

MAY 16/94

Court File No. 48783/94

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

CATHERINE L.E. ROSS

Petitioner
(Wife)

- and -

WILLIAM THOMAS ROSS

Respondent
(Husband)

THE PETITIONER'S FACTUM

KATRINA A. PRYSTUPA
Barrister & Solicitor
204-120 Holland Avenue
Ottawa, Ontario
K1Y 0X6

(613) 729-4669

Solicitor for the Petitioner

TO: Hamilton / Appotive / Callan
Barristers and Solicitors
150 Metcalfe Street
Ottawa, Ontario
K2P 1P1

Vivian P. M. Russell

Solicitor for the Respondent

THE PETITIONER'S FACTUM**PART I - STATEMENT OF FACT**

1. The parties were married on December 14, 1985 and separated on April 9, 1994, when the Petitioner advised the Respondent that she sought a formal separation. The parties have, however, continued to reside in the matrimonial home, known municipally as 1077 Thomas A. Dolan Parkway since that time.
2. The parties have two children of their marriage, namely, Khierstyn Laurel Emily Ross, born November 16, 1986, and Hilary Lynne Victoria Ross, born January 27, 1989. There are presently no arrangements in place with respect the custody of and access to the children.
3. The Petitioner states that her continued cohabitation in the matrimonial home is being rendered impossible due to the Respondent's actions. The Husband taunts and harasses the Petitioner on a daily basis, and has threatENed to rape her. He threatens her with destruction and despair. She is told that she is "poison", that she "poisons everything she touches", that she is "a defective human being" and that he knows "what (not who) she is". She states that the Respondent treats this action as a sick game, as though they should compete to prove who is at fault for the breakdown of their marriage, and the innocent party should "win" everything. She describes her marriage as abusive.
4. Dr. Smith states that in his opinion, "to expose Mrs. Ross and her children to such an environment is clearly hazardous and not in the best interests of Mrs. Ross or her children". He also states that the degree of anxiety from which she is suffering is due to the incompatible state of the relationship between Mr. and Mrs. Ross. She is being treated with a mild

tranquillizer.

5. The Respondent has accused the Petitioner of alcoholism, and has sought the written support of friends and relatives to support his accusation. All such individuals are people who have infrequent contact with the family.
6. The Affidavits of Diane Nicol, Donna Clement, and Jacqueline Bonnar confirm the evidence of the Petitioner that she does not suffer from alcoholism, and that they have never seen her in an inebriated state. All are individuals who, at different times, would come into contact with the family on a frequent basis. Further, Dr. Smith expresses his opinion that she does not suffer from alcoholism.
7. The Petitioner states that she has been the primary caregiver for the children, which is supported by the Affidavit evidence of Diane Nicol, Donna Clement, Jacqueline Bonnar, and Marguerite Day. All named individuals were people who would come into contact with the family on a frequent basis.
8. The Petitioner initially stayed home with the children of the marriage following their birth. To do so financially, she ran an in-home daycare. Three individuals whose children were cared for by the Petitioner at her day care, Susan Perry, Diane Nicol, and Lorene Rolfe supplied letters of reference confirming the quality child care received. The Respondent, nonetheless states that he was primarily responsible for the care of the children.
9. The Petitioner states that the Respondent has assisted with child care and household responsibilities to the extent that he regularly takes the girls to their dance lessons, often sends the children to take their baths in the evenings, and reads a story to them prior to bedtime. She indicates that

she takes the girls to their swimming lessons, has made all arrangements to enrol them in school and day care, and paid for same. She purchases all of the children's clothing, organizes their scheduling, takes them to their doctors' appointments and puts them to bed. She has been responsible for all of the mending, laundry, and ironing, looking after the animals, cleaning the home, and doing most of the cooking.

10. The Petitioner states that it would be in the children's best interest if they were to continue to reside with her in the matrimonial home, being 1077 Thomas A. Dolan Parkway. This will permit the children to continue to attend the same school and caregiver, and permit them to maintain friendships.
11. The Husband accuses the Wife of reckless depletion of family assets as she had family debt of \$5500.00 repaid through the transfer of assets owned prior to marriage. The Husband, however, has locked the parties' financial records in a room to which the Wife does not have access, sold in excess of \$10,000.00 worth of shares to a friend, and claimed debt that the wife does not believe exists to his family of \$35,000.00.
12. The parties jointly own the matrimonial home, known municipally as 1077 Thomas A. Dolan Parkway, Dunrobin, Ontario. This is a duplex, and the parties rent out the other half. It is extremely economical, and would provide accommodation to the wife at reasonable cost. Shortly prior to the parties' separation, the Husband unilaterally reduced the mortgage payments.
13. The Petitioner is employed by Mitel, and work full-time hours, although classified as a part-time employee. She earns \$26,000 to \$28,000.00 per annum. In addition, the parties have rental income of approximately \$8000.00 per year, but the husband receives and handles the income and expenditures for

the rental unit.

14. The Husband is employed by BNR and earns approximately \$67,000.00 per year. In addition, he receives the rental income referred to above, and additional money from time to time as a computer consultant, and in fixing up old computer equipment for resale.
15. Pursuant to the Petitioner's child care budget, the monthly cost for the children is \$1763.40. The Petitioner states that the Respondent should be responsible for the payment of his proportional share thereof.
16. The Petitioner states that since her marriage, her career ambitions have always been subservient to that of the Respondent. Initially, this was based on the parties agreement that she remain in the home to care for the children following their birth. However, once the children were old enough to be in school, she wanted to return to school to obtain training in social work, which the Respondent would not agree to. The Petitioner has also done the majority of the housework. She seeks an Order for the payment of spousal support.

PART II - STATEMENT OF LAW

17. The merits of an application for custody of or access to a child shall be determined on the basis of the best interests of the child.

Section 24 of the Children's Law Reform Act
Section 16(8) of the Divorce Act

18. Every parent has an obligation to provide support in accordance with need for his or her unmarried child, who is a minor ... to the extent that the parent is capable of doing so.

Section 31 of the Family Law Act
Section 15(8) of the Divorce Act

19. In making an order for spousal support the Court shall consider the length of time the spouses have cohabited and the functions performed by the spouses during cohabitation, including child care, as well as the desirability that one of the parties remain at home to care for a child.

Section 33(8) of the Family Law Act
Section 16(5) of the Divorce Act

20. The objectives of an order for spousal support include:
- (a) The recognition of economic advantages/disadvantages arising from the marital breakdown;
 - (b) Apportion financial responsibility for the care of children over and above child support obligations'
 - (c) Relieve economic hardship arising from the marital breakdown;
Section 16(7) of the Divorce Act

21. In an application under s. 33, the court may make an interim or final order,

- (a) Requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;

- (i) in an order made under clause (1) (a), the court may provide that the amount payable shall be increased annually on the order's anniversary date by the indexing factor, as defined in subsection (vi) for November of the previous year;

- (ii) the indexing factor for a given month is the percentage

change in the Consumer Price Index for Canada for prices of all items since the same month of the previous year, as published by Statistics Canada.

- (b) Requiring that sum of all of the money payable under a support order be paid to another person or agency; and
- (c) Requiring a spouse to irrevocably designate the spouse or children as beneficiary of life insurance policies;
Section 15(4) of the Divorce Act
Section 34 of the Family Law Act

22. Both spouses have an equal right to possession of a matrimonial home. However, the court may on application, by order, direct that one spouse be given exclusive possession of the matrimonial home or part of it for the period that the court directs and release other property that is a matrimonial home from the application of this part.

Family Law Act, s. 19 and 24

23. In considering whether to grant an order for exclusive possession of the matrimonial home, the court shall consider:

- (a) The best interests of the children affected, including the possible disruptive effects of a move to alternate accommodations, the views and preferences of the children, if they can reasonably be ascertained; and psychological straining and stresses to a child arising out of friction between the parents;
- (b) The financial position of both spouses;
- (c) The availability of other suitable and affordable accommodation; and

(d) Any violence by a spouse against the other spouse or children.

Section 24(3) and 24(4) of the Family Law Act

24. On application, a court may make an interim or final order restraining the applicant spouse or former spouse from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the applicant spouse or former spouse to enter into the recognizance that the court considers appropriate.

Family Law Act, s. 46 (1)

PART III - RELIEF SOUGHT

25. The Petitioner (Wife) seeks an Order for the following relief:

(a) Interim custody of the children of the marriage, namely, Khierstyn Laurel Emily Ross, born November 16, 1986, and Hilary Lynne Victoria Ross, born January 27, 1989;

(b) An Order that an assessment be conducted by a qualified professional;

(c) Interim child support in the amount of \$1000.00 per month per child (for a total of \$2000.00 per month) to be paid to the Petitioner (Wife), to be indexed to the cost of living, based

on increases in the Consumer Price Index, as published by Statistics Canada;

- (d) Interim spousal support in the amount of \$800.00 per month to be paid to the Petitioner (Wife), to be indexed to the cost of living, based on increases in the Consumer Price Index, as published by Statistics Canada;
- (e) An interim order requiring the husband to designate the wife and the children of the marriage as irrevocable beneficiaries of his life insurance policy or policies;
- (f) An interim order for exclusive possession of the matrimonial home at 1077 Thomas A. Dolan Parkway, Dunrobin, Ontario, and the contents thereof;
- (g) An order that the Respondent be restrained from harassing, molesting or annoying the Petitioner, pursuant to s. 46;
- (h) An interim order that the Police of any jurisdiction in any municipality, province or in Canada will enforce the above order;
- (i) An interim Order restraining the Respondent from disposing of any property in his possession, power, or control;

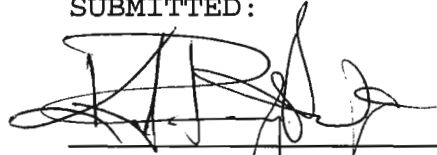
(j) Costs of the within motion on a solicitor and client basis;
and

(k) Such further and other relief as this Honourable Court may
deem necessary and just.

DATED AT OTTAWA THIS 22ND DAY OF JUNE, 1994

ALL OF WHICH IS RESPECTFULLY

SUBMITTED:

A handwritten signature in black ink, appearing to read 'KATRINA A. PRYSTUPA', written over a horizontal line.

KATRINA A. PRYSTUPA

SOLICITOR FOR THE PETITIONER

CATHERINE L. E. ROSS
Petitioner

- and -

WILLIAM THOMAS ROSS
Respondent

ONTARIO COURT (GENERAL DIVISION)

Proceeding commenced at Ottawa

THE PETITIONER'S FACTUM

KATRINA A. PRYSTUPA
Barrister and Solicitor
Suite 204
120 Holland Avenue
Ottawa, Ontario
K1Y 0X6

BOX 333

(613) 729-4669

SOLICITOR FOR THE PETITIONER