

FAMILY COURT OF NOVA SCOTIA

Citation: *A.P. v. J.K.*, 2018 NSFC 14

Date: 2018-06-11

Docket: Pictou No. FPICPSA-106151

Registry: Pictou

Between:

A.P.

Applicant

v.

J.K.

Respondent

Editorial Note: **Identifying Information has been removed from this electronic version of the judgment.**

Judge: The Honourable Judge Timothy G. Daley

Heard November 20 and December 13, 2017 in Pictou, Nova Scotia

**Written
Decision:** June 11, 2018

Counsel: Mallory Arnott, for the Applicant
Tammy C. MacKenzie, for the Respondent

Introduction

[1] This decision concerns two young sisters, MMK, who is ten years old and MIK who is four years old, and what is in their best interests. Specifically, their mother, AP, requests that she be permitted to relocate the children with her to Sweden, her country of origin. The father, JK, opposes this relocation request and seeks an order that the children remain in Nova Scotia in a shared parenting arrangement.

[2] AP says that the children should primarily reside with her and be permitted to relocate with her to Sweden because she has been their primary care giver since birth, she is from Sweden and that is where she has family support, that the younger of the children was born in Sweden, both children lived in Sweden with their parents for approximately two years, the children and JK have dual Canadian and Swedish citizenship and the children will be comfortable returning to Sweden to share their lives with family and friends there. She says that she is in an unstable employment circumstance in Canada and has better opportunities in her field in Sweden.

[3] AP says that JK has been verbally, emotionally and, at times, physically abusive with her both before and after the birth of the children and, at times, in the presence of at least one of the children. She says JK has a history of alcohol abuse which affects his parenting. She says JK has a poor history parenting and that she has provided primary care for the children both before and after separation. She says that JK's family has not been supportive of her and have been abusive towards her. She says it is best for the children to remain in her care and be permitted to relocate to Sweden.

[4] JK says that if the children are permitted to relocate to Sweden, it will effectively end his relationship with them. He denies the allegations of family violence and alcohol abuse. He says that he loves the children and has been involved and committed parent throughout their lives, both in Canada and in Sweden. He says that his family is supportive of him and the children in Nova Scotia, he and his family have a strong relationship with them, his family has not been abusive towards AP and it is in the children's best interest to remain in Nova Scotia and be parented in a shared parenting arrangement.

[5] AP says that, if relocation is permitted, she seeks no child support from JK so he can fund travel to ensure he maintains a relationship with the children in Nova Scotia and Sweden. JK says if shared parenting is ordered, given the rough

equivalence of incomes between the parents, he is not seeking any child support from AP.

[6] To properly determine this matter, it is important to begin with a review of the law applicable to such circumstances including what is required to be assessed in determining the best interests of the children and the interrelated issue of the application for relocation.

Parenting and Relationship History

[7] The parties were in a common-law relationship from January 2002 until April 26, 2017. They have two children together, MMK and MIK.

[8] The parties met while travelling in Europe in January 2002. Approximately six months later, in January 2003, AP travelled to Halifax and stayed with JK at his father's house for three months. AP left to return to Sweden and was later followed by JK. They lived for three months in Lund, Sweden in the summer of 2003. In the fall of 2003 the parties travel to Canada where they stayed for six months together. They left in January 2004, spent a few months in England followed by a working holiday for one year in Australia.

[9] In the spring of 2005 the parties returned to Sweden and after a short time, JK returned to Canada. AP immigrated to Canada in late September 2005, having obtained permanent residency status.

[10] After immigrating to Canada, AP and JK resided together at his mother's home and AP began working for Sobeys at the head office while JK worked at a local printing company.

[11] They moved out of his mother's home in April 2006, purchased a home in New Glasgow and moved in on December 21, 2006. AP became pregnant with MMK shortly thereafter.

[12] JK was convicted of driving under the influence in the spring of 2007 and lost his license. AP, who was not licensed to drive, began the process of obtaining her license which she did in October 2008.

[13] MMK was born on October 15, 2007 in New Glasgow. AP suffered a failed epidural during delivery which led to a period of approximately one week of extreme pain and disability. After her release from hospital she remained quite

limited in her movement. Since they were renovating her home, AP stayed with JK's mother but found the sleeping arrangement caused constant pain. She then went to stay with JK's aunt who provided not only an appropriate bed but assisted in care of MMK for several weeks.

[14] After maternity leave, AP return to work and they worked to finish the renovations on their house. They discussed moving to Sweden and JK gave two years notice to his stepfather, for whom he was working, that he would be leaving at that time.

[15] They sold the house in 2011, left Canada for Sweden in August 2011 and resided with AP's mother. AP found employment in October 2011 but JP struggled to find work. In part this was due to the fact that he didn't speak Swedish at the time. Eventually JK became somewhat conversant in Swedish, obtained Swedish citizenship and found work though that employment ended.

[16] MIK was born on April 19, 2014 in Sweden. JK obtained employment in Norway, working a two-week rotation. They continued living in Sweden and JK worked for the Norwegian company for approximately two years.

[17] They then returned to Canada in June 2016. AP obtained employment with Sobey's head office and JK was employed with a local burner company.

[18] The parties separated on April 26, 2017 and AP became the primary care parent for the children. After some dispute about the father's parenting time, he retained counsel and an arrangement was worked out such that father had parenting time every second weekend from Friday to Sunday and an overnight each week.

[19] AP provided written notice to JK of her intent to relocate the children with her to Sweden and JK provided written notice of his objection. That resulted in his hearing and decision.

[20] Given the somewhat complex history of the parent's residence, citizenship, language and the children's places of birth, it is helpful to summarize that JK and the children are dual citizens of Sweden and Canada, AP is a Swedish citizen and has landed immigrant status in Canada. AP and the children are bilingual, speaking Swedish and English and JK speaks English and some Swedish.

The Law Applicable to Relocation and Best Interests

[21] The governing legislation in this circumstance is the *Parenting and Support Act* 1989 RSNS c.160 as amended (the *Act*). The beginning point in any analysis under that *Act* is s.18(5) which directs that:

In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

[22] Section 18(8) further directs that:

In making an order concerning custody, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

[23] In determining what I should consider in assessing what is in the child's best interest, s.18(6) sets out some of the relevant considerations to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

- (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's... willingness to support the development and maintenance of the child's relationship with the other parent...;
- (c) the history of care for the child having regard to the child's physical, emotional, social and educational needs;
- (d) the plans proposed for the child's care and upbringing having regard to the child's physical, emotional, social and educational needs;
- (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
...
- (g) the nature, strength and stability of the relationship between the child and each parent...;

(h) the nature, strength and stability of the relationship between the child and each... sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent... or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child....

[24] Given that family violence is alleged in this matter, I first note that it is defined in s.2(da) as follows

“family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

(i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

(A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

(B) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal autonomy,

(C) stalking, or

(D) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

[25] I am directed to consider family violence as a factor in determine the children’s best interests under s.18(j) as follows:

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-

operation would threaten the safety or security of the child or of any other person.

[26] I must also consider s. 18(j) in the context of s.18(7) as follows:

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

- (a) the nature of the family violence, abuse or intimidation;
- (b) how recently the family violence, abuse or intimidation occurred;
- (c) the frequency of the family violence, abuse or intimidation;
- (d) the harm caused to the child by the family violence, abuse or intimidation;
- (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and
- (f) all other matters the court considers relevant.

[27] I note that s.18 (f) was not included as a factor in this matter. This section requires consideration of the views of the child. The most common way the child is heard is through a Voice of Child Report, but no such report was requested.

[28] There was some effort to have MMK's voice heard through hearsay evidence, specifically two handwritten notes by her written in school. They are similar but not identical in content and some time was spent discussing how each came to be and why they were different. Both letters, I find, provide little useful content as they simply make general comments about her family, each parent and her friends in Nova Scotia and Sweden.

[29] The analysis of the children's best interests does not end with the factors set out under s. 18(6) of the *Act*. I must also look to what other courts have said in relation to the determination of a child's best interest. The leading decision in Nova Scotia respecting that analysis is *Foley v. Foley* 1993 CANLII 3400 (NSSC), a decision of Goodfellow J. I note that this decision predates the *Act* and the factors contained in s. 18(6) and I find that the so-called "*Foley* factors" have been largely subsumed by those amendments. That said, *Foley* supra remains a helpful analysis of the test of best interests. The following is a list of those factors which are relevant to this case:

15 ... In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.

16 Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:

1. Statutory direction ...;
2. Physical environment;
3. Discipline;
4. Role model;
- ...
8. Time availability of a parent for a child;
- ...
11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child.
13. The support of an extended family, uncles, aunts, grandparents, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. ...;
15. The interim and long range plan for the welfare of the children.
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
17. Any other relevant factors.

17 The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.

With whom would the best interest and welfare of the child be most likely achieved?

18 The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

19 Nevertheless, some of the factors generally do not carry too much, if any, weight. For example, number 12, the financial contribution to the child. In many cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the financial contribution is to the welfare of that child, there would not likely be any

real appreciation of such until long after the maturity of the child makes the question of custody mute.

20 On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

[30] In this case, there is also the issue of relocation. This requires consideration of the law applicable to such matters. The *Act* includes specific provisions respecting relocation. Some of these provisions, including those respecting the requirement to provide adequate notice of relocation and the consequences of a failure to do so, I find are not applicable as appropriate notice was given. I find that other provisions as set out below are applicable:

18G

...

(2) On application by

(a) a parent ... of the child;

...

the court may make an order authorizing or prohibiting the relocation of a child and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.

(3) An application for an order authorizing or prohibiting the relocation of a child may be filed at any time prior to or after the relocation occurs.

18H (1) When a proposed relocation of a child is before the court, the court shall be guided by the following in making an order:

(a) that the relocation of the child is in the best interests of the child if the primary caregiver requests the order and any person opposing the relocation is not substantially involved in the care of the child, unless the person opposing the relocation can show that the relocation would not be in the best interests of the child;

(b) that the relocation of the child is not in the best interests of the child if the person requesting the order and any person opposing the relocation have a substantially shared parenting arrangement, unless the person seeking to relocate can show that the relocation would be in the best interests of the child;

(c) for situations other than those set out in clauses (a) and (b), all parties to the application have the burden of showing what is in the best interests of the child.

....

(3) In applying this Section, the court shall determine the parenting arrangements in place at the time the application is heard by examining

- (a) the actual time the parent or guardian spends with the child;
- (b) the day-to-day care-giving responsibilities for the child; and
- (c) the ordinary decision-making responsibilities for the child.

(4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including

- (a) the circumstances listed in subsection 18(6);
- (b) the reasons for the relocation;
- (c) the effect on the child of changed parenting time and contact time due to the relocation;
- (d) the effect on the child of the child's removal from family, school and community due to the relocation;
- (e) the appropriateness of changing the parenting arrangements;
- (f) compliance with previous court orders and agreements by the parties to the application;
- (g) any restrictions placed on relocation in previous court orders and agreements;
- (h) any additional expenses that may be incurred by the parties due to the relocation;
- (i) the transportation options available to reach the new location; and
- (j) whether the person planning to relocate has given notice as required under this Act and has proposed new parenting time and contact time schedules, as applicable, for the child following relocation.

...

[31] Prior to the proclamation of the *Act* in 2017, which included new provisions in s. 18 respecting relocation, the leading judicial authority on relocation matters was the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CANLII 191 (SCC).

[32] For reasons set out in my decision in *J.B. v. E.D.*, 2018 NSFC 8 at paragraphs 46 to 54, I find that, with the proclamation of the *Act*, the provisions on mobility contained in s.18 are a complete legislative scheme for considering such matters under the *Act*. These provisions were enacted long after the decision in *Gordon*, supra and clearly were designed to clarify and, in some cases, modify the analytical structure from that decision in determining such matters.

[33] In this case credibility is an issue. In assessing credibility, I am mindful of the comments of Forgeron, J. in *Baker-Warren v. Denault* 2009 NSSC 5 in which she provided the following helpful guidance:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. v. Gagnon* 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. R.E.M.* 2008 SCC 51, para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Re: Novak Estate*, 2008 NSSC 283 (S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney* [1952] 2 D.L.R. 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R v. Norman*, (1993) 16

O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Re: Novak Estate, supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1996] 2 S.C.R. 291 at 93 and *R. v. J.H.*, [2005] O.J. No. 39, *supra*).

Relocation – Options Available

[34] It is important to note that the parties have identified three options or parenting arrangements for the court to consider. Of course, the court is not limited to these options or to the structure proposed by either party with within any of these options.

[35] AP seeks, as her primary position, an order of sole custody and primary care of the children with her and permission to relocate with the children to Sweden. She proposes the father have parenting time and contact time with the children within that proposal.

[36] In the alternative, AP says that if the children are not permitted to relocate with her to Sweden, she will remain in Nova Scotia and seeks an order of sole custody and primary care of the children with her and parenting time and interaction time for JK.

[37] JK seeks an order of joint custody and shared parenting of the children in Nova Scotia whereby they would spend approximately equal time with each parent.

[38] Within the context of those primary and alternative positions, I must next determine the issue of relocation.

Presumptions and Burden of Proof for Relocation

[39] The first step in deciding the issue of relocation under the *Act* is to determine where lies the presumptions, if applicable, and the burden of proof concerning the proposed relocation. Section 18(H)(1) sets out three possible circumstances of parenting at the time of the application for relocation and identifies a presumption in the first two circumstances and a distinct and different burden of proof for each.

[40] In considering each provision of this section, I note the use of the phrases “substantially involved” in s.18H(1)(a) and “substantially shared” in s.18H(1)(b) and find that they deserve some attention. As I found in *C.O. v. S.M.*, 2017 NSFC 22 respecting the phrase “substantially involved” at paragraph 90 as follows:

[90] The phrase "substantially involved" merits some attention. The word "substantially" is variously defined to mean "significant", "to a great or significant extent" and "not imaginary or illusory". While reference to dictionary definitions is not determinative in such analysis, this does provide a beginning.

[91] In considering this section in the context of the amendments to the Act concerning relocation with a child, it is clear to me that section 18H(1)(a) creates a presumption in favour of the relocation in a circumstance where the parent opposing such relocation has minimal or moderate contact, involvement and decision-making responsibility or interest in the child. It is intended to prevent such a parent from unreasonably obstructing a move and respects the decisions of the primary caregiver in such circumstances. It is, in many ways, an effort to mitigate against claims by minimally or uninvolved parents where there is little likelihood of success in opposing the relocation and does so by placing the burden squarely on the parent opposing to show that the relocation would not be in the child's best interests.

[41] Similarly, I find that the phrase “substantially shared parenting arrangement” in s.18H(1)(b), when considered in the context of the amendments to the *Act*, makes two things clear. First, the use of the term “substantially shared parenting arrangement” is markedly and deliberately different than the phrase “shared custody” under the *Provincial Child Support Guidelines* which is defined to exist where “a parent exercises parenting time with a child for not less than 40 per cent of the time over the course of a year.” The use of different terms between the *Act* and *Guidelines* strongly implies that the Legislature did not intend to equate the definition of “shared custody” under the *Guidelines* with the term “substantially shared parenting arrangement” under s.18H(a)(b) of the *Act*.

[42] Second, this is reinforced by the requirement that the court consider the three factors under s.18(H)(3) in determining the parenting arrangement. This is different from the analysis of counting time only, whether days, hours or minutes, in determining shared custody under the *Guidelines*. The determination of substantial shared parenting is a more nuanced and blended analysis of actual time spent with a child, the day-to day care responsibilities and the decision-making responsibilities of each parent.

S.18H(1)(a) – “Substantially Involved”

[43] In considering section 18H(1)(a), I note that this subsection creates a presumption in favour of the relocation if:

1. a primary caregiver is identified,
2. that primary caregiver requests the order for relocation,
3. someone is opposing the relocation and
4. the person opposing the relocation is not substantially involved in the care of the child.

[44] If those four circumstances are present, then the burden of proof falls to the person opposing to prove that the relocation would not be in the child's best interests.

[45] In this case, I need not consider this provision and as both parties agree that the father is substantially involved in the care of the children. Based on the evidence before me, I agree with these positions and find s.18H(1)(a) is not applicable.

S.18H(1)(b) – “Substantially Shared Parenting Arrangement”

[46] Section 18(H)(1)(b) creates a presumption against relocation if:

1. both the person seeking and the person opposing the relocation have a substantially shared parenting arrangement.

[47] In that case, the person seeking relocation bears the burden to prove that the relocation is in the child's best interest.

[48] Given my comments above respecting the phrase “substantially shared parenting arrangement”, I find that the evidence supports the position of AP that this was not a circumstance where the parties were in a substantially shared parenting arrangement.

[49] Throughout AP's evidence, particularly in her two affidavits, she provides a very detailed history of the circumstances of the parties both before and after the

birth of the children. AP says that, from the day that MMK was born to today, she has been the primary caregiver of both children. She says that during her maternity leave she did the cooking, cleaning, laundry, shopping, organizing of doctor's appointments for the family, disinfecting bottles for feeding, prepared formula and lunches for everyone as well as organizing the family's day-to-day activities, scheduling and transportation. She said she never slept through the night due to feedings and JK would fight with her if she asked him to get up to do a feeding through the night.

[50] AP described herself as "the default parent" and that JK decided, rather than seek babysitters, she should remain at home when he went out to socialize.

[51] After they moved to Sweden and she began working, AP says that it remained her responsibility to care for MMK and to organize the family. In part this was because JK did not at that time speak Swedish though he did begin Swedish language courses and became somewhat fluent in the language over time.

[52] During their time in Sweden, it is relevant that JK obtained full-time employment in January 2012 which required a commute. AP says that he left early and got home late so she was responsible for getting MMK to and from daycare. Ultimately that employment ended.

[53] After the birth of MIK in April 2014, AP says things improved for a while and JK obtained full-time employment in Norway which required him to be away for one to two weeks at a time. Though his evidence is not clear on this, I understood that this was a two week on and two week off rotation. This job lasted approximately two years. AP says that she was a single parent when he was away working until they moved back to Canada in June 2016.

[54] AP's evidence is that she remained primarily responsible for everything related to the children and family, estimating that she did at least 80% of the household work and parenting throughout their relationship. As an example, she says that during the approximate five years they lived in Sweden they did not own a vehicle and she would walk the children to every activity including daycare, school, doctor appointments, parties and play dates with friends.

[55] AP says that she took a skincare course while living in Sodra Sandby which took about a year. That led to practice skin care one day per week at a local therapist's practice and she began to develop a small business.

[56] JK says that the course AP took required her to attend 3 to 4 consecutive days per month for a period of one year. He said he rearranged his schedule, compressing his work rotations, to accommodate the courses and he took over primary care of the children during the time she was away.

[57] AP acknowledges that JK and MMK moved to Canada first in mid-June 2016 and she and MIK remained in Sweden until late August 2016. This would mean that he had responsibility for MMK for those two months.

[58] After coming to Canada in 2016, she says her primary care responsibilities continued, in part because she says JK was diagnosed with attention deficit disorder which made it extremely hard to organize and carry out parenting and family responsibilities. AP says that she continued the housekeeping and primary care responsibilities of the children. This was despite working full-time, taking courses for work and helping in renovation of the home.

[59] After separation in late April 2017, AP says that she continued in her primary parenting role for the children which she says was not different from when the parties were together. She said that JK's time with the children was organized around his convenience and requests and he was seeing them usually one overnight per week. In early July 2017, JK, through counsel, proposed parenting time every second weekend and one overnight visit per week to which AP agreed.

[60] JK has a different view of his involvement as a parent. In his affidavit, he denies that he is not involved in his children's care and denies that he struggles with his parenting and is not engaged. He says he has always contributed equally to the parenting duties for the children and strives to be a better parent at all times.

[61] To AP's evidence that he was not participating significantly in the care of MMK after her birth, he says that he has always been very active in both his children's lives. He says he remained available to help at any time requested by AP even after separation.

[62] He says that he was fully involved as a parent during the family's time in Sweden and after the birth MIK. He says that he equally contributed to the parenting and household responsibilities throughout the relationship. JK says that he also participated in taking the children to daycare, school, appointments and social engagements while they were in Sweden.

[63] In response to AP's allegation that, as an example of his poor parenting, he mistakenly took MMK to the wrong dance class on one occasion, he admits that this occurred and that MMK enjoyed the class nonetheless. He says this was an honest mistake and did not reflect his ability to parent or schedule activities for the children. I agree.

[64] JK says that after separation AP refused to allow parenting time with the children and refused to communicate with him on parenting issues. He says when he saw AP he would ask, out of desperation, when he could see the children. Because it wasn't advancing, he turned to legal counsel.

[65] After separation, JK says that AP unilaterally assumed the role of primary care parent for the children despite his objections. He says it was a battle to get any parenting time with them and he had to retain a lawyer to help before the current parenting time schedule was put in place. He describes AP as being incredibly hostile towards him at every turn after separation and incredibly difficult to deal with.

[66] AP's brother, FP, provided evidence and while his evidence primarily relates to the nature of the relationship of his family with the children, he does say that he got to know JK when the parties and children were living in Sweden and he thought of that JK is a good friend and father. He says that AP did the majority of the parenting but JK "seemed like a fine father".

[67] TA also provided evidence. Though her evidence was largely around the past and future business dealings with AP, she did offer some evidence on AP's parenting. I do not consider this evidence helpful as she only observed the mother and children on 4 or 5 occasions for a few minutes at work. Her limited time to observe AP, JK or the children renders that portion of her evidence unhelpful.

[68] In assessing all this evidence, I find the evidence of AP on the issue of whether the parties were in a substantially shared parenting arrangement to be more persuasive and credible than the evidence of JK.

[69] I find that the evidence of AP is more internally consistent and provides a great deal more detail on the responsibility she undertook, both with respect to parenting time and decision-making as well as day-to-day responsibilities with the children. She was able to recall in great detail not only these circumstances but many others in her evidence. On cross-examination, I found that she gave her

evidence in a candid and straightforward manner and was not evasive or hesitant. This left me with a higher level of confidence with respect to her credibility.

[70] While JK did provide his evidence in a straightforward manner, I did not find he provided much detail as to his involvement in decision-making and parenting responsibilities for the children. Given the significant allegations made by AP in her primary affidavit, I found that his response did not reflect a parent who was as involved as he claimed. For example, he did not describe any of the day-to-day activities or responsibilities he undertook for the children except in very broad terms. While I have no doubt that he believes what he says, that he was and remains fully involved in the children's care and was equally responsible for decisions for them, I find that his evidence is lacking in detail.

[71] As a result, I find that the parties were not in a substantially shared parenting arrangement both during the relationship and after separation and therefore the presumption in s.18H(1)(b) does not apply.

[72] As a result, I find that s.18H(1)(c) applies and both parties have the burden of showing what is in the best interests of the children.

Best Interests Analysis

[73] It is important to note that there is nothing in the *Act* to suggest that any one of the factors to be considered under ss. 18(6) and 18(H)(4) is of a higher priority than the others and, as a result, one factor may be more relevant for one family than for another. I find that I must conduct a blended analysis of the evidence and these factors, including the applicable “*Foley* factor” in arriving at a decision respecting the children’s best interests.

The Impact of Any Family Violence, Abuse Or Intimidation, Regardless Of Whether The Children Has Been Directly Exposed (S.18(j), S.2(da) And S.18(7))

[74] AP's argument for relocation is founded in part on a few broad issues including the pressure of family violence by JK against her and its impact on her and the children. She also connects with this the impact of alcohol and drug abuse by JK on the relationship, her and the children. The allegations of family violence are extensive.

[75] AP says that JK's abusive behaviour began long before the children were born. In reviewing this evidence, I will only set out some of the more significant allegation she has made as well as reviewing JK's response to each of those allegations to provide context on this issue.

[76] She describes an incident in 2003 when they were living in Sweden. She says JK became very angry one evening and wanted to go out drinking. She says he picked a fight with her and jumped up on the marble window sill in the room that they rented. He then jumped out the window. The window sill snapped in half and it had to be replaced, costing hundreds of dollars. She said JK was out the entire night and when he returned, told her that he had nearly been beaten for wearing a Swedish hockey jersey in an offensive way and shouting rude comments to two men.

[77] JK says that the windowsill was broken accidentally when he attempted to use the window to exit to the street to smoke and claims he had done this several times before.

[78] AP says that on JK's birthday in May 2002, while she was in Sweden and he was in Edinburg, Scotland, he became so intoxicated he passed out on the street and was picked up by police and thrown in jail for the night.

[79] JK says that she was mistaken about this. It was his birthday and he was drinking with friends. While going to an ATM to withdraw some money he was rushed and tripped over a homeless man sitting on the sidewalk, knocking himself unconscious. He awoke to a police officer explaining that a homeless man was going through his pockets. He went with the officer to sleep off his intoxication and no charges were laid.

[80] AP says that JK's drinking escalated over time and when they were living in Nova Scotia in April 2006. The drinking began to get out of hand and he began to show aggression more and more frequently. JK denies this.

[81] She describes some instances in 2006. The first was when she and JK were going to quit smoking. She did not want to quit but says he refused to drive her to the store for cigarettes. She begged him to do so and says that he began calling her abusive names which she details in her affidavit.

[82] JK says that they both agreed to quit smoking and says that she called him names and in response he refused to drive her to the store given her rude and inappropriate language.

[83] AP says during the same year JK was out for a bachelor party and lost his phone. When he returned home, he took her phone and began entering all his friend's numbers into it. When asked what he was doing he replied that she didn't have friends anyway and it was better that he take her phone. She says he didn't ask her but just took it from her. JK did not respond to this allegation.

[84] AP notes in her evidence that JK was convicted of driving under the influence in the spring of 2007. JK admits to this but says he has had no alcohol difficulties since and he learned from that experience.

[85] During her pregnancy with MMK, AP says that JK drank excessively, and was intoxicated 3 to 4 nights a week, picking fights with her to have an excuse to leave and drink. He denies this.

[86] AP says that some nights JK did not return at all and she sometimes found him curled up in the dog crate on the front porch or heard the next day that he had been in jail to sleep off his intoxication. He denies this as a "bizarre accusation" and denies he was ever in jail to sleep off his intoxication.

[87] AP describes an incident where JK called her from a stranger's home and explained that he had been sleeping on the floor in that home next to a dog he thought was his own. JK says that this was taken out of context. He explains that he slept at a friend's house after socializing and slept on an air mattress in the living room. When he awoke, there was a dog that resembled theirs present and he mistakenly believed he was in his own living room. He said his comment to AP was made in a humorous manner, nothing more.

[88] AP describes an incident where, when she was 7 months pregnant with MMK, JK was intoxicated and chased her through the house. She hid in a long narrow closet behind some suitcases and when he found her, he said he gave up because he didn't care anymore. JK denies this occurred.

[89] As noted earlier, during the birth of MMK, AP suffered a failed epidural which caused significant disability and extreme pain for some time. She says that despite asking JK not to have family visit that night given her condition, he refused and allowed family to visit the child. She says during that same hospitalization she

was bleeding heavily and in need of pads immediately. She was going to ask a nurse for help but JK told her he would get them for her but he did nothing. When she repeated the request, he became mad at her, when she asked the third time he became furious and yelled at her using vulgar language. JK denies this occurred, saying this is a falsehood.

[90] AP says that she gained a lot of weight during pregnancy and had a hard time losing it. She says that JK constantly made negative remarks to her when she ate anything he considered unhealthy. JK denies this occurred.

[91] AP says that they made plans over several years to go to Sweden including giving two years notice to JK's stepfather for whom he worked. She said just before they announced to his family they were leaving, he told her that they would all hate her, that his family will blame the move on her, that it would be her fault and would hate her for taking MMK from them. AP also says that JK told her that because he agreed to move to Sweden, he would have the right to treat her however badly he wanted. JK denies this. He says he did discuss with AP what he anticipated his family's reaction to be.

[92] AP describes being socially isolated by JK. As an example, she says in April 2008, following the death of one of JK's best friends, JK and his friends and their girlfriends met often to go drinking together. Yet JK told her that she wasn't part of the group and did not need to go.

[93] Despite this, one day, with the support of JK's stepmother and sister, she went to the restaurant where JK and his friends were. She called JK from outside the restaurant to ensure he was there and he told her to go home as this is not the type of event for her, just friends of his deceased friend. She says that she saw a lot of girlfriends in there. She felt ashamed and heartbroken from this event. She felt humiliated getting back in the car with JK's sister and telling her that JK didn't want her there.

[94] JK agrees that he spent time with his friends after the death of a close friend as a period of mourning. He says the event at the restaurant occurred when he and his friends agreed to get a small tattoo in memory of their deceased friend. When AP arrived at the restaurant they all decided to leave and he left with AP.

[95] AP says that JP received many offers each week to go drinking from 2008 to 2011 while living in Nova Scotia. She says he would come home heavily intoxicated, wake her up and was nasty and angry with her. He yelled at her,

called her horrible names and he was especially nasty when he drank rum. He became so bad she pretended she was asleep when he came home, hoping to avoid the abuse.

[96] She says when MMK was little, during one drunken rage, JK pushed AP through the kitchen so hard that she flew from one side to the other, hitting the countertop. He came to her, grabbed her and held her down over a baby gate. AP says she remembers it hurt and her head was racing, she begged him to let her go and he eventually did. She had a bruise on her stomach.

[97] AP says that when fights occurred like this, she would want to leave, was intimidated and afraid and JK would always grab her and hold her back, refusing to let go of her. AP says JK held her, pushed her up against walls and held her down on the bed, put his hands on her throat and other similar behaviour. He would refuse to let her go until he was "done talking". He would then try to make it seem like it was her fault and that she was being hysterical. JK flatly denies these allegations.

[98] AP said that during these rages, JK would throw things around the house, not directly at her but in a way to intimidate her. He broke furniture, walls, glasses, plates and afterwards he would leave. He never apologized for any of the behaviour and would try to make her feel as though it was her fault. She says that she got to the point where she was no longer afraid though she knew she should be. She got used to it and being treated like that. It seemed almost normal. She didn't share this with anyone because she was ashamed.

[99] JK says the only time he made physical contact with AP was when she came at him in an aggressive manner. He placed his hands on her shoulders to keep her at arm's length during arguments and in many cases AP was the instigator. He denies throwing anything around the home or attempting to intimidate AP in any way. He does say that during one argument when she was insulting his mother he punched a hole in the wall.

[100] The parties moved to Sweden in 2011. AP describes JK as angry and jealous of someone at her work, being furious when she travelled for work event because he had to stay at her mother's home and look after MMK and other similar behaviour during that time.

[101] She describes one incident when she picked up MMK at daycare and JK began yelling at her in the car in the presence of MMK. She says the JK called her

“the lowest of the low”, cursing at her. This took place in the centre of Lund and when he stopped, he yelled at her to get out of the vehicle. She got out because she didn't want MMK exposed to the yelling. He drove away before AP closed the door which hit her and nearly knocked her off her feet. AP says she sat down in the park for a very long time, crying and shaking. She eventually took the buss back home. JK denies these allegations.

[102] AP says that JK continued to have fits of anger, throwing things in the apartment to intimidate her. She says he broke wallboard in three places around the apartment and punched a hole in the wall near her head to intimidate her. Rather than fixing the holes, JK covered them with MMK's drawings. She says that MMK saw and heard many of these outbursts and on many occasions MMK ran up to AP and hid behind her. JK denies these allegations.

[103] AP admits she finally responded to all of this on one occasion. They were in Sweden and some of his family, including his mother and stepfather, were visiting. She says they were quite negative and critical of everything during the visit. AP had just learned that she was pregnant with MIK.

[104] One night during the visit, she and JK had a fight and she says all the frustration and stress with his family and their treatment of her came to a breaking point. She said that JK had, for the third time, taken her cell phone, saying his battery was dead. He switched the SIM card to convert it for his use. She said she “lost it” and all the years of stress, frustration and hurt erupted.

[105] She says his mother and stepfather intervened and called her down to the lowest. She told them of all the abuse she suffered from JK and says that JK's mother told her that it was okay for JK to be abusive to me because AP was a horrible person. She says that JK's mother pushed her into the wall in the hallway as she passed her. She says that JK's stepfather spit at her and, she asked what he was doing, he spit at her again. He told her that she was a great dog owner but a terrible parent.

[106] AP says that JK called her a terrible name and said horrible things to her in front of his family. She said this was the first time she had pushed back and gotten angry after years of abuse and was attacked by all. She says MMK was present and heard everything that was said and done during that incident.

[107] JK says that AP did not make his family feel welcome on that trip and that she was angry the entire time. He agrees they argued and his family came to his

defense but he says he didn't observe anything physical between AP and his family including spitting. He says AP abandon all reason and launched into a vicious tirade against him in front of MMK. He says he apologized for his role in the argument several times.

[108] It is of significance that, despite the serious allegations made by AP in this and other portions of her evidence against JK's family, none of them have provided evidence in this matter either to refute these allegations or to offer their support for JK and his plan for care of the children in Nova Scotia.

[109] After MIK was born in April 2014, AP says things improved for a while. JK's father and family came for a visit and on a trip by train to Stockholm, AP says JK became drunk and nasty. AP suggested he and his father take a break from drinking to allow her, JK's sister and stepmother a break. JK became furious and started another fight in front of his family.

[110] When they got home JK blew up again and AP says his stepmother had to calm him down. MMK observed this was and was so afraid she ran and hid in a closet. JK's stepmother brushed this off is nothing to worry about. AP says that MMK was usually around when JK became angry over the years and hid behind her many times.

[111] JK says he was drinking with his father on the train but says it was a calm until AP confronted him and accused him of being drunk, which he says he was not. He denies the remainder of the allegations.

[112] The parties moved to a town Sodra Sandby in September 2014 and remained there until they returned to Canada in June 2016. AP says that overall, they were a lot happier there. She was closer to her mother, friends and family. This provided a rich support system to her and the children. She spoke highly of the many services in the community.

[113] AP says that, one day when living there, JK threatened to kill himself if they did not move back to Canada. She says he jumped up on the rail of the fourth-floor stairwell outside their apartment and threatened to jump. She says that she cried and begged for him to come back into the apartment and told him whatever he wanted to hear to get him back off the railing and prevent the suicide. She said she agreed to move back to Canada to avoid the children losing their father to suicide. After moving in June 2016, JK told her he had only done this to get her to agree to move back to Canada.

[114] JK denies that he ever threatened to kill himself. He says they had an argument and he left the apartment to get away from the situation and cool down. He says AP pursued him into the hallway and tried to convince him to return to the apartment. He told her that he would rather jump down four flights of stairs than returned to the apartment with her. He says she misconstrued his statement and he didn't trick her into coming to Canada.

[115] AP describes a final incident when the parties separated. JK told her he wanted to end the relationship on April 26, 2017 and did so in the morning before she left for work. She tried to talk to him about it the next day. She laid on the bed next to him. He got up, lifted the bed up and threw her out of the bed. She says he then yelled at her for several minutes.

[116] JK says that when he woke at about 1 a.m. that morning AP was in the bed making sexual advances to him. He was surprised at this as they had been sleeping in different rooms after separation. He told her to leave and she did not. He stood up and slowly lifted the mattress to indicate his desire to have her leave. He says she became furious and left.

[117] AP says that after JP told her he wanted to separate and they were still residing in his mother's home, JP came to the children's room where he yelled at and argued with her and he was recording the conversation on a cell phone. She asked many times for him to stop the recording and he refused. She says the children were in the room and she was about to put them to bed. She closed the door, JP pushed it open and she was scared. She closed the door again and put a desk and heavy moving boxes in front of it to block it until he calmed down. She attached a photograph of her thigh showing a bruise which she says occurred on that occasion.

[118] JK says that AP misrepresented what occurred. She believed he had spent a large sum of money on drugs. He learned that she been telling others of this. He said he had bank records disproving this and wanted to record the conversation when he confronted her. When she realized he was recording the conversation, she grabbed his phone from him and went upstairs to delete the recording. He says he did attempt to enter the room where she was but not to the degree she describes. He denies doing anything to cause the bruise.

[119] Even after they physically separated, AP says that JK continues to argue with and yell at her, often in front of the children, despite her begging him not to do so. JK denies he argues with AP in front of the children and describes AP as

incredibly hostile towards him and it being incredibly difficult to deal with her due to that hostility. He accuses her of erecting barriers between him and the children.

[120] AP says that JK has repeatedly entered the home in which she resides with the children without her consent. She says he makes up excuses to come into the home to do various things. On one occasion, he came to the home, she asked him to leave 42 times and he refused. This lasted over 30 minutes before he left.

[121] AP says JK came to the home again the day after he was provided with a notice of her plan to relocate with the children to Sweden. He again refused to leave after she told him to do so many times. She told him she would call the police if he didn't and he jammed the door with his foot so she couldn't close it. AP call 911 and JK left. An officer attended and took a statement from her.

[122] JK says that he only attended the home a few times. He says she creates dramatic situations when he is there and asked him to leave without discussing anything. He says on each and every occasion he left without incident. He says he has never been contacted by the police.

[123] He does admit that he attended the home after notice of her plan to relocate was provided. He said he came to walk their dog as he had done many times after separation. He said he attended with AP's permission and that they had agreed earlier that day to discuss parenting time after the walk. When he tried to do so, AP became agitated, refused to speak to him and demanded he leave, claiming she was afraid. She called the police and he left. There was no follow up by the police. He denies threatening or intimidating AP in any way.

[124] After separation, AP agreed to drive JK to work and MIK was in the car. AP says that JK was upset that she had the vehicle and he often tried to pick fights with her in the presence of MIK, calling her vulgar names and threatening her in various ways.

[125] He would pursue questions about custody and other difficult topics in front of the child and when she begged him to stop, he would say that in MIK didn't understand in any event and would try to make it appear that it was AP's fault. JK denies this happened.

[126] These are some of the incidents referred to by AP in her evidence. While there are more and responses from JK, I think these are sufficient for this decision.

[127] As to allegations of family violence by AP, I find that there was one significant incident when she “lost it” during JK’s family trip to Sweden. I find that, considering the long history of abuse she had experienced, such a reaction and outburst was inevitable. Although it would have been preferable that it take place when the children were not present and she bears responsibility for that, I do not find that this could have had much, if any, impact on the children considering the history they had and would continue to be exposed to with JK.

[128] I further do not accept JK’s evidence that AP was the aggressor on other occasions and was violent towards him. The pattern of abuse is clear and flowed from JK towards AP, not the other way around.

[129] After careful review of these and other allegations and after careful assessment of the credibility of each party, I find that the evidence of AP with respect to these incidents is credible and I accept her evidence where it conflicts with that of JK. I find her evidence to be consistent, clear, cogent and convincing. It was detailed and persuasive. I do not find the evidence of JK on these issues to be likewise clear, cogent or persuasive. He minimizes incidents when he acknowledges they occurred and in many cases I do not find his evidence to be persuasive on a balance of probabilities.

[130] I find that the evidence demonstrates a clear pattern of escalating family violence with concurrent alcohol abuse over a period of many years both preceding and following the birth of each child. JK attempted on many occasions to suggest that the incidence either did not occur or were the fault of AP.

[131] I find that these behaviours, including physical, verbal and emotional abuse, constitute a series of acts forming a pattern of abuse which not only caused or attempted to cause physical abuse towards AP but also included, at times, forced confinement in the form of holding her down and that in doing so, throughout many years, JK caused psychological and emotional abuse which constituted a pattern of coercive controlling behaviour. This included engaging in intimidation and harassment. I cannot find that at any point along the continuum of these behaviours that JK was at any time acting in self-defense or to protect another.

[132] I further find that while none of the acts were directed against the children, this pattern of family violence was certainly witnessed by the children, particularly MMK who is older and who saw more of these incidents over her short life.

[133] I also note that this pattern continued even after separation when JK came to the home and refused to leave and continued the intimidation.

[134] I find that this will have a significant impact on the ability of JK to care for and meet the children's needs while in his care. He has yet to gain any insight or perspective on the incidents and their impact over many years on both AP and his children. There is simply no acknowledgement of almost all the incidents, let alone any indication that he understands the impact.

[135] As a result, I must carefully consider the appropriateness of any arrangement for parenting that would require cooperation between JK and AP on issues affecting the children. As with any victim of a protracted pattern of family violence and abuse, AP, I find, has been traumatized by this behaviour. She describes feeling no fear and thinking it was becoming normalized.

[136] I further find that the children have been traumatized as well. That MMK repeatedly hid behind her mother, in closets and exhibited other behaviors demonstrating fear of her father in the presence of this abuse demonstrate a reaction to trauma that is of significant concern to this Court.

[137] I have considered that much of this family violence dates to a time before the birth of each of the children. I am also mindful that the family violence continued after the birth of each child and on many occasions in the presence of one or both children. I find that the frequency of the acts and behaviour was significant and ongoing. I further find that this will inevitably harm each of the children. MMK was also already involved in therapy and MIK may require the same. While the specific harm is yet to be identified, family courts are very familiar with the potential and likelihood of harm to children from exposure to repeated incidents of family violence including physical, verbal and emotional abuse, all of which were present over many years in this family.

The Children's Physical, Emotional, Social and Educational Needs, Including Their Need For Stability and Safety, Taking Into Account Their Ages and Stages Of Development - (s.18(6)(a), *Foley* factors)

The History of Care for the Children Having Regard To the Children's Physical, Emotional, Social And Educational Needs – s.18(6)(c), *Foley* factors

[138] There is no question that each of these children have the normal physical, emotional, social and educational needs of any child. But having been witness to

family violence over many years, particularly in the case of MMK, I find that there are specific emotional needs that have to be addressed which are connected to their need for emotional and physical safety and stability. They are very young children who have been exposed to much in their lives.

[139] These needs must be met by one or both parents as they grow and develop. I consider the evidence canvassed set out above in the analysis under section 18H(1)(a) to (c) respecting the presumptions and burden of proof on relocation and I find, based on that evidence, that AP is better able to meet the needs of the children, particularly in the context of the history of family violence.

[140] There is no doubt that JK loves his children and they love him. Moreover, there is also no doubt that it is in their best interest to maintain a strong and healthy relationship with JK.

[141] That said, until JK gains understanding and insight into the impact that his behaviour has had over the years on both AP and the children, I do not believe that he is able to meet the children's need, particularly their need for emotional stability and safety. He exposed them to family violence on repeated occasions and to this day does not acknowledge the damage that likely has resulted from that.

[142] As well, the evidence respecting the pattern of parenting, both in Canada and Sweden, persuades me that the mother has a long history of more appropriately meeting the physical, social and educational needs of the children. She has been primarily responsible for their care, upbringing, schooling and all scheduling and medical matters for many years.

[143] This is not to say that JK has not contributed. He has earned income for the family and, when able and required, has provided parenting to the children. That said, I find that his contribution has been significantly less than APs and that, given the evidence of history of parenting, he is not as well positioned to provide for the children's needs, particularly the need for stability and safety.

[144] AP details concerns about JK's health including dislocated elbows, arthritic pain in those elbows, problems with a bone in his wrist from a break while working in Norway, effects of a rotator cuff injury suffered in Sweden, TMJ syndrome and surgery for double vision.

[145] JK denies that any of these medical concerns affect his ability to parent the children. He says he was never diagnosed with TMJ Disorder and had a broken

pinky, not wrist. I find that, other than detailing them, AP has provided no evidence that they affect his ability to parent the children and I do not find them relevant to the assessment of the children's best interests.

Each Parent's Willingness to Support the Development and Maintenance of The Children's Relationship With The Other Parent – s.18(6)(b), *Foley* Factors

[146] On the issue of each parent's willingness to support the development and maintenance of the children's relationship with the other parent, there is some evidence to assist the court.

[147] After separation, there was some dispute respecting JK's parenting time before an agreement was reached. JK says that AP made it extremely difficult to communicate on the issue and was interfering with his relationship with the children. AP says that JK was not pursuing much parenting time until she notified him of her plan to relocate and he wanted any such time organized for his convenience.

[148] Fortunately, shortly after separation the parties reached agreement with the assistance of counsel and it appears that parenting time has gone forward reasonably well. This suggests that each parent is willing to support the relationship of the children with the other parent at least in the early stages post separation.

[149] AP says that she wants to support the relationship and does whatever is required to promote it. That said, she is seeking to relocate with the children to Sweden. This presents significant challenges. While AP suggests extended access during summer, electronic communication and time with the children if the father can go to Sweden, the relocation will clearly have an impact on the relationship of JK with the children. Thus, the stated willingness to support that relationship is limited by the proposal she makes for relocation to Sweden. This cannot be avoided and is the reality of what is before the court.

[150] Likewise, JK says that he will promote that relationship if the children remain in Nova Scotia. He seeks shared parenting and whether this or some other parenting arrangement is ordered, if the children remain in Nova Scotia I do have concerns about his willingness to support the relationship between AP and the children. The evidence of the history of parenting and his behaviour in the presence of the mother and the children over the years gives rise to those concerns.

[151] The evidence which I have accepted is that he has repeatedly physically, verbally and emotionally abused the mother, often in the presence of one or both children. He has denigrated her in front of them. He has attended her home after separation and refused to leave until forced to do so. He has argued with AP in the presence of the children. This leaves me with significant concerns that JK would not be willing to support the development and maintenance of AP's relationship with the children.

[152] That said, under his proposal there will be a shared parenting arrangement, and therefore significant parenting time for AP. In the alternative, AP proposes that if the children remain in Nova Scotia, JK have parenting time similar to that which he enjoys now. Again, she would have significant parenting time with the children. This would mitigate some of the concerns the court has regarding support of the relationship between AP and the children.

The Nature, Strength and Stability of The Relationship Between the Children and Each Parent – s. 18(6)(g), *Foley* factors

[153] Considering the factor of the nature, strength and stability of the relationship between the children and each parent, I first accept that each of the parents love each of their children and each of the children love each of their parents. That, though important, is not determinative of the assessment of this factor under the *Act*.

[154] First, from the evidence, each parent has been involved in the care of the children over the years. I have already found that AP has been the parent who has been primarily responsible for nurturing and raising the children as part of the family since each child's birth.

[155] Second, the nature of JK's relationship is somewhat more complex. He has had significant involvement in the care and nurturing of the children. He has done so on his own on various occasions including when the mother was taking courses for skin care and at other times when she was working and he was not.

[156] There is no evidence that he has been directly abusive towards the children, has done anything to intentionally harm them or that he is been neglectful of them. There is some evidence of a concern raised by AP about a gap in supervision of MMK after separation when she was alone for a short time after school but I do not infer from this that JK has been neglectful or put her at risk.

[157] JK has not provided much evidence of his relationship with the children. He claims that he did as much parenting as AP. He also provides extensive replies to the allegations made by AP about his behaviour throughout the years. Yet there is little in this affidavit or viva voce evidence about how he spent time with the children or what specifically he did with them. That said, I do find that the evidence supports the conclusion that he is a loving and appropriate parent when he has care of the children on his own.

[158] Third, the main concern respecting JK's relationship with the children centres around JK's history of family violence. This behavior and history would affect the nature and strength of his relationship with the children. This also gives me pause for concern respecting whether he has gained, or will ever gain, insight into the impact that these behaviours have on the children and the necessity of him parenting them differently and avoiding any further exposure to family violence or similar deleterious behaviour in the future.

[159] The fact that I already found that he continued to engage in some inappropriate behaviour after separation also gives me some concern about the nature, strength and stability of his relationship with the children.

[160] That said, I do not find that this in any way disqualifies him from providing parenting for the children or suggests that it is not in their best interests to maintain as strong a relationship with JK as possible under whatever parenting arrangement is ordered.

The Nature, Strength and Stability of The Relationship Between the Children And Each Sibling, Grandparent and Other Significant Person In the Children's Lives – s. 18(6)(h), *Foley* factors

[161] The court must consider the nature, strength and stability of the relationship between these children and each of their grandparents and other significant persons in their lives. Respecting the relationship between each of the sisters, there is no evidence to suggest it as anything other than a perfectly normal, healthy relationship.

[162] Respecting AP's family's relationship with the children, the parties and MMK moved to Sweden in August 2011 and returned to Canada in June 2016, a period of almost 5 years. MIK was born in Sweden in 2014.

[163] When the parents and MMK first moved to Sweden, they lived with the AP's mother, MP, from August until December. AP says both children are very

close with their grandmother who provides a calm, comforting and loving environment at her home. She says that MMK went for regular sleepovers at her grandmother's home where she could relax, bake cookies, plant flowers and spend time with her grandmother. She says that MMK has been around her grandmother since she was born and her grandmother is one of the few people MMK allows to hold her. They continued to Skype regularly. She notes that MP's home is located next door to the school she would have MIK attend.

[164] AP says she had support of their family throughout their time in Sweden but particular when they moved to Sodra Sandby between September 2014 and the return to Canada in June 2016. The residence was close to AP's mother and her childhood friends and other family. She describes having a rich support system for herself and the children. She says that support system is waiting for her again if permitted to relocate to Sweden.

[165] FP, AP's brother, testified in support of his sister. He, his wife and two children, ages 9 and 4, live in a small village about 20 minutes away from Sodra Sandby where he and his sister grew up. He says he works approximate 30 minutes from his home. His wife works full-time as well.

[166] He says that when AP and JK lived in Sweden, the families met to celebrate holidays and birthdays along with AP's and FP's mother and brother. They often spent time with AP, JK and their children for dinner, picnics, excursions and sleepovers. He says that during summertime AP, JK and the children would come to their home to enjoy their pool. They shared birthdays, Christmas, mid summer breaks and other occasions quite often. He says that they got together a couple of times a month, usually at his home which was bigger, and that they usually stayed overnight. When they visited the home of AP and JK, they did not stay overnight. In total, they would get together or visit 2 to 3 times per month.

[167] He says that MMK and MIK formed a close relationship with his children and they enjoyed spending time together.

[168] FP says that his mother, MP, lives in Sodra Sandby and visits with them quite frequently, usually every second week, sometimes staying overnight. He says that his mother is very close with all her grandchildren including MMK and MIK. He says that AP and MP are very close.

[169] FP says that his and AP's older brother, KP, lives in Lund, close to Sodra Sandby. He he has one 12-year-old daughter and they see each other at birthdays and holidays as well as other occasions. He acknowledges KP has had a troubled past including drugs but has been "cleaned up" for almost 20 years.

[170] FP says that when AP initially moved to Canada he spoke to her perhaps every two weeks but now that she is back in Canada they speak more often, including a lot of text messaging. She also says that she and her children Skype with his children too.

[171] FP says that, as part of AP's plan to move with the children to Sweden, his home has room for AP and the children until she find a place of their own and welcomes them to his home. He also says that he and his family will support AP and the children financially always and that he supports her plan to relocate the children to Sweden.

[172] JK says that during their time in Sweden, they received very little support from AP's family. He says her mother could no longer drive due to eyesight issues and had limited mobility. He says that AP's sibling, which I take to mean her brother, was the only one she had a relationship with, he lived 35 minutes away and usually only saw them on special occasions.

[173] As an example of the lack of support, JK describes an incident in September 2015 when he and AP were away from the apartment. She had to travel to Stockholm and he went to Canada to take part in a wedding. To care for the children they had his stepmother, KK, fly to Sweden from Nova Scotia to watch the children.

[174] AP says that her mother had some health issues when they first moved to Sweden but was not very ill. Her health improved over time and was better by August 2011. She says JK knew all of this.

[175] AP says that it is insulting to her family that JK says they offered no support or help. She says that her mother had eye surgery, was waiting for lens replacements and for that brief time was unable to drive. She says that they didn't need a drive from anyone as there is excellent public transit available and most things in Sodra Sandby are within walking or biking distance.

[176] AP says her mother helped whenever she asked, they visited with her frequently and they were all close to one another. She says her mother invited them for dinner many times but JK only came occasionally, usually when her brothers attended. As another example, she says her mother looked after their dog while they were working.

[177] AP says that they had the use of her mother's car for their first year in Sweden as she was not using it, JK could drive it using his Canadian license.

[178] AP says that KP and his wife loaned them their apartment in Lund while they were looking for their own. AP says that both KP and his wife assisted JK with connections for employment. Two of their neighbours offered him jobs, one of which he accepted.

[179] With respect to care of the children while both parents were away, AP says that this is a distortion. Her recollection is that a friend first offered look after the children and they had many friends and family to reach out to for child care. She says that JP's stepmother came to care for the children because she wanted to. It was a good chance for her to spend time with the children and have a vacation. AP thought this "was quite crazy" but JK's stepmother seemed to want to do this and enjoyed her visit.

[180] JK says that the children have a large extended family in Nova Scotia, all of whom love spending time with them. He says having such a large extended family enriches the children's lives.

[181] AP tells a different story. She says that when they first moved to Canada in September 2005 they lived briefly with JK's mother, CM. She describes having a very strained relationship with CM. Much of this appears to be the result of ongoing conflict between JK's parents, who were separated for many years and are in new relationships. AP describes constant conflict between the families and the burden that this had on JK over the years.

[182] AP says that JK worked for his stepfather for a time in 2007 but this made an already strained relationship even worse. She says JK came home angry from work each day and took out all of his frustrations on her. He would yell and swear and call her horrible things and in the end, it would always become clear that his stepfather had said something that hurt JK.

[183] JK says that he and his stepfather have had a strained relationship over the years. When he began working for his stepfather, the relationship was tested but it was always manageable. He says recent years have improved the relationship, especially since JK became a father. He says he's happy with the progress of the relationship and that his stepfather has been an important part of the support network for the children and him.

[184] Before they left for Sweden, AP says that JK's father was demoted at work and then was convicted of driving under the influence. She says he fell into a depression, sitting in the basement drinking all the time. She cared a lot for him but to ensure and MMK's safety, she did not allow him to drive or watch her anymore, even when he got his license back, out of concern that he would drink and drive.

[185] As an example of her relationship with JK's family, she described a visit by JK's mother and stepfather to visit them in Sweden which I reviewed earlier in this decision.

[186] It was on this occasion that AP exploded and verbally fought back against JK and his behaviours. AP says that during that incident JK's mother and stepfather called her down to the lowest, his mother said it was okay for JK to be abusive because she was a horrible person and a bitch. AP says his mother pushed her into the wall in the hallway as she passed her. AP also says that JK's stepfather came over to her, spat at her and did so a second time. He said that she was a great dog owner but a terrible parent. AP says that MMK was present for all of this.

[187] JK says that AP did not make his family feel welcome when they arrived. She was angry the entire time they were there. He says this eventually led to an argument as described by AP. He agrees his family came to his defense but says he did not observe anything physical between them and AP including any spitting. He says AP abandon all reason and launched into a vicious tirade against him. He agrees MMK was present.

[188] When MIK was born in April 2014, JK's father and stepmother came for a visit and AP does say this went well overall. As described earlier, this is the incident when she says JK was drinking on the train back from Stockholm.

[189] AP says when they returned to the apartment JK's stepmother had to calm JK down and MMK was so afraid she ran and hid in a closet. JK's stepmother brushed off the incident as nothing to worry about and AP became quite upset with her. AP says she confronted JK's stepmother outside of the apartment when MMK was not present and his stepmother made excuses and avoided the topic.

[190] AP says that while they lived in Sweden, they Skyped regularly with both sides of JK's family. She said she was not in contact with JK's mother and stepfather for approximately two years but eventually started communicating with JK's mother again to make it better for the children and to help JK and AP find a way back together. She said they Skyped with JK's family almost every weekend and she sent pictures of the children and their lives and messages on a daily basis to both sides of his family.

[191] In those communications, they heard the news from Nova Scotia from each side of the family. AP says that almost every week there was a story of someone not getting along, getting drunk fighting or other bad behaviour.

[192] AP says that after separation, for a couple of months she dropped MMK off at the paternal grandmother's home before school and picked up JK to drive into work. She then took MIK to daycare and after which she went to work. At the end of the day she picked up the children, one from the daycare and the other from her grandmother after school.

[193] AP says that though JK's family is bigger, her family is not conflictual like his. She says they handle their differences quite differently.

[194] AP says that MMK has friends in Sweden including a group of four children with whom she was particularly close. She kept in contact through social media since coming to Nova Scotia and still maintains contact with some of them to an extent but found it hard to connect over time. AP says she has friends in Nova Scotia but does not seem as close to them as she was with her friends in Sweden.

[195] AP says that since moving back to Nova Scotia, the children have only seen their cousins on the father's side a dozen or so times. JK does not organize play dates with the cousins at all. They only meet at events like birthday parties.

[196] AP says that since separation she's trying to reach out to JK's family but they have not been very supportive of her. She is trying to maintain a positive relationship with them but it has been difficult.

[197] JK's strongly denies this. He says his family has made several attempts to help AP since separation but she has rejected his family and appears to be keeping them at arm's length. JK says that his mother, CM, has always tried to help AP in any way that she could.

[198] JK says that, despite AP's claim that she was concerned about afterschool care of MMK with his family, his mother and stepfather had always provided free child care prior to separation and were willing to do so afterwards so they can spend time with the children.

[199] JK says that neither he nor his family speak ill of AP around the children and that the children spend a lot of time with his family. He says a relocation to Sweden would disrupt those relationships that the children have come to know and enjoy.

[200] As an example of the children being shut out of JK's family's lives, he points to his sister KA who has had a good relationship with AP and played a large role in the children's lives. He says that recently AP had refused KA's request to see the children.

[201] In response, AP provides a copy of an email between herself and KA in which AP explains why she was declining to have the children visit with KA. She invited KA to come to their home. AP expresses appreciation for KA's requests and her relationship with her and the children but explains that while going through difficult time such visits, including overnights, away from home are not in the children's best interests. She does invite KA and her mother and father to come for MMK's birthday party but would understand if she already had plans to celebrate that with JK. She welcomes her to her home at any time.

[202] After review of this evidence, I have no hesitation in finding that the children have had good, strong and positive relationships with their extended family in Sweden. I find the evidence of AP, and particularly FP, to be credible and trustworthy on this issue. AP was able to easily explain any of the concerns and criticisms JK had of those relationships or support and I find that her family not only have had strong and important relationships with the children, including the grandmother, uncle and other family members, but that they provided direct and indirect support to AP, JK and the family while in Sweden.

[203] Respecting JK's family, I have some concerns. JK's family on both sides have been hostile to one another and this creates continuous tension and conflict among them.

[204] More importantly, the incident in Sweden when AP says that she was verbally attacked and physically pushed and spit upon by JK's mother and stepfather is of concern. MMK was present and AP had an emotional explosion at an inappropriate time but I accept her evidence of the response of JK's family in that moment and I find this entirely inappropriate. JK does not deny the push and spit, just that he did not observe it. It is certainly true that none of this should have happened in front of the child but since it did, I am concerned that JK's mother and stepfather intervened as they did and acted in a confrontational, verbally and physically abusive way in front of the child.

[205] I am also somewhat concerned about the behaviour of JK's stepmother after the train incident in Sweden. It was helpful that she calmed JK down on the return to the apartment but her discussions with AP outside the apartment, which I accept as accurate, causes me concern that members of JK's family are prepared to minimize his behaviour and rationalize what he does and says even when the behaviours are not in the children's best interests.

[206] I also note that, despite the many and serious allegations made against JK's extended family by AP, and JK's position that his family is supportive of him in his parenting plan and have been appropriate in their interactions with the children

notwithstanding the complaints of AP, no one from his extended family provided evidence in this matter. For example, it would have been helpful to hear from his mother and stepfather respecting the incident in Sweden. Likewise, it would have been helpful to hear from JK's stepmother about her interaction with AP in Sweden.

[207] As well, no one from JK's family has testified as to their relationships with the children similar to that evidence provided by FP in support of AP's position. I do recognize that there is no requirement that anyone other than the parties provide evidence in matters concerning these children. That said, it does leave me with some question as to why no one, most of all JK's parents and step parents, stepped forward or were called to give evidence in the matter in support of his plan and to provide further evidence regarding the allegations made against him.

[208] On the other hand, there is significant evidence that, whatever AP's concerns, the children have spent significant time with JK's family. This includes child care, both before and after separation, family visits, overnights with KA and many other similar interactions. There is no evidence before me that these times have been problematic for the children.

[209] There is also evidence that when the family was in Sweden, the mother supported and encouraged continuing contact by Skype with the family and the children and send photos and updates to the family in Nova Scotia.

[210] Taking into account all the evidence, I find there are concerns with respect to the nature, strength and stability of the relationship between the children and JK's family. The history of conflict in the family has clearly spilled over into the relationship between AP and JK during their relationship which has affected the children. The behaviour of the parents and step parents and JK causes concern in the specific instances noted.

[211] As well, the fact that there was no evidence from any of those family members in support of JK and to provide evidence regarding the allegations made against the family is of concern.

[212] Taking all of this into account, I find that the relationships between JK's family, specifically his father, mother and stepparents as well as his sister are of some significance and importance to the children but also present some significant challenges to the best interests of the children for the reasons noted. Those relationships should be supported but I find that the relationships between the children and AP's family are healthier and more appropriate on balance.

The Children's Cultural, Linguistic, Religious and Spiritual Upbringing And Heritage (s.18(e))

[213] The children's cultural, linguistic, religious and spiritual upbringing and heritage is of importance in this case. Each child is a dual citizen of Sweden and Canada. MMK was born in Canada but spent five years in Sweden. MIK was born in Sweden, spent her first year and a half there and has been in Canada since. Both children are bilingual.

[214] AP is a dual citizen, born and raised in Sweden with landed immigrant status in Canada. She is fluent in English and Swedish. JK was born and raised in Canada and has dual citizenship. He speaks English and has some capability in Swedish.

[215] It is trite to say that Sweden and Canada are two different countries and with different cultures and heritages. While there is little evidence as to those differences, the children are of the both cultures, languages and heritages. They should be exposed to and maintain both to the extent possible.

[216] This does present unique challenges in this case. If the children remain in Nova Scotia, AP will have no direct cultural, heritage or linguistic support in the community. Their father has limited capacity in Swedish. AP will be left to address these issues by herself, except for any assistance she receives from her family in Sweden or on any visits to Canada or Sweden.

[217] Should they be permitted to relocate to Sweden, the issue of maintaining their cultural, linguistic and heritage connection with Canada is similar. Their father will be in Canada will only see them on occasion through the year. Fortunately, one difference is that their mother and extended family in Sweden are fluently bilingual and the evidence is that most Swedes are as well. Maintaining their linguistic heritage should be less problematic with some effort by AP and her family.

[218] The cultural and heritage elements, however, present the same challenges as if they remain in Nova Scotia. Though the mother has spent years in Canada, she is not of this culture or heritage and it will be largely up to their father, from a distance or during visits, and the efforts of her mother and extended family in Sweden to maintain that connection. This, I find, will be problematic.

[219] While the problems are similar, I find a relocation to Sweden presents fewer challenges given that AP and her family are bilingual. Given the history of support they have shown to AP and the children, I find they are likely to support the

maintenance and development of the children cultural and heritage connections to Canada with JK's help.

[220] Respecting religious and spiritual upbringing, there is little evidence of this except AP's evidence that both children were christened in Sweden. AP says she is not a churchgoer but belonging to a religion is important to her and JK did not care whatsoever about religion. JK was unable to attend the christening due to financial challenges and he has never expressed any concern about not being present. She does note at that JK's father, stepmother and sister KA did come to Sweden to witness MIK's christening.

[221] JK makes no mention in his evidence of any such religious or spiritual issues and I find these are not particularly relevant to this circumstance.

The Ability of Each Parent or Other Person in Respect of Whom The Order Would Apply To Communicate And Cooperate On Issues Affecting the Children – s. 18(6)(h), *Foley* Factors

[222] The ability of these parents to communicate and cooperate on issues affecting the children is a significant problem in this matter. The history of family violence makes communication challenging at best. This is highlighted by the behaviour of JK after separation in coming to the home and remaining despite being told to leave, his outbursts in the car while in the presence of one of the children when AP was taking him to work and the general challenges they have experienced after separation in cooperating on any issues. This recent experience simply reflects the long history of communication challenges experienced by these parents.

[223] I find this will not likely improve or change in any significant way until JK obtains some insight into his abusive behaviour and the impact it has had on AP and the children. He has attempted, at times, to place the blame for these difficulties on AP and has never accepted in any of his evidence responsibility for any of those behaviours. Until that changes, it is unlikely communication will improve.

[224] This is relevant in several ways. First, for there to be a joint custody arrangement that has any hope of working, the parents need to be able to communicate and arrive at joint decisions about major issues concerning the children's health, education, religious upbringing and general well-being. They need to be able to calmly and maturely discuss any issues in a polite, business-like and child focused manner and arrive at cooperative decisions were possible. If they disagree, they need to be able to bring the matter before the court for determination or avail themselves of some other mechanism such as mediation

arbitration. I have very little faith that these parents are going to be able to achieve this at least until JK has some insight.

[225] This analysis feeds into the question of shared parenting which JK seeks. For that to succeed, it requires an even greater level of communication and cooperation between parties to be effective for the children. I find that level of communication and cooperation is simply absent now and is not likely to change in the near future for the same reasons articulated above.

[226] In making this finding, I am mindful that neither parent should be rewarded for creating a circumstance where communication cannot take place. For example, if there were evidence that AP were deliberately frustrating communication or cooperation to parties to gain the upper hand to obtain an order of sole custody, that should not be encouraged or allowed. There are some circumstances where, despite such conflict, courts can and should order joint custody in order to force parents to move past the conflict and to employ appropriate communication techniques and skills in the best interests of the children.

[227] In this case, I do not find there is any evidence that AP has engaged in such obstructionist behaviour. To the contrary, I find that over the years she has attempted, many times in the many ways, to continue her relationship with JK's family and to encourage communication between them to no avail. She has taken an enormous amount of verbal and emotional abuse trying to co-parent with JK. Some of this is continued even after separation. I do not find there is any evidence to support a belief that AP has created this circumstance to her advantage.

The Reasons for The Relocation - s. 18(H)(4(c))

[228] AP's evidence for the reasons for relocation is not specifically enumerated. From her evidence, however, some reasons can be reasonably inferred.

[229] She says that all her family supports are in Sweden. I have already found that those supports are strong and appropriate both for her and the children. She is living in Canada without any family. This is a cause of stress and she says relocation to Sweden would enhance her ability to parent her children.

[230] AP also says that JK and his extended family are not as supportive of her and her parenting of the children as they could be. I have already reviewed the evidence respecting the various conflicts she's encountered with JK's family and find that she is in fact significantly isolated in this province in attempting to parent the children effectively.

[231] AP also says that she is financially vulnerable. She works for Sobey's head office. Her employment has always been on a contract basis. At the hearing, she

provided a letter from her employer confirming that Sobeys is going through "a period of restructuring to a smaller, functionally led organization. This requires making some difficult decisions to create a strong organization." The letter goes on to offer her a contract for seven months and indicating that the contract will end on July 6, 2018. This places her at serious risk of losing her position with Sobeys and creates a financial vulnerability and uncertainty which leads into her request for permission to relocate.

[232] In cross-examination, AP said she had applied to two local companies for work to no avail. She has also sent her resume around the county, including the hospital, in hopes of interest but nothing has arisen. While this could not be described as maximum effort to find work, it does represent a reasonable effort.

[233] AP also says that the opportunities for the children and her are far greater in a broad range of areas in Sweden. She provides evidence and length of the social safety net, supports for education, daycare, cost-of-living, social amenities and many other factors that she says form part of the reasons for her request for relocation. I find that these are not particularly compelling in my analysis as I find that Nova Scotia and Canada generally have similar amenities and it is impossible to fully compare and choose which jurisdiction provides the best of the services. I am prepared to find that, on the evidence before me, Sweden certainly is at least comparable in its services, financial and social supports and amenities to Nova Scotia.

[234] I imply from AP's evidence that she feels that relocation will reduce the level of future conflict between her and JK and remove the children from that conflict. I have already made findings regarding the history of family violence and ongoing conflict between the parties.

The Effect On the Children Of Changed Parenting Time And Contact Time Due To The Relocation – s. 18(H)(4)(c)

[235] Considering the effect on the children of the change in parenting time and contact time with JK due to the relocation, the position of the parties are understandably wholly divergent. AP says that the impact of the children would be minimal. She points to the availability of Skype and other communication technologies which will allow JK to communicate daily with the children. She notes he is a dual citizen and can travel to Sweden, even relocate there, if he chooses to. Given that she is not seeking child support, she argues that he will be able to apply those funds to fund flights for himself to Sweden or the children to Canada for periods of parenting time.

[236] JK, on the other hand, simply says that the costs of such travel to and from Sweden are prohibitive and would prevent him from maintaining any significant or meaningful parenting role in the children's lives.

[237] I do not find either position is well-founded. There's no question that a relocation to Sweden would have a significant effect on JK's parenting and contact time with the children. I accept that technology will permit him to maintain daily contact with them via Skype or other tools. That, however, can never replace in-person parenting time available to him if they remain in Nova Scotia.

[238] The evidence is that the father's annual income is \$41,664. I find it unlikely that he would be able to fund much travel with that income if he is required to pay child support given that applicable amount under the Nova Scotia table would be \$609.50 per month. The annual amount of support would therefore be \$7,314.

[239] On the other hand, if child support were waived, these funds would be available for transportation. This would provide JK with some means to either travel to and from Sweden himself with some amount for accommodation or to fund travel for the children to Canada from Sweden for extended periods of parenting time.

[240] Thus, I find that there would be a significant impact on JK's parenting time but not to the degree he suggests in his submission. Through the waiver of child support proposed by AP, he would have the means to fund some travel for parenting time though even in that circumstance, there would never be the same level of in person contact with the children as he would have if they remain in Nova Scotia.

[241] Likewise, I find that AP's position that relocation would have little impact on the children's relationship with JK is untenable. It would clearly impact their time with JK. On whatever analysis is applied, and despite the history of family violence of JK and its impact on the children, I have no difficulty in finding that a relocation would have a negative impact on the children due to the reduction in parenting time and therefore a diminishment of the relationship with their father.

The Effect On The Children Of The Children's Removal From Family, School And Community Due To The Relocation (s.18H(4)(d))

[242] Considering the effect on the children of their removal from family, school and community due to the relocation, most of the evidence of the parties has focused on family. I have already made findings with respect to the nature, strength and stability of the children's relationship with JK's family and, despite my concerns respecting these relationships, I found they are of some significance and

importance to the children and should be supported. If relocation is permitted, the children will lose a great deal of contact time with JK's family. This can be somewhat mitigated by regular Skype interaction and other technology tools but, as with JK, such interaction is never the same as in-person contact between the adult and child. If relocation is permitted, that contact will only be available when the children are in Nova Scotia to visit their father or that family member travels to Sweden to see the children.

[243] I do note that some of JK's family have visited Sweden on occasion to see the children and they would certainly be able to do so if relocation occurred. But this is unlikely and would never be a substitute for the amount of contact they would have with the children if relocation were denied.

[244] On the other hand, relocation would enhance the children's contact with AP's family which I have already found are more appropriate for the children.

[245] Relocation would also impact the children as there would be a change of school for MMK, caregivers for MIK and a change of community, thereby losing friends and activities they enjoy here in Nova Scotia. That must be balanced by the fact that at least MMK has friends in Sweden already, they have lived there for an extended period and they would be returning to a community with which they have history. That would make the transition easier for these children, than a child who is relocating to a community he or she has never known before, to a new school and to new friends and activities they have never experienced.

The Appropriateness of Changing the Parenting Arrangements – s. 18(H)(4)(e)

The Plans Proposed For The Children's Care And Upbringing Having Regard To The Children's Physical, Emotional, Social And Educational Needs (s.18(6)(d))

[246] In assessing the appropriateness of a change to the parenting arrangement, I find it helpful to consider at the same time the plans proposed for the children's care and upbringing by each parent.

[247] AP proposes to relocate the children with her to Sodra Sandby in Sweden. She has already confirmed a daycare position for MIK in the community. This is the same daycare that MIK attended prior to coming to Nova Scotia.

[248] AP says that she will register an MMK in school and though it would not be the same school she attended before, as she is in a higher grade, some of her old classmates will be attending the new school. AP says she does not need to apply

for placement in one of the three schools in the area before arriving in Sweden and provides email correspondence from the school confirming this. The email also confirms that in the case of “shared custody” both parents have to consent and sign the application form for it to be processed.

[249] AP says that MMK will have no difficulty in moving into the next grade in Sweden because she had already completed a higher grade in Canada. AP says that MMK will not struggle to catch up and will have a year of “grace” getting back into the Swedish school system.

[250] AP says the school is familiar to MMK and is next-door to her maternal grandmother's home. MMK has been to that school for dances and soccer as well as other activities.

[251] AP says that MMK can attend a program before and after school if needed which provides care for children in each school. It consists of activities for the children, both inside and outside, including sports, crafts, games, learning and hikes.

[252] The afterschool care program is also available for days when the schools are closed for in-service or other occasions. There is a cost which she says is \$65 per month. She says the combined cost for both children will be the equivalent of approximately \$225 per month including food, activities and trips.

[253] For additional childcare, AP says her mother lives right around the school and will watch MMK after school. She also has two friends who will provide the same service if necessary including one who retired and has provided care for the children before. The children are familiar with both of these women and their children.

[254] AP says that the children will see the same doctor and dentist as they did before leaving Sweden and the transition to life in Sweden should be smooth. She expects to use public transit to get to and from work which will be easier and less expensive than using a vehicle but for extracurricular activities, vacations, events and outings she will use a vehicle.

[255] AP says she will enroll MMK in dance, an activity she has enjoyed in the past, if MMK chooses. She will register her for soccer which is right behind her school and, if she is interested, will register her in a scout club. She also notes there are riding schools nearby.

[256] AP describes her support network of friends and family in and around that community. AP says that she and the children will spend time with her brother, KP, and his family and says that she has an aunt and uncle a few hours’ drive from

Lund whom she plans to visit regularly, as well as a cousin and family in Stockholm, she is very close. She says they will spend holidays and long weekends in Stockholm which is a 4 to 5 hour train trip away.

[257] AP describes her plans to vacation mainly in Europe and notes the cost and distances are so much lower than they are in Canada for travel to other countries.

[258] AP says that if she lives in Sweden with the children she will make more money and be able to have a comfortable life for herself and the children even without child support from JK. In Nova Scotia, she lives paycheck to paycheck and relies on JK for financial support. She says she will likely struggle to find employment as her current contract will expire. She also says that given that JK lived in Sweden for five years and has dual citizenship, he is familiar with the country and she would welcome him to visit to spend parenting time in Sweden with the children at reasonable times.

[259] The plan has a particular challenge in that she has not yet obtained employment in Sweden. She claims that there is a shortage of finance controllers in the nearby community of Lund and says it would be easy to find a well-paying job. She says it is difficult to obtain employment from outside of the country but also says she has already been applying for and interviewing for jobs. This included a Skype interview with the employer in Lund. Unfortunately, they selected someone else because they were able to start right away and were in Sweden.

[260] AP also says that she is interviewing for another job for a controller position via Skype for which she would be paid the approximate equivalent of \$5,300 per month.

[261] AP's plan is to return to the finance field saying it is something she is good at and should have no trouble finding work in. She says it pays extremely well with excellent benefits. Her evidence is that this field permits flex time, allowing her to do work at various times of the day so long she accomplishes a quota, freeing her up to work from home at least one day per week.

[262] AP describes various other advantages around vacation, sick time and similar benefits available to her if employed. This includes the ability to receive a percentage of her pay if her children are sick and require her care and a benefit of 80% of salary for two weeks if she is ill.

[263] AP says that she will have increased vacation time if she works in Sweden permitting her to travel with the children to Canada for parenting time with JK. By way of example, she says that when they lived in Sweden, JK went to Canada for

vacation three times and MMK went with him for two of those trips. In contrast, while living in Canada, she was only able to go to Sweden to visit once. She says this was because of the rates of pay and vacation policies being different, making it easier and more affordable to visit Canada while living in Sweden than the other way around.

[264] AP also says that she plans to begin her skin care business again. Her friend, TA, provided evidence in the matter and confirmed that she would welcome AP back to begin her business again at her clinic. There is nothing firm in the plan of AP concerning this or any other businesses she might wish to begin with or without TA.

[265] AP proposes that she be permitted to relocate the children with her to Sweden and she be granted sole custody of the children and primary care of them. She says sole custody is not about gaining control but simply recognizes the fact that the parents live in separate countries. With joint custody, JK's consent and signature for things as simple as registering the children in school will be required and very difficult to obtain. She says it will create unnecessary delays and potential risk of harm to the children.

[266] AP proposes that JK remain involved in decision-making on major issues for the children and that she will continue to include him and make every effort to make decisions jointly whenever possible. She says that he should have direct access to any third-party service provider or records concerning the children.

[267] AP does not, in her plan for relocation, set out any particulars of parenting time for JK other than to suggest that he can have parenting time with the children in Nova Scotia, in the summer, or in Sweden at reasonable times if he travels there. She does refer to continuing contact through Skype.

[268] In the alternative, if relocation is not permitted, she seeks an order of sole custody and primary care of the children with her. She proposes that JK have the same parenting time he has now.

[269] JK's plan is straightforward. He proposes a joint, shared custody arrangement on a week about basis. He says that both parents can provide care for the children equally and they live within a short distance of one another. He says there is no evidence that the children would not respond well to a shared parenting arrangement and, in fact, the stability of that arrangement would permit the parties and the children to establish a functional status quo which will be in their best interests.

[270] He admits that the communication between the parties has been strained but that they have been able to deal with anything that arose. JK is confident that when the litigation ends, a shared parenting arrangement will improve communications.

[271] Each plan has costs and benefits. AP's relocation plan has the obvious disadvantage of severely limiting JK's parenting time with the children as well as contact with his family. While I cannot conclude it would terminate his relationship with the children, it would no doubt have a significant impact on their relationship which will affect the children. Despite the family violence and other challenges within the family over the years, I do find that the children love their father and him them and it is important to maintain a relationship between them in the best interests of the children.

[272] The advantage to AP's plan is that it gives her a real opportunity to obtain meaningful and ongoing support from family and friends in Sweden where she grew up. Because the children have lived in Sweden for an extended period prior to coming to Canada, that transition should be much smoother for them. They will return to the same community, see the same doctor and dentist and MMK will go to another school but with many of her former classmates with whom she formed friendships in the past. Each child will have the benefit of a closer relationship with her maternal grandmother, uncle and other extended family.

[273] I also find that the infrastructure and social services as well as activities in Sweden are quite appropriate for the children. That said, I likewise find that the children are not challenged or without similar infrastructure and services in Nova Scotia.

[274] AP's plan also provides for the prospect of a more stable financial circumstance. While she does not have employment in Sweden, she likewise does not have a guarantee of employment in Nova Scotia. She says that her opportunities in the finance field are greater in Sweden and, though that may be a self-serving statement, some support for this is found in her evidence that she had an interview lined up for a position and was on a list of potential employees for another.

[275] Her evidence on income suggest that, if she is employed in her field in Sweden, she will earn more than she does in Nova Scotia which would enhance the children's financial stability. It would also allow funds that would otherwise be payable as child support to be used for the cost of travel for parenting time for JK and his family to bring the children to Nova Scotia.

[276] The plan of the father has an advantage of simplicity. It continues much of the status quo by keeping the children in Nova Scotia, in the same schools and under the same care arrangements while extending his parenting time to a week about basis. The children would continue to enjoy the relationships with him and his family while maintaining the relationship with AP.

[277] The disadvantage of JK's plan is that it does nothing to address the financial stability of AP and therefore financial stability for the children. Under his plan, he maintains neither parent should pay child support to the other which would not contribute to financial stability for AP in her parenting of the children.

[278] The other disadvantage to JK's plan is that it maintains regular contact and interaction between the parents which risks placing the children in the middle of further family violence or abuse. Some of this behavior has continued after separation as described elsewhere in this decision. This risk would be virtually eliminated by relocation to Sweden but continue to exist if the children and AP remain in Nova Scotia.

[279] Finally, JK's plan does nothing to enhance the contact between the children and their family in Sweden. That family has been an important and appropriate part of the children's lives and should continue to be so. Without relocation and without an increase in resources, any time in Sweden will be limited.

Compliance With Previous Court Orders And Agreements By The Parties To The Application

[280] There have been no substantial issues of compliance with previous orders or agreements by the parties. There was a challenge when an interim order was issued containing an error which limited the planned parenting time of JK. AP refused to permit the agreed-upon time to go ahead until the order was corrected. AP says she felt it was important to abide by the order as issued until corrected. I find this was a relatively minor issue and there have been no compliance issues since then.

Any Restrictions Placed On Relocation In Previous Court Orders And Agreements

[281] There were no such orders or agreements containing any such restrictions.

Any Additional Expenses That May Be Incurred By The Parties Due To The Relocation

[282] There is no question but that relocation will create additional expenses for parenting time for JK and the children. Whether he goes to Sweden or the children

come to Nova Scotia or both, the costs will be significant though no such cost estimates are before the court.

[283] This issue is somewhat mitigated by AP's position that she is not seeking child support on relocation. This notionally frees up \$7,314 JK would otherwise pay as child support to use for these additional expenses.

The Transportation Options Available To Reach The New Location

[284] The only option for transportation is via airplane for parenting time.

Whether The Person Planning To Relocate Has Given Notice As Required Under This Act And Has Proposed New Parenting Time And Contact Time Schedules, As Applicable, For The Child Following Relocation.

[285] The parties agree that proper notice has been given.

Analysis and Decision

[286] Any decision regarding relocation requires assessing and balancing the many issues which are interrelated and often conflicting. Ultimately, it must be the best interests of the children that governs. I am also mindful that any order should recognize the principle of maximum contact between each parent as is consistent with those best interests.

[287] In this case, I must weigh the benefits of the children of remaining in Nova Scotia and thereby having significant contact with JK and his extended family against the benefits to the children in relocating to Sweden with AP and the increased likelihood of financial stability as well as increased contact with AP's family.

[288] Overarching all this analysis is the issue of family violence. I will not repeat the evidence and my analysis on that issue or other issues in this portion of the decision. I have reviewed each factor, the evidence respecting and my findings in some detail. The presence of a long history of family violence by JP leads me to the conclusion that his plan for shared custody of the children in Nova Scotia is not in their best interest. The effects of family violence on the appropriateness of communication between the parties, the impacted it has had on the children, the continuing abuse by JK after separation and the risk that it will continue if frequent contact and communication between the parties is required argues against shared parenting.

[289] I also conclude that shared parenting is not in the children's best interests given my finding that JK has no insight into the impact family violence has had, and will continue to have, on an AP and the children. He does not acknowledge

the incidents of family violence that occurred. In that context, there is significant risk of the continuation of that behaviour in a shared custody arrangement which would put the children squarely at risk and would be contrary to the best interests.

[290] I therefore also find that the parenting arrangement cannot be one that requires regular interaction and communication between the parents on matters of importance for the children and should therefore be one of sole custody in favour of AP. Given that same history, I find it appropriate and in the children's best interest that she have primary care of the children. I do this acknowledging the principle of maximum contact but also noting that this principle must be applied in the context of the best interests of the children which, in this case, I find requires less than equal parenting time for each parent.

[291] As to the ultimate question of relocation, I find that the benefits of such relocation outweigh the cost of same for the children. There is no question that they will have less parenting time with JK and less contact time with his family. That will be a loss to the children whatever order is made on relocation.

[292] On the other hand, the relocation will provide the children with a much greater opportunity for financial stability, increase their contact and interaction with AP's family in Sweden and will address the risk of family violence in the future.

[293] In concluding that relocation is in the best interests of the children, I am mindful of the plans of both parents and find that AP's plan, though not perfect, does appropriately address the best interests of the children. Any concern respecting whether she would find employment is mitigated by her evidence that she has already interviewed for a job, was considered for another and has a history of employment in her field in Sweden in the past.

[294] I have carefully considered the plan of JK and, while it would certainly address the maximum contact principle both for himself and his family, it does nothing to address the risk of family violence or even acknowledge that history. It also does not address in any meaningful way the financial stability of the children, particularly given the evidence that AP's employment is coming to an end.

[295] When considering the parents' plan for shared custody or primary care, I also considered the history of care of the children and note that I have already made findings that AP was the primary care parenting throughout their lives and though JK did contribute, most of the responsibility lay with AP. That history continued after separation to this day.

[296] I find that though the children will also suffer a loss of friends, activities and community in Nova Scotia on relocation, they will be returning to a community, family and friends they already have experienced in Sweden. It is highly relevant to my analysis that this family resided in Sweden for almost 5 years, MMK spent approximately half her life there and MIK was born there, spending the first one and a half years in Sweden. They are not strangers to that culture, language or community. This, I find, mitigates against the loss of their friends, activities and community in Canada.

[297] I have also carefully considered that, though the use of Skype will help maintain continuing contact for JK and his family with the children in Sweden, it is no substitute for in-person contact and parenting time.

[298] I have also carefully considered that the only means of travel for the children and JK is by flight across the Atlantic and there is significant cost associated with this. It seems realistic that the children will travel to Nova Scotia rather than JK to Sweden where he might incur additional accommodation costs. By not paying child support, as is proposed by AP, he will have over \$7,000 per year notionally available to him for such travel. AP says that return flights cost around \$1,000 each.

[299] Given that I will require AP to contribute to some of these costs as well, JK and his family will be able to enjoy significant blocks of parenting time and contact time in Nova Scotia, primarily over the summer and during school breaks and Christmas. I find that, though this will not equate to the parenting time JK now enjoys, it is consistent with the best interests of the children taking account all of the evidence and the factors to be considered in this case.

[300] I have carefully considered the plans of each parent in the context of the reasons for AP's request for relocation. I find her reasons to be reasonable and child-focused and do not find they are intended to unreasonably interfere with JK's relationship with the children or that of his family. I find her reasons to be based on a balanced assessment of what is in the children's best interests despite the fact that relocation will inevitably impact on the relationship between the children and JK and his family.

[301] I have carefully considered the issue of the children's cultural and linguistic upbringing and heritage. I find the relocation will somewhat enhance their experience of both Canadian and Swedish culture, language and heritage in that they will be surrounded by family and friends who are bilingual and a mother who will support the maintenance of the connection to Canada.

[302] On the other hand, if they and AP remain in Nova Scotia, AP will be the only source of connection to their Swedish culture, language and heritage in Nova Scotia. I do not believe that JK will encourage this when the children are in his care and find that this factor is best addressed by relocation.

[303] In considering the significant reduction of contact with JK's extended family in Nova Scotia, I acknowledge that this will be a loss to the children. Despite my concerns respecting some of those family members and their behaviour, I acknowledge that their relationships are meaningful to the children.

[304] In this case, however, I also find that the children's relationship with AP's family in Sweden is at least as important and meaningful to them. Until they return to Canada, it was AP's family that they had the closest relationship with the children and I find it is no less important to them going forward. I have already made findings that AP's family is the more appropriate extended family in the lives of the children and what they lose from contact with Nova Scotia family they will gain from contact with their Swedish family.

[305] For all of these reasons and after taking into account all of the evidence and considering the factor set out under the *Act* and in the case law, I find that it is in the children's best interest to grant AP's requested to relocate the children with her to Sweden. The order will contain that provision.

[306] The order will also contain the following provisions:

1. AP shall have sole custody of the children and primary care of the children with her in Sweden.
2. AP shall be permitted to relocate with the children at any time after July 31, 2018. Until that time, the current parenting times for JK shall remain until the summer school break for the children commences. At that time, JK will have the children for block parenting time for at least three weeks from the commencement of the summer school break until AP relocates the children with her to Sweden.
3. AP will consult with JK on all major issues arising for the children concerning their health, education, religious upbringing and general well-being and shall consider JK's input on any such issues. AP will have the final decision-making authority with respect to these issues and she will be specifically authorized to provide any consent or authorizations respecting the children including, but not limited to, consents or authorizations required for their education, health, dental care, religious upbringing or any other matter issue arising concerning the general well-being.

4. JK will have parenting time and contact time as follows:
 - a. Each summer school break commencing in 2019 JK will have block parenting time in Nova Scotia with the children for at least five weeks.
 - b. JK will have the children with him during the Christmas school break for even-numbered years commencing in 2018 and AP will have the children with her during the Christmas school break in odd numbered years commencing in 2019.
 - c. If the children have any breaks during the school year of one week or more, JK shall have the option of parenting time in Nova Scotia or Sweden with the children for that period. AP will notify JK each year of all such breaks in the school year and JK shall provide AP with at least 30 days' notice of his desire to have parenting time with the children for any period as set out herein.
 - d. JK shall have parenting time with the children in Sweden at reasonable times upon reasonable notice to AP so long as such parenting time does not interfere with the children's attendance at school.
5. The cost for all such travel for the children to and from Nova Scotia shall be paid by JK. Given their ages, they will have to be accompanied by an adult and I order that JK will pay the cost of that adult flight when the children are coming to Canada and AP will pay the cost of that adult flight when the children are returning to Sweden. The cost of any travel for JK to Sweden for parenting time shall be borne by him.
6. JK shall have interaction with the children on at least three occasions each week via Skype or other videoconferencing tool when they are in Sweden and AP shall ensure that the children are available for such interaction at times and on days agreed between the parties on a reasonable basis. Such interaction schedule shall take into account the school and activity schedule of the children, the time difference between the countries and the circumstances of the parents.
7. AP shall keep JK updated on all major matters concerning the children as well as regular, at least weekly, updates on the children's schooling and activities.

8. All communication between the parties shall be conducted in a polite, respectful, businesslike and child-focused manner.

9. The parties are prohibited from making any derogatory comments respecting each other or each other's families at any time that they have care of the children. Each party shall ensure that no one else makes such derogatory comments about either party or either party's family in such circumstances and if the other person does not immediately cease such comments, the party in care of the children shall remove the children from that circumstance or ensure that the other person is removed.

10. JK, a resident of Nova Scotia, has an annual income of \$41,664 and would otherwise pay child support in accordance with the Provincial Child Support Guidelines, Nova Scotia table, in the amount of \$609.50 per month. Taking into account that JK will be responsible for significant travel costs to exercise parenting time with the children, and considering that AP is not seeking child support if she is permitted to relocate the children with her to Sweden, JK shall not be required to pay child support to AP.

[307] Counsel for AP shall draw the order.

Daley, JFC