his mouth. Mrs. Tate told Ms. Tate that this was extremely unusual behaviour and intimated that it was almost certainly evidence that S had been sexually molested and she encouraged Ms. Tate to call the police and the Ministry.
- [121] After Ms. Tate took S out of the bathtub and while she was drying him off and diapering and dressing him, she asked him questions about his behaviour, repeating the questions in the face of his repeated denials of anyone having done anything to him, and persisting until she got an answer she accepted, which was an indication that S's Daddy had put his penis into S's mouth. This was in response to repeated direct questions from her about whether anyone had put his penis into S's mouth.
- [122] Ms. Tate gave several slightly different versions of the questioning process, and I do believe that S said something to her that implicated Mr. Carrier, but I am also satisfied that the answer given was not true. It is clear to me, from her recounting of the event, that S would not have understood the significance of what was being suggested to him; and that the persistence of the questioning made it clear that until he gave an answer that satisfied his mother she would persist in questioning him and he would not be allowed to go and play.
- [123] Ms. Tate was already highly suspicious of Mr. Carrier, although conduct she regards as suspicious seems perfectly ordinary and normal, and is regarded by Dr. Ley as such. She objected to the way Mr. Carrier kissed S on the mouth or allowed S to kiss him when they were saying goodbye. She thought that games of hide and seek they played were unusual because either R, who was only an infant, or no one, was looking for them. She objected to Mr. Carrier lying with S on S's bed when reading S a bedtime story. She considered it

inappropriate that Mr. Carrier allowed S to run around the fenced backyard of her home, when playing near a paddling pool, unclothed. Mr. Carrier denies pointing at S's penis and playfully asking him about childish names for that body part during this episode, but even if he did so, it appears to be a normal teasing interaction between a child and parent.

- [124] Both Ms. Tate and Mrs. Tate seem unwilling to accept that young children, and boys in particular, go through stages where they are fascinated by their own bodies, and their genitals, and in the case of boys, their penises, in general. Although Dr. Ley addressed this common behaviour in his report and in his testimony, Ms. Tate seemed unwilling to accept any innocent explanation for S's behaviour.
- [125] Initially the police took Ms. Tate's allegations very seriously, especially when she delivered Mr. Carrier's laptop to them. They interviewed Mr. Carrier - initially a "soft" interview and then a more pointed interview, and they were preparing to seek a warrant to search his computer. Mr. Carrier insisted that he be given an opportunity to take a police polygraph examination and he was subjected to such an examination. At that point the police no longer considered him a suspect. They also interviewed Mr. Gilbert, who had become Ms. Tate's tenant initially and then entered into a relationship with her that has since become a common law relationship, and they asked Ms. Tate about other males who had access to S, but eventually closed the investigation.
- [126] The fact that the police decided that Mr. Carrier's denials of sexual molestation of S were true, and have dismissed him as a suspect does not, of course, prove his innocence. What is significant, however, is that the conclusion by police that Mr. Carrier had not sexually molested S did not make even the slightest dent in Ms. Tate's conviction that he had done so.
- [127] While the investigation was ongoing, Ms. Tate was given a copy of a book titled "Red Flag, Green Flag" by a Ministry employee. This book is apparently a tool used to teach children about inappropriate touching. Ms. Tate read this book to S in November 2005 when S was not quite 3 and one-half years old. She testified that while reading this book to S he reported that his Dad doesn't like him anymore. When Ms. Tate asked why he said that, S is reported to have replied that "He always touches my private parts". It is necessary to point out here that Mr. Carrier would indeed have touched S's private parts on many occasions. S was not toilet-trained even at this age, and during access visits at Ms. Tate's home, Mr. Carrier did, on occasion, change S's diapers as he had when the family was intact and Mr. Carrier was caring for S. I conclude that this innocent statement by S was treated by Ms. Tate as a "disclosure" of sexual abuse. I consider it quite likely that S has come to believe that he was sexually abused, because of the reaction he received to this information and subsequent events that would tend to create and reinforce an impression in S's mind that something untoward had taken place.

- [128] Ms. Tate decided she needed to videotape S in order to record what she considered to be a disclosure of sexual molestation and she set up the video camera and re-read the book with S. Ms. Tate claims that this was only the second occasion on which S had been shown the book, but his familiarity with its contents, as recorded on the videotape, suggests that it is probable that he had been read the book on more than one previous occasion. On the videotape, S appears to be performing. He does not appear upset although he "stages" appearing to be angry. It is not clear that he understands what "private parts" are. He refers to wanting to throw his Dad in a dirty pond - a reference that Ms. Tate understood to refer to ponds in her back yard because he wanted to "die" or "dye" his Dad. Ms. Tate favours the first interpretation of the word but I think the second to be more plausible.
- [129] I find this so-called "disclosure" of sexual molestation entirely unconvincing. Dr. Ley commented that Ms. Tate's tone of voice alters when she receives a response from S that she likes and it is clear that he is not persuaded that S was disclosing an actual instance or instances of sexual abuse. S appears to me to be engaging in a display of silliness for the benefit of his mother and the camera.
- [130] Certainly he demonstrates no distress, although Ms. Tate and Mr. Gilbert both maintain that S's disturbed sleep patterns must be evidence of significant emotional distress caused by the alleged abuse by Mr. Carrier.
- [131] In the days following the reading of the book, S apparently declared to various visitors to his home that his Dad had touched his private parts. Again, this was literally true. I am not persuaded, however, that S understood or intended to convey that he had been sexually abused. S made a similar disclosure to Ms. Irene Peterson, a registered clinical counsellor to whom he was recently taken by Ms. Tate following a second report she made to the police and to the Ministry. S told Ms. Peterson that his father had touched his private parts - specifically, had stuck his finger up S's bum 10 times. It is probably literally true that Mr. Carrier has touched S's anal area while assisting him to wipe himself after urination or defecation. The same could probably be said of Ms. Tate and probably of Mr. Gilbert and S's nanny. Anyone who assisted S to use the toilet or changed his diaper would have touched his private parts in the process. S may be recalling occasions on which he thought Mr. Carrier was rough in wiping his genitals following toileting and that seems to be an equally plausible or more plausible source of the touching he has recounted. The fact that S is now supposedly recounting more and more details of events that happened when he was very young and which he has not previously reported causes me to believe that the statements he is making are false.
- [132] I am satisfied that S is very aware of his mother's views. He has been subjected to numerous interviews with police, counsellors, his mother, his grandmother and no doubt others. Sometimes he obliges his questioners and gives them something they appear to want. Generally, however, his "disclosures" have been varied, inconsistent, and belated.

- [133] Ms. Tate asserted rigorously that she "believes" her son. It is clear, however, that she only chooses to believe him when he says something that indicates that Mr. Carrier has touched him inappropriately and she chooses to disbelieve him when he denies such events. In any event, S has never confirmed the totality of the acts which Ms. Tate believes Mr. Carrier has perpetrated on his son, which include fellating S, having S fellate him, French-kissing, penetration of S's anus by Mr. Carrier's fingers and penis, manual masturbation of S by Mr. Carrier and of Mr. Carrier by S.
- [134] It is very difficult to comprehend when Mr. Carrier would have had the opportunity to commit the number and variety of acts of which Ms. Tate suspects him; given that his access to S and R has, except in the very earliest days following separation, taken place in Ms. Tate's home or in her presence.
- [135] In addition to the supposed disclosures made by S, Ms. Tate relies on a list of behaviours on the part of S that she considers aberrant. The manner in which S sucked on a cob of corn, or on a popsicle; his play with dolls; his occasional rough treatment of the family's cat; fondling of his own genitals; stroking of Mr. Carrier's fingers or hers; references to "baby angels" being killed or hurt. She even interprets S's apparent interest in touching her breasts as a sign that Mr. Carrier has sexually molested S, although I can discern no rational correlation between an interest in female breasts and sexual abuse by an adult male. Dr. Ley testified that all of these activities fall within the normal range of behaviour for a child of S's age.
- [136] She also found Mr. Carrier's actions to be strange and inappropriate. She testified that Mr. Carrier locked the bathroom door when he was having a bath with S in her home. It is clear that when the couple lived together, Mr. Carrier did bath with S. Ms. Tate took photographs of them in the bath together and those photos were introduced in evidence. The fact that Mr. Carrier felt uncomfortable leaving the door unlocked in a situation where his ex-partner could walk in on him in the bathtub does not seem unusual or strange to me at all. She objected to Mr. Carrier allowing S to hold onto his hand and play with his fingers while father and son were watching TV. She objected to Mr. Carrier bouncing R or S on his lap while playing on the floor. She considered some of these activities evidence of sexual abuse and others to be "inappropriate". None of these activities struck Dr. Ley as unusual or sexually-charged and they do not impress me as such.
- [137] Much trial time was taken up with evidence about a verbal exchange Mr. Carrier often shared with S, especially when saying goodbye. Either Mr. Carrier or S would make a statement to the effect of "I love you to the moon", or "I love you to the stars", of "I love you to the chair", with the obvious of indicating the strength of the love being expressed. On one or more occasions, Mr. Carrier or S or both used the expression "I love you to my room" or "I love you to my bed". Ms. Tate considered these statements a form of sexual grooming. I don't agree. In order to be so, S would have to understand that sexual activity goes on in a particular room or in bed, and the evidence does not suggest that S would even remember being in Mr. Carrier's bedroom or understand that sexual activity often takes place in

bedrooms and in beds. In my view, the implications that an adult might read into such statements, with an adult's knowledge and sensibilities, would be entirely lost on a three or four-year-old child. I do not believe these statements to have been made or exchanged with any sexual intentions whatsoever.

- [138] Ms. Tate and Mr. Gilbert are also convinced that S's frequent awakenings at night are evidence of distress caused by Mr. Carrier's abuse. They purport to have detected a pattern relating to contact by S with Mr. Carrier, even on the telephone, or contact with Ms. Carrier-Scott or Ms. Carrier-Denis. Since the disturbances have continued long after S last had any contact with his father, I consider this theory implausible. Dr. Ley suggested possible reasons for the sleep disturbances.
- [139] A tape of Ms. Tate and Mr. Gilbert interacting with S when he has awakened at night also reveals that there are many "secondary gains" for S when he awakens during the night. S and R share a bedroom. When he wakes during the night, Ms. Tate and Mr. Gilbert get up and spend time comforting him or questioning him, or both. He receives attention - some positive and some negative, but attention nonetheless - and then is often allowed to spend the rest of the night in bed with Ms. Tate and Mr. Gilbert. Until recently, S was unable or unwilling to tell his mother if he was awakening because of nightmares or the content of those nightmares, despite persistent questioning. Mr. Tate related some recent dreams supposedly related to her by S. I found no sexual content in these dreams.
- [140] Dr. Ley interviewed S during the preparation of his custody and access report. In his report, he indicates that S demonstrated a strong secure attachment to both of his parents, and that S was happy and enthusiastic in the company of his father. S was anxious to see his father and after having visited with him in Dr. Ley's office, inquired of Dr. Ley on subsequent visits about whether he would see his father. He saddened visibly when told that Mr. Carrier would not be present.
- [141] Dr. Ley concluded that "it is most unlikely" that Mr. Carrier sexually abused S or engaged in any inappropriate sexual behaviour with him. He stated his many reasons for forming this opinion and he testified about those reasons at trial. He could not elicit from S any evidence whatsoever indicating that he had been sexually abused by his father, despite having formed a good rapport with S. To the contrary, S seemed to want regular contact with his father and to be saddened by the lack of contact. He found this "very positive orientation" on the part of S to be a contraindication of sexual abuse by Mr. Carrier. He concluded that S does not show any of the expected kinds of emotional reactions, attitudes or behaviours that one would expect to see in a child in the company of the adult who molested him.
- [142] Dr. Ley relied on the results of the police polygraph examination Mr. Carrier took voluntarily that resulted in the investigation being concluded. Although Dr. Ley is aware that polygraph examination results are not admissible in court, he stated his reasons for relying on the results in this case.

- [143] Dr. Ley also explained that he found Mr. Carrier to have a solid, adult, heterosexual orientation. Indeed, he commented that Mr. Carrier has a strong interest in adult females and the means of acting on that interest. Unlike Ms. Tate, he does not believe that this indicates that Mr. Carrier is likely to "branch out" into homosexual pedophilic activity. In fact, he believes the opposite.
- [144] Ms. Tate testified that she had again taken S to the police to be interviewed a short time prior to trial. She said that S had made a very limited "disclosure" - another reference to the rough touching of his private parts, to police. She testified however that during the drive home, S disclosed a number of other allegations to her. In this instance, I am satisfied that Ms. Tate has actually fabricated evidence. Her recounting of her conversation with S was entirely unconvincing. I am persuaded that in an effort to buttress her position at trial, and in the firmness of her belief that S has been molested, she has resorted to a deliberate falsehood.
- [145] I have carefully considered all of the evidence elicited at trial regarding the allegations of sexual misconduct on the part of Mr. Carrier in relation to S. I have not listed here every item relied on by Ms. Tate, but I have considered all of her evidence, the evidence of her mother, common law husband, and friends. I have also considered Mr. Carrier's denials of the alleged abuse. I find Mr. Carrier's testimony to be consistent, compelling and credible in relation to these allegations.
- [146] . I recognize that the court must err on the side of caution if there any real possibility that a child has been or will be abused, and that it is not sufficient to conclude merely that the allegations have been disproved on a balance of probabilities. I am convinced, however, that Mr. Carrier has not sexually abused, molested, or assaulted S in the past, and that there is no likelihood of him abusing either of his children if permitted to see either or both of them in an unsupervised setting.
- [147] I have arrived at this conclusion based on Dr. Ley's opinion; my own assessment of the testimony of the evidence; the vagueness and inconsistency of the so-called disclosures by S; the lack of access and opportunity Mr. Carrier has had to commit the many and varied acts attributed to him at various times; my assessment of the credibility of his denials; Ms. Tate's influence over S and the circumstances in which so-called "disclosures" have taken place.
- [148] It follows from my conclusion that no sexual abuse or sexually inappropriate activity has occurred, that S and R are being deprived of a meaningful relationship with their father for no good or valid reason and that that contact between father and sons should be resumed as soon as possible.

- [149] I turn finally to the allegations that Mr. Carrier is a negligent and careless parent who has and will expose the boys to physical danger. This is the approach that Ms. Tate took in the early days following separation to justify her supervision of his access visits. Interim orders were made, at her instigation, for supervised access.
- [150] Ms. Tate testified about various behaviours she considers dangerous, including allowing S to stand on a chair too close to a stove when he and Mr. Carrier are cooking together; knives and scissors left on countertops, S being allowed to play on the sidewalk in front of the Vancouver town home while Mr. Carrier was some distance away, and leaving S in his vehicle while he went into a building to pick up a cheque. In the re-telling of these events, Ms. Tate appeared to increase the frequency of the events.
- [151] Mr. Carrier admitted many of these events, although he did not portray them in the same light as Ms. Tate. He was willing to acknowledge that on occasion he was not as vigilant as he ought to have been. He also recounted instances of her placing the children at risk, and Mrs. Tate recounted concerns she had about certain household risks she attributed to both parents. Mr. Carrier testified that both parents had occasionally left S in his car seat in a locked vehicle while one or the other parent was picking up groceries. Ms. Tate acknowledged that on one occasion she came out of a store to find a group of people, including a police officer, at her car where she had left S alone. The police officer warned her not to do it again. Mr. Carrier also recounted other instances of Ms. Tate placing S at risk.
- [152] There can be no condoning of any of this behaviour and both parents must do their best to ensure that the children are not exposed to preventable dangers. It must also be said, however, that no parent is perfect, and most parents make mistakes and have moments of inattention and occasionally may demonstrate poor judgment. Mr. Carrier has taken a number of parenting courses since separation to improve his parenting skills and I am satisfied that he is now sufficiently well-informed and vigilant that the children will not be exposed to any undue risk while in his care.
- [153] Mr. Carrier's counsel submits that so long as Ms. Tate's home remains the children's primary residence, Ms. Tate will do everything in her power to alienate the children from Mr. Carrier; to reinforce the belief S may now have formed that he was sexually molested by Mr. Carrier; and to prevent Mr. Carrier from having any meaningful relationship with his sons. Mr. Carrier's counsel is able to point to a considerable body of evidence that supports this submission.
- [154] For some time prior to trial, Ms. Tate refused to allow Ms. Carrier-Scott and Ms. Carrier-Denis to exercise their court-ordered access with S and R without Ms. Tate accompanying the children during the visits. Ms. Tate was aware that she was contravening the court order by her actions, but she chose to do so. I believe she was afraid that her campaign to convince S that his father was a bad person would be jeopardized by S's positive contacts with Mr. Carrier's mother and sister.

- [155] At the end of the first week of trial, Mr. Carrier's counsel advised the court that the next day - Saturday - was a day on which Ms. Carrier-Scott was to have access according to the court order in place. I made it abundantly clear to Ms. Tate that the access was to go ahead. She asked whether she could accompany the children. I told her no. She asked whether her mother could accompany the children. I told her no. On the following Monday, Mr. Carrier's counsel reported, and later Ms. Carrier-Scott and Ms. Carrier-Denis testified, that Ms. Tate had refused to allow them to take the boys without her.
- [156] Ms. Tate admitted this conduct and Mr. Gilbert later testified that the two of them had discussed her intentions and that he had tried to persuade her to comply with the court order and the court's specific directions. She chose to knowingly disobey the order and the directions and behaved in a rude and childish fashion towards Mr. Carrier's mother and sister while denying them access.
- [157] Ms. Tate suggested that she has exercised restraint when the children are present and that they are unaware of her antipathy towards Mr. Carrier or her belief that Mr. Carrier has sexually molested S. This is simply not true. In tapes that Ms. Tate played for the court of telephone conversations with Mr. Carrier in which she berates him and swears at him and accused him of inappropriate sexual behaviour, there are two or three instances in which the tape records S coming into the room while Ms. Tate is on the telephone. Ms. Tate can be heard telling S to leave the room.
- [158] During these calls, she frequently raises her voice. In one of the tapes, an infant can be heard crying in the background through much of the tape. I conclude that child is R and that if R can be heard crying on the tape, R would be able to hear his mother yelling and swearing at his father.
- [159] In the presence of the children, Ms. Tate yelled at Ms. Carrier-Scott that her son is a child molester. She also stated to S and R that the reason she was away from them so much was because their grandmother was taking her to court. This conduct is inexcusable and harmful to the children. It demonstrates that Ms. Tate is sometimes incapable of controlling herself even when the welfare of the children is at stake.
- [160] S must be aware of the reasons behind his mother's actions in taking him to see police officers, social workers, doctors and counsellors. He cannot help but know what his mother believes has been done to him. This behaviour and Ms. Tate's past behaviour in limiting and controlling or denying access, including telephone access, suggests that the court may ultimately have no alternative but to move the children to their father's home before Ms. Tate succeeds in entirely alienating both children from their father.
- [161] In other respects, however, I am satisfied that Ms. Tate is a good and loving parent and that the children have a stable and healthy home environment in the care of their mother. They have a physically attractive home with a large yard, many toys and books and have been provided with many educational opportunities. Ms. Tate is committed to healthy nutrition for the children, and actively seeks out opportunities to enhance their development. She

exposes the children to learning opportunities. Their home is the only home they have ever known as a residence. It appears that they have a good relationship with Mr. Gilbert. S is attending a school near his mother's home. The children have a good relationship with Ms. Tate's extended family, many of whom reside in the area. Ms. Tate's home certainly represents the status quo for these children, and a move to Mr. Carrier's residence would have a big impact on their lives.

- [162] I am equally satisfied, however, that if it becomes necessary to change the children's primary residence to their father's home, Mr. Carrier is capable of being the children's primary caregiver, with or without the assistance and support offered by his mother and sister, and that his home - rented accommodation on the lower floor of a home in Vancouver - would also be a suitable environment for the children. I have seriously considered whether I have any alternative at this time other than making an order to place the children in their father's primary care in order to ensure the restoration of a relationship between father and sons.
- [163] I am satisfied, however, that at least at the time Mr. Carrier began this lawsuit he was willing to have Ms. Tate's home continue to be the boys' principal residence so long as he is able to spend sufficient quality time with the boys to ensure a close and loving bond is re-established with the two boys, and is able to be maintained. Mr. Carrier's job at the restaurant involves working shifts that often include day-time and night-time shifts, including late at night and on weekends. I am satisfied that if it becomes necessary for him to do so, he can rearrange his work schedule and rely on his mother and sister to provide the child care the two boys will require, with the assistance of appropriate professional childcare providers or daycare.
- [164] Although I have some doubt about Ms. Tate's ability to change her behaviour, I have decided to allow Ms. Tate to have one final chance to demonstrate that she is capable of allowing her sons to have a relationship with their father, and his extended family, that will foster strong bonds of love and affection. Ms. Tate must understand that I am making an interim order only, however, and I shall remain seized of all applications and proceedings in relation to this lawsuit for a minimum period of the next 24 months, and such further period as the court may order. In the event that she is unwilling or unable to change her behaviour, and to carry out the terms of the order I am making, I will have no choice but to move the children from her home to that of their father, and I will do so. I am satisfied that Mr. Carrier is a competent and caring parent and that he, unlike Ms. Tate to date, would make a sincere effort to ensure that the children are able to maintain a relationship with Ms. Tate if his home was designated as the boys' primary residence.
- [165] I am therefore making an interim order that the children continue to reside primarily with Ms. Tate. That order shall be in effect until further order of this court and is subject to review on application by Mr. Carrier if Ms. Tate does not adhere to the terms of the court's order.

- [166] I am making a permanent order that Mr. Carrier and Ms. Tate shall have joint custody and joint guardianship of S and R. The "Master Joyce" model of joint guardianship shall be incorporated into the order, except that in the event the parents are unable to agree on decisions concerning the boys' health and education, neither parent shall have the right to make the final decision and either parent is at liberty to apply to court for directions.
- [167] Mr. Carrier shall have liberal and generous access to both boys, and that access shall be unsupervised. Mr. Carrier shall have responsibility for picking the boys up from Ms. Tate's residence at the start of each access visit and Ms. Tate shall pick the boys up at Mr. Carrier's residence or at his mother's residence or at his sister's residence, as the case may be, at the end of each access visit. Mr. Carrier shall advise Ms. Tate when he picks the children up at the start of each visit the location at which the children will be at the end of each visit; that is, at his home, or at that of his mother or sister. Mr. Carrier may designate his mother, step-father, sister or brother-in-law to pick up and transport the children on his behalf. Ms. Tate may designate her mother, sisters, or Mr. Gilbert to pick up and transport the children on her behalf.
- [168] Mr. Carrier's access shall include unsupervised access to both children every second weekend from Friday at 4:00 p.m. until Monday at 8:00 a.m. The access visits shall commence on Friday, November 2, 2007. However, because it has been many months since Mr. Carrier last had direct contact with the children, and because Mr. Carrier's mother and sister have had more recent contact with the children, I order that for the first three weekends of access - November 2 to 5, November 16 to 19, and November 30 to December 3, Mr. Carrier's mother or sister should be present during at least part of each access visit, in order to allow an opportunity for Mr. Carrier and the two children to become reacquainted in the presence of persons familiar to them. I wish to note that I am not ordering that Mr. Carrier's mother or sister must be present at all times, just that at least part of each weekend should be spent in their presence.
- [169] Thereafter, Mr. Carrier may exercise access without his mother or sister present for any part of each visit, unless he chooses to involve them..
- [170] If the Friday or the Monday during a regularly scheduled access weekend falls on a statutory or school holiday or a day on which the school is closed for a professional development day, then Mr. Carrier's weekend access will include the Friday or the Monday or both as the case may be, and he shall be entitled to pick the children up at 9:00 a.m.
- [171] Mr. Carrier may also have access to R two full days each week, between Monday and Friday inclusive, from 9:00 a.m. to 7:00 p.m. until R is in Kindergarten, and to both boys one week night each week from 4:00 p.m. until 7:00 p.m. Mr. Carrier shall choose the two days on which he will exercise access. If R attends a Kindergarten that requires attendance on two or three days only of the five week days, then the two full days of access each week shall continue until R is in Grade 1. In the event that R's Kindergarten has daily attendance, but for a half day only, then Mr. Carrier shall also have access to R for two half-days each week.

These visits should take place in the presence of Mrs. Carrier-Scott or Ms. Carrier-Denis until the end of November.

- [172] The day-time access with R may be exercised anywhere in the Lower Mainland, but the evening access should take place in Abbotsford with Mr. Carrier picking the boys up and dropping them off. I believe the drive to his residence in Vancouver is too long for an evening visit. The evening access may be exercised on the same evening as the day-time access with R or on a different evening.
- [173] The parents shall share the Christmas vacation, spring break and the summer vacation equally. Mr. Carrier shall have the children with him for the first half of S's Christmas vacation in 2007, which period shall include Christmas Day. Ms. Tate shall have the children for Christmas day in 2008 and it shall alternate annually thereafter. Mr. Carrier shall have access for two consecutive weeks in each of the months of July and August, separated by an interval of at least two weeks. He shall notify Ms. Tate by June 1 of each year of the four weeks that he wishes to have for summer access, commencing in 2008. The children shall spend their birthdays with Mr. Carrier in 2008 and thereafter will alternate yearly spending their birthdays with Ms. Tate and Mr. Carrier. Mr. Carrier shall have access on Father's Day annually, even if Father's Day falls on a Sunday on which he is not scheduled to have access; and the children shall spend Mother's Day with Ms. Tate, even if Mother's Day falls on a Sunday on which Mr. Carrier is scheduled to have access. The children shall spend Hallowe'en evening and night with their parents on an alternating basis. In 2007, they shall spend Hallowe'en evening with Ms. Tate; in 2008 they shall spend Hallowe'en evening and overnight on October 31 with Mr. Carrier; alternating thereafter on a yearly basis.
- [174] Mr. Carrier shall have unlimited telephone access to both boys up to 8:00 p.m. each evening. In the event that the boys are not at home when Mr. Carrier calls; Ms. Tate shall place a return call to Mr. Carrier at any number specified by him on that same evening, even if the children return home after 8:00 p.m. Mr. Carrier shall permit the boys or either of them to call Ms. Tate if they ask to do so during an access visit with Mr. Carrier.
- [175] Mr. Carrier and Ms. Tate are at liberty to apply to court for further directions concerning the details of the access schedule and the arrangements for the exercise of access. I wish to emphasize, however, that an application for directions cannot consist of a retrial, or an appeal from the orders I have made.
- [176] I wish to emphasize that Mr. Carrier is entitled to exercise access even if the children are ill with normal childhood diseases - colds, flu, stomach aches, headaches, fever, measles, chicken pox, mumps - and that such illnesses are not sufficient reason to deny access without Mr. Carrier's consent in writing, given in advance. A consent conveyed by electronic mail shall be sufficient. In the event that one of the children is seriously ill, then access shall not occur so long as Ms. Tate produces a note from the child's doctor indicating the nature of the illness and how long the child is expected to be too ill. In the event that one child is ill, then access shall take place with the other child alone.

- [177] I also wish to emphasize that the access must be allowed to occur even if the children protest to Ms. Tate or express an unwillingness or disinterest in the visit. I am satisfied that both children understand Ms. Tate's antipathy towards Mr. Carrier and may be influenced by it to express unhappiness about the visits in her presence.
- [178] Ms. Tate shall not enrol or register the children in activities or lessons or commit them to events that conflict with Mr. Carrier's scheduled access visits without his prior consent in writing. In the event that he consents to a proposed activity for the boys, then he shall be entitled to take the boys to the activity.
- [179] Mr. Carrier is entitled to obtain information about the boys directly from any school, daycare, or activity, but Ms. Tate is also obliged to keep Mr. Carrier informed of activities such as school parties or concerts that come to her attention, and Mr. Carrier is, of course, entitled to attend such activities if he chooses to do so.
- [180] Neither parent shall remove the children from the Province of British Columbia without the consent in writing of the other parent, not to be unreasonably withheld, or a court order. In particular, Ms. Tate shall not take either or both of the children into the United States of America without Mr. Carrier's consent in writing, or an order of this court.
- [181] Ms. Tate shall not change the children's residence from the Lower Mainland, defined as Abbotsford to Delta and White Rock, without Mr. Carrier's prior consent in writing or an order of this court. Ms. Tate shall not apply for any passports for the children without Mr. Carrier's consent in writing or an order of this court and if she has obtained passports, shall surrender those passports to Mr. Schuman within 48 hours of the release of these Reasons. Mr. Schuman shall not provide the passports to either party without the consent in writing of the other party, or an order of this court.
- [182] Mr. Carrier shall ensure that when the children are with him, they have no access to any sexually explicit material stored or "book-marked" on his computer or any television channels on which pornographic material may be viewed; and Mr. Carrier shall not access or view such material or television channels while the children are with him. He shall also ensure that any other materials depicting sexual intimacy - photographs, magazines, etc. - are not accessible to the children and shall not view such material when the children are with him. If Mr. Carrier chooses to participate in telephone adult dating services, or "chat lines"; he shall do so only when the children are asleep and there is no risk of his conversation being overheard by the children.
- [183] Mr. Carrier shall equip his vehicle or any vehicle used by one of his family members to transport the children with age-appropriate child car seats, and shall ensure that the children are utilizing these seats at all times during transport.

- [184] Ms. Tate shall cease to make derogatory comments to or about Mr. Carrier, Ms. Carrier-Scott, or any other member of Mr. Carrier's family in the presence of the children or in any circumstances in which the children could overhear such comments, and shall take necessary steps to ensure that other persons, including her common law spouse, sisters and mother, make no derogatory comments concerning Mr. Carrier or his family members in the presence or hearing of the children.
- [185] As Mr. Carrier shall now have regular access with the children, I consider that it is no longer necessary for Ms. Carrier-Scott to have independent court-ordered access. She will be able to spend time with the children when they are residing with Mr. Carrier. Accordingly, the interim order for Ms. Carrier-Scott's access is set aside.

CHILD AND SPOUSAL SUPPORT

- [186] Ms. Tate is seeking an order for past and ongoing spousal and child support, including a contribution to extraordinary expenses, in particular, child care costs.
- [187] I am satisfied that Ms. Tate was no longer a spouse within the definition found in the Family Relations Act when she initiated her claim for spousal support and that that claim must therefore be dismissed.
- [188] Mr. Carrier has been paying child support and shall continue to pay child support to Ms. Tate for the two children in accordance with the Federal Child Support Guidelines, based on the income reported in his Property and Financial Statement, which income includes gratuity income that was not included in his tax return. The payment shall be made on the first day of each month. The question of arrears may be addressed once Ms. Tate has produced a Property and Financial Statement.
- [189] Ms. Tate failed to produce a Property and Financial Statement despite frequent reminders and requests to do so during the course of trial. The court is, therefore, unable to make an order at this time in relation to extraordinary expenses. There is a dispute between the parties about whether Mr. Carrier should be obliged to contribute to child care expenses in the form of a full-time in-home caregiver, or based on reasonable out-of-home daycare costs. This issue should be revisited when the matter of extraordinary expenses is next before the court, and the court is in possession of accurate information about both parties' income and expenses.
- [190] Ms. Tate is at liberty to renew her application for an order that Mr. Carrier pay a share of retroactive and future extraordinary expenses upon production of a current Property and Financial Statement, including her last three income tax returns, in full, and evidence of her income in the six months preceding the date of the Property and Financial Statement. In the event such an application is brought, Mr. Carrier shall also prepare and file an updated Property and Financial Statement. I shall be seized of any application for child support for the next 24 months, or such further period as the court may order.

[191] Both parties shall file their annual individual and/or business income tax returns no later than April 30 of each year, and provide the other party with a copy within two weeks after the date of filing. Each party shall provide the other with a copy of any Notice of Assessment or Notice of Reassessment within two weeks of receipt of same. Child support payments shall be adjusted on May 1 of each year to reflect Mr. Carrier's current income. If Mr. Carrier is not declaring all of the gratuities he receives for income tax purposes, which he should do, he shall provide to Ms. Tate, with a copy of his tax return, a statement of gratuities received in the previous 12 months and the amount of these gratuities shall be included in his income for the purposes of calculating child support quantum.

COSTS

[192] Ms. Tate's position throughout has been that she should have sole custody and guardianship of the two children and that Mr. Carrier should have no access, or extremely limited access under conditions of strict supervision. Mr. Carrier has succeeded in obtaining an order for joint custody and guardianship and liberal access. Ms. Tate has failed to establish the allegations of sexual abuse made against Mr. Carrier.

[193] I am convinced that Ms. Tate has made and persisted in pursuing allegations of sexual abuse that are false and largely brought about by her desire to punish Mr. Carrier, and to prevent him from having a relationship with the two boys. The trial was considerably longer than it needed to be because Ms. Tate was unwilling to accept direction from the court and persisted in attempting to introduce irrelevant testimony. She breached court orders relating to access for Ms. Carrier-Scott and acted in a reprehensible manner towards Ms. Carrier-Scott. Ms. Tate shall pay to Mr. Carrier the costs of this action, on Scale C. Ms. Tate shall be liable to pay the daily hearing fees for trial directly.

"W.G. Baker J."

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