

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *D.P. v. G.G.M., 2017 NSFC 34*

**Date:** November 21, 2017

**Docket:** FATMCA-87647

**Registry:** Antigonish

**Between:**

**D.P.**

Applicant

v.

**G.G.M.**

Respondent

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

**Judge:** The Honourable Judge Timothy G. Daley

**Heard:** October 18, 2017, in Antigonish, Nova Scotia

**Oral Decision:** November 21, 2017

**Counsel:** James MacIntosh, for the Applicant  
Chris Boyd, for the Respondent

## **Introduction**

[1] This case is solely and exclusively about what is in the best interests of two children, G.M., who is 13 years old, and I.M., who is 10 years old. Their father, G.G.M, and their mother, D.P., disagree as to what the appropriate parenting time arrangement should be for G.G.M. and what contact time, if any, G.G.M. 's, partner, T.M., should have with the children.

## **Positions of the Parties**

[2] D.P. says that G.G.M.'s parenting of the children is so stressful on them that his parenting time should be supervised while he takes part in parenting courses to gain insight into the impact his behaviors are having on the children.

[3] She alleges that the children are subject to great stress when in his care for several reasons. She says the children are exposed to conflict between T.M. and G.G.M., conflict between G.G.M. and T.M.'s daughters, and that the children are constantly exposed to negative comments by G.G.M. and T.M. respecting D.P. She says that they undermine her and attempt to persuade the children to live with them, as opposed to D.P., which causes great stress for the children.

[4] D.P. says that T.M. should have no contact time with the children, even when they are with their father, because her behaviour has been likewise detrimental to the children and she has no biological relationship with the children. D.P. says that T.M.'s behaviour is so damaging, including attempts by her to persuade G.M. and I.M. to change their residence to their father's home. D.P. says that it is not in their best interests to have any contact with T.M. until she obtains appropriate education and gains insight into the effect her behaviour will have on the children and understands her role in this circumstance.

[5] G.G.M. says that his parenting time should not be impacted at all by any of the circumstances in this case, that D.P. is exaggerating or emphasizing only the negative issues for the court and that, while he has a different parenting style, the children are happy in his home. He says there is simply no basis to require his parenting time to be supervised or otherwise impacted based on the evidence before the court.

[6] G.G.M. also says that T.M. should not have any restrictions on her contact time with the children, though he does, to some degree, concede that T.M.'s communication with G.M. was inappropriate on at least two occasions.

[7] T.M. says that she has a good relationship with these two children and her own three children and there is no basis for contact time to be further supervised. She acknowledges that she had inappropriate discussions with G.M. by phone, in which she suggested and attempted to persuade him to change his residence to his father's home. She says that she has an understanding now of the damage that she did and the risk it poses to G.M. and promises she will never do it again.

### **History of the Proceedings**

[8] As to the history of the proceedings, an interim order was granted by this court in November 2013, which provided joint custody for the parents respecting both children and D.P. was granted day-to-day care of the children. G.G.M. was granted reasonable parenting time with the children. There are various other provisions concerning travel, child support and insurance coverage. G.G.M. was required to enroll in and attend an anger management and parenting program and provide a schedule of his attendance to D.P. on a quarterly basis, acknowledging that at the time he worked outside the province from time to time. That order resolved matters, at least temporarily.

[9] This matter came back before the court in July 2016 when I.M. refused to see her father. This court ordered that a Voice of Child Report be prepared for I.M. and further ordered that she be seen by a duly qualified psychologist to attempt to resolve the issue of her refusal to spend time with her father.

[10] At a subsequent appearance, a Child Needs Assessment was ordered. This occurred on December 6, 2016 at which time it had been seven months since G.G.M. had seen I.M. At that time, parenting time for G.G.M. during the Christmas period of 2016 was ordered for both children.

[11] The matter was then before this court in May 2017 at which time the Child Needs Assessment was not completed and the Voice of Child Report had been completed. Unfortunately, there was further evidence, by way of a transcript of recordings of telephone conversations between T.M. and G.M., which raised serious concerns. As a result of that evidence, an interim order was granted prohibiting T.M. from having any contact with the children. Given that G.G.M.'s counsel, Mr. Boyd, was unable to speak with G.G.M. prior to that appearance, the matter was adjourned for further review.

[12] At the next review date in May 2017 the Child Needs Assessment had not yet been received in the matter and an organizational pretrial conference was

scheduled for early June. It was anticipated that hearing dates would be set at that time. At that appearance, the interim order adjusting child support was granted and the support of \$1,571 per month was put in place. The matter was adjourned for pretrial conference on June 6, 2017 to set dates.

[13] On June 6, 2017 counsel for D.P. had not yet received the Child Needs Assessment and the matter was adjourned to June 20, 2017 for a telephone pretrial and update. On June 20, 2017, it was confirmed everyone had received the Child Needs Assessment and a hearing was required. A hearing was set for October 18, 2017.

[14] Shortly after, there was a request for an interim hearing in the matter and that date was set for August 14, 2017. Unfortunately, due to a lack of disclosure by counsel for D.P., the hearing was unable to proceed and costs were awarded against D.P. The final hearing date of October 18, 2017 remained.

### **Issues for The Court**

[15] The issues for determination by this court are as follows:

- i. What are the appropriate custody arrangements for these children?
- ii. What is the appropriate parenting time arrangement for G.G.M. with the children? Specifically, should his time be supervised or unsupervised and what terms should be applied, if any, to his parenting time?
- iii. What contact, if any, should T.M. have with the children? Specifically, should she have any contact time, and if she should, should it be supervised or unsupervised and what conditions, if any, should apply to the contact time?
- iv. What amount of child support should be paid by G.G.M. to D.P. for the children?

### **Issues Not in Dispute**

[16] I first note that certain issues are not in dispute. The original order in this matter was a consent interim order and there is therefore no final order from which a material change in circumstance must be established. I must therefore determine all outstanding issues raised in the original application and the subsequent pleadings before the court for these children.

[17] The consent interim order of November 2013 granted joint custody of the children to the parents. Since that time, there is no dispute with respect to the custodial arrangement and I take it from this that the parties agree, despite significant disagreements otherwise, that the appropriate custodial arrangement should be a joint custody order.

[18] Further, that same consent interim order granted day-to-day primary care of the children to D.P. and this has not been contested since. I therefore conclude that the parties consent to the primary care of the children remaining with D.P.

[19] With respect to child support, it was set in the original consent interim order at \$1,630 per month and then varied on May 16, 2017 by consent to \$1,571 per month based on the father's annual income of \$118,116. Though this was not memorialized in an interim order by counsel, it was certainly put on the record by consent and no contest or dispute has arisen respecting that issue since.

[20] Therefore, the two remaining issues are that of the parenting time for G.G.M. and the contact time for T.M. These are the two issues that I will address further in this decision.

### **Hearsay Statements of the Children**

[21] As a preliminary issue, the parties and T.M. have included in their affidavits numerous statements made to each of them by the children and ask that the Court consider admission of the statements for the proof of the truth of the contents of those statements.

[22] Each of the statements is hearsay and can only be admitted if they meet the criteria of falling within one of the specific exceptions to the hearsay rule or the principled exception to the hearsay rule concerning necessity and reliability.

[23] First, I find that none of these statements made by the children fall within the category of any classical exceptions to the hearsay rule nor has this been suggested.

[24] Second, with respect to the principled exception based upon an assessment of necessity and reliability, I first note with respect to I.M., that there is a Voice of Child Report and the Child Needs Assessment, which reduces the necessity of the admission of the statements by her to obtain her views.

[25] With respect to G.M., there is no form of assessment available to obtain his views and so in his case, there is an argument to be made that the statements may be necessary. This is clearly so, when it would be inappropriate to call either of the children to give evidence in the hearing. It is the practice of this Court to avoid putting children in the middle of such litigation and I endorse that policy and practice.

[26] It is on the test of reliability that I find that each of the parties and T.M. fail the test for admission. Each of the hearsay statements were made to one of the three of them. Each of them has an interest in the litigation. T.M.'s interest is that of G.G.M.'s as well as her own. Each has a reason to mislead, misrepresent or misinterpret what may or may not have been said to them by the children. Courts have repeatedly expressed the concern respecting the admission of such hearsay statements of children. I endorse that concern and I find it applicable to this particular circumstance. There is no assurance of reliability present whatsoever respecting any of these hearsay statements and I will admit none of them except as they may inform the evidence of the parties as to what they said or did following such statements such as requesting counselling, assessment reports or similar decisions and actions taken.

[27] Having said this, I have also considered the hearsay statements contained in the Child Needs Assessment of Angela Ellsworth received June 20, 2017 and the Voice of Child Report of Michael Craig from October 2016. Each contains statements made by I.M. to the assessors. In considering whether the statements are admissible under the exception to the hearsay rule, I find that they are admissible.

[28] With respect to the issue of necessity, the same policy reasons apply. I find that these statements meet the test of necessity.

[29] As to reliability, the statements are made to two assessors who are professionally trained and accredited to conduct the assessments. There is no issue with respect to qualifications raised by either party. I find that the statements made were in appropriate circumstances.

[30] Respecting the Voice of Child Report, there is some concern noted by the assessor as to whether I.M. was expressing her views completely but there is also no opinion of the assessor that I.M. was under coercion, direction or influence by either party in providing her statements. No such issues arose in the Child Needs Assessment.

[31] I will admit any such child hearsay statements made in either of these reports.

### **The Evidence**

[32] In her affidavit sworn June 14, 2016, D.P. confirms that the children live with her and have so since their birth. She says that she lives with her partner, C.H., and they had cohabitated for about 1 1/2 years, at that time, and have been together as a couple since 2011.

[33] D.P. says that G.G.M. and the children do not have a good relationship and it was affecting both the children and her in a negative way. She claims that G.G.M. is verbally abusive to the children, he talks critically about her with the children and in this affidavit of June 2016 and a subsequent affidavit of August 2017, she relays what each of the children has told her about their feelings, experiences in his home and their concerns and wishes. I have already made a comment and ruling with respect to the admissibility of those hearsay statements of the children.

[34] In her first affidavit, D.P. also says that I.M. did not want to visit with G.G.M., that she rejects contact with him most of the time and does not want to go to his home. She was unsure at the time what was going on and what the cause was.

[35] She says that G.M. had refused to go to his father's occasionally and occasionally refused to speak to him by phone. She says there was a major upset in the summer of 2015 resulting in G.M. refusing to visit with his father for a time.

[36] She expresses concern regarding G.G.M.'s disrespect to her and that she could no longer encourage the children to visit with their father. She sought, at that time, supervised parenting time for G.G.M. She wanted supervised parenting time to continue until G.G.M. gained insight into his behaviors and the impact they were having on the children.

[37] In G.G.M.'s affidavit of July 12, 2016 in response to D.P.'s affidavit he describes his efforts to comply with the order of November 2013 which required him to attend for anger management and parenting classes including several sessions with a psychologist in the spring of 2014 and the contact he had with Family Services regarding anger management programming. His challenge, he says, was his work out of province made scheduling programming difficult and

says he was informed by Family Services that they would not match the one-on-one counselling he received from a previous psychologist. He says he had arranged for mental health assessment for June 21, 2016 and had an intake appointment for parenting courses in July 2016.

[38] He describes his work as a carpenter and scaffolder in construction which takes him out of the province on a regular basis, at that time to Fort McMurray in Alberta. He says he is usually away for 14 days and home for 7 days or, for his last job in the Northwest Territories, 23 days away and 12 days at home. When working on a 14/7 rotation he is only at home for about five days when accounting for travel time.

[39] He described his love for his children and the importance of a parenting time with them, including telephone contact when he is away. He complains that recently, his telephone contact with the children had been limited or ignored. He says D.P. often makes excuses for why the children are not speaking to him and G.M. would tell him from time to time that I.M. was asleep even on school days.

[40] He described the history of being on a 12-month so-called "Peace Bond" in March 2014 which required him to refrain from communication with D.P. except regarding the children. There is little other evidence of the genesis of this order in the record.

[41] He describes his home and activities with the children in very positive terms. He says that he helps the children with homework, reads with them in the evening and enjoy speaking with I.M.

[42] G.G.M. discusses his relationship with T.M. who moved in with him in December 2015 and who works full time. She has three teenage daughters who would now be approximately 19, 18 and 16. He describes an excellent relationship between the children and T.M. as well as between G.M. and I.M. and T.M.'s three daughters.

[43] G.G.M. confirms that I.M. had not visited him at his home since April 2016. He complains of virtually no telephone contact with her during that same period. He also says that she had not visited with his mother, her grandmother, as well. When he discusses why this was occurring with D.P., she informed him it was because he was speaking critically of her in front of the children and it was making I.M. uncomfortable. He denies ever doing this and did not accept this as the reason

why I.M. was refusing contact, rather he put the blame on D.P. for influencing I.M. against him.

[44] He describes two incidents in June and July 2016 when he attended at the school in Sherbrooke to pick up G.M. He says I.M. ran to him, hugged and kissed him. He says the same occurred in July 2016 at the local Walmart store when they spoke for 2 to 3 minutes.

[45] Like D.P., G.G.M. describes the various things the children have said to him about their wish to spend time with him and why they weren't doing so. I have already decided on the issue of those hearsay statements.

[46] Specifically, G.G.M. denies being verbally abusive to the children but does not hesitate to correct them if they misbehave.

[47] He denies the allegation that he told the children that D.P.'s father had killed her mother and denies that T.M. had done so. He denies similar allegations regarding another family member and discussing issues with the children that were inappropriate around those circumstances.

[48] Put simply, throughout this affidavit, G.G.M. absolutely denies any inappropriate discussions with the children under any circumstances.

[49] He requests specific parenting time with the children and believes this will alleviate any of the issues present in their relationships.

[50] In her affidavit sworn April 20, 2017, D.P. said that she filed the affidavit out of concern for G.M. who is struggling with several issues. She describes him as disrespectful to others, including her and his sister, and that he is having trouble at school including disrespectful behaviour toward the vice principal.

[51] She describes G.M. as sensitive, feeling things both positive and negative and describes his difficulties with the behaviors of T.M. and G.G.M. in the home.

[52] Specifically, she attached to her affidavit transcripts of telephone calls between G.G.M. and the children and T.M. and the children. These were transcripts of surreptitious recordings of conversations. These conversations were recorded by D.P. using her cellular phone and an application on that phone that permitted her to start the recording before handing the phone to the children for the

conversation. Her evidence is that the children did not know the conversations were being recorded, nor did T.M. or G.G.M.

[53] Four of these recordings were transcribed and presented before the court as evidence. D.P. said that there was a total of 24 conversations recorded and the others were not offensive or concerning in any way.

[54] This Court ordered that all such recordings be disclosed to counsel for G.G.M. and no further recordings or transcripts were sought to be introduced in evidence.

### **Admissibility of Recordings**

[55] The question of the admissibility of the recordings is now squarely before the court. G.G.M. says, through counsel, that such recordings should not be in admitted and refers to the decision of the Ontario Court of Justice of *Hameed v. Hameed*, [2006] O.J. No. 3109, 2006 ONCJ 274, 2006 Carswell Ont 4653, a decision of Justice Sherr who held at paragraph 11 as follows;

Surreptitious recordings of telephone calls by litigants in family law matters should be strongly discouraged. There is already enough conflict and mistrust in family law cases without the parties worrying about whether the other is secretly taping them. In a constructive family law case, the professionals and the courts work with the family to rebuild trust so that the parties can learn to act together in the best interests of the child. Condoning the secret taping of the other would be destructive to this process.

[56] Justice Sherr went on to say

The court in deciding whether to admit such evidence will need to weigh these policy considerations against this probative value. The party seeking its admission should establish a compelling reason for doing so.

[57] The policy reasons for denying the admission of such surreptitious recordings are compelling and clear. To routinely admit such recordings will, without doubt, encourage parties, both in the matter before the court and more generally, to record such conversations on a regular basis. This will inevitably impact the natural flow and benefit to the child or children of such conversations with parents and others. Parents will understandably become paranoid, suspicious and reluctant in such conversations with the constant worry that anything they say may be manipulated or used against them at a later stage.

[58] As well, the apparently compelling nature of recorded conversations, which appear to provide an accurate record of the interaction, can be easily manipulated by providing such transcript or recording out of context, cherry picking such recordings or even manipulating or varying such recordings. This is a real and pressing risk at play in any such circumstance.

[59] Further, there is significant risk to the child if such recordings become known to them. It would be greatly antithetical to the best interests of the child for the child to self-censor, have the added stress of worrying about anything they say, or their parents say, being used in the litigation. The risk of stress, paranoia and accompanying emotional injury to the child is clear.

[60] The other policy concern is not to encourage parties to attempt to manipulate the conversations between children and parents or to set up parents by directing issues or conversations. While older children may be less susceptible to such manipulations the risk of such manipulations are serious and must be carefully considered by the Court. All of that said, if a compelling case can be made for the admission of such recordings they may be admissible. The test, as outlined by the Ontario Court of Justice, comes down to an assessment of necessity and reliability.

[61] In this case, I consider that D.P. filed her affidavit raising concerns respecting the behaviour of the children, including I.M. initially and later G.M., before these conversations were recorded. In other words, D.P. had already articulated concerns about I.M.'s refusal to see or communicate with her father, G.M.'s changing behaviour and reluctance to be with his father and all the other related concerns in her earlier affidavit. This mitigates the concern that these recordings may have been set up to "catch out" T.M. or G.G.M.

[62] Further, it is D.P.'s evidence that she had not listened in on or otherwise participate in these conversations and I accept this based on the transcripts. The problematic passages from the transcript arose out of comments initiated by G.G.M. and T.M., not by the children or D.P. There is nothing in the transcript that suggests that D.P. in any way directed or manipulated conversations in a particular way. The utterances, questions and comments appear to be spontaneously made by the adults, not the children.

[63] I also further consider that G.G.M. and T.M. have not suggested that these recordings and transcripts are inaccurate in any way or that they been manipulated or altered in any way. They have, through counsel, made clear that they accept that

these are accurate recordings and transcriptions and object to the admission strictly based on policy considerations.

[64] Finally, to weigh the competing interests in this matter and to consider the necessity and reliability of the recordings in transcript, I have had to review the contents. Having done so, I consider much of the content to be of such great concern, particularly the conversations between G.M. and T.M., that I find that the transcripts and conversations are relevant to these proceedings and are reliable with respect to their accuracy.

[65] For these reasons, I do find that this is an exceptional circumstance where D.P. has established a compelling reason for the admission of the transcripts of the recordings. I have carefully weighed the policy considerations against the probative value of the transcripts and find that there is significant probative value which outweighs those policy considerations. I therefore admit these transcripts as evidence and consider them in this decision.

[66] Having said that, I do reiterate and adopt the comments of Justice Sherr that surreptitious recordings of telephone calls by litigants in family law matters should be strongly discouraged. This decision should not be taken as a blanket endorsement of such recordings. Quite the contrary, I wish to be clear that this Court will be reluctant to admit any such recordings based on the policy considerations outlined and others that may arise from time to time and strongly discourages the use of this technology for this purpose.

[67] In the transcript of the conversation between G.G.M. and G.M. on August 17, 2017 G.G.M. asks G.M. if he said something to his mother about G.G.M.'s lawyer or something else to his mother and admonishes G.M. not to discuss anything with his mother like that. He says in part "sometimes I say stuff cause I'm cranky and I'm cross. I should not be saying it. Don't ever breathe a word about anything like that to mommy or to... anybody. Don't ever say anything."

[68] He asks G.M. about an incident involving being thrown in the pool and questions him closely about the circumstance.

[69] In the transcript of the conversation between G.G.M. and G.M. on September 20, 2016 they engage in general conversation but at one point G.G.M. appears to try to persuade G.M. to spend more time with him and to "come stay with me" on the basis that it would be more fun if he was doing things with his father.

[70] At a later point, G.G.M. engages in a conversation with G.M. about D.P. not being fair with G.G.M. when he requests additional time with the children, describing a request for three hours the previous weekend and that his mother had denied this. He asks G.M. if he got to spend much time with I.M. on her birthday and G.M. replied "no". When he goes on to criticize D.P. respecting his parenting time including that he did not get to attend for grading day for I.M., that she missed the swimming pool all summer at his home and that he was frustrated, G.M. listened to what his father said.

[71] In the transcript of the conversation between T.M., G.M. and I.M. of February 1, 2017 there is generally positive communication between them at times. In the conversation, T.M. discussed the following with G.M.:

- G.M.'s 16th birthday and G.G.M.'s plan to travel with him for a trip to Toronto to a hunting camp for a week. She describes it as a "a special trip" and asks him if he knows how much it will cost his father. She says that it cost a lot of money, that G.G.M. has a lot of bills to pay and that he wants to make things special for his birthday.
- In a conversation with I.M., she describes a birthday gift of makeup and when she suggested pictures and sending them to her mother, I.M. says she didn't know if her mother would like that. T.M. says that perhaps it would be just the makeover and that she would not sent any pictures.
- In further conversation with G.M., T.M. describes G.G.M. as a difficult man, stubborn and G.M. describes him as "you're better off talking to a wall". T.M. goes on to say that with G.G.M. there is no give and says he is narrowminded in his ways and that he is very stringent. T.M. says that she spoke to G.G.M., explaining that his children are growing up and hers are teenagers and that he has to change his way of thinking, and to change the way of how his life goes and that G.G.M. is not good at that. She then says that "I think that was a lot of your mom's issues with daddy, was his being stubborn in the way he thinks about things and the way he like... He's stubborn, he's a stubborn man".
- T.M. discusses with G.M. period blood, telling the story of finding blood on one of her daughter's underwear. G.M. is clearly uncomfortably with this conversation.

- T.M. discusses with G.M. having children in the future, describing that he would be an amazing father, describing "watching somebody's belly grow" and throughout this conversation G.M. is clearly uncomfortable.
- T.M. discusses school, various activities such as winter carnival and then specifically asks "G.M., would you like to come live with me and daddy?". She then asks if he would miss his mother and suggests he could be with his father and T.M. during the week and with his mother on weekends. She goes on to discuss that G.M. could be in their home even if G.G.M. he was not there and was away working, that G.G.M. had discussed this with his lawyer and that it will be up to G.M. where he lived given his age.
- T.M. goes on to discuss that if this occurs, G.G.M.'s child support will be "way less" though he would still be working away. G.M. suggests child support would be reduced to zero. T.M. asks if G.M. knew what his father was paying for child support to his mother. She then goes on to again tell G.M. that he can come live with her and his father and that his father had discussed it with his lawyer. She discusses other conversations between the lawyer and G.G.M. and reiterates that the decision would be up to G.M.. She describes how it all would work if he moved in with them and then suggests that she is not trying to persuade him. At this point, G.M. becomes quite quiet and T.M. asks if anything was wrong to which G.M. replies "nothing". At that stage, the conversation tails away and ends.

[72] D.P. says that she believes that T.M. was intoxicated during the conversation with G.M. T.M. absolutely denies this in her evidence but says she may have had a glass of wine, was on prescription medication and was tired from working.

[73] D.P. says that she believes that the nature of these conversations reflected in these transcripts was what was affecting the children's relationship with G.G.M. since separation. She says she has complained of this since separation.

[74] Further, she says that G.M.'s behaviour had become extremely disrespectful, that he has growing distant from his sister and was behaving badly towards D.P. and his sister. It is her belief that G.M. is struggling to reconcile two very different sets of rules and two very different families with whom he lives.

[75] In his affidavit sworn August 14, 2017, G.G.M. he says that he is upset that the conversations were recorded and that he feels he will be uncomfortable and suspicious for any further telephone conversations with the children.

[76] In that affidavit, G.G.M. says that he discussed these conversations between the children and T.M. with her and that he believes she does not overstep any boundaries. He says the primary goal of T.M. was to have G.M. know that their home is always open to him.

[77] In addressing each of the concern raised in the affidavit of D.P. sworn April 20, 2017, G.G.M. consistently denies or minimizes the issue presented, specifically denies ever speaking with the children about inappropriate matters and expressed that he believes T.M. when she denies ever having discussed inappropriate matters with the children.

[78] G.G.M. says the children have developed a very close relationship with T.M. and he does acknowledge it was inappropriate for T.M. to discuss a change of home with G.M. during the February 1, 2017 call. In fact, he endorsed an interim order that T.M. not have any contact, directly or indirectly, with the children.

[79] In her affidavit sworn August 14, 2017 T.M. says that she has developed a close relationship with G.M. and I.M. and they participated in many activities together until recently. She describes a normal and healthy home life with these two children and her own three daughters. She describes telephone contact with the children when their father is away working.

[80] She does acknowledge that much of the conversation she had with G.M. on February 1, 2017 was inappropriate and she says she accepts responsibility. She admits that such conversations exposing the children to court proceedings and issues between the parents was "none of my business".

[81] She says that the interim order preventing any contact between her and the children was a great inconvenience to her. She agrees she will abide by whatever conditions the court imposes if she can have contact with the children.

[82] In reply to this, D.P. describes in an affidavit sworn August 14, 2017 incidental contact between the children and T.M. on a parade float and in a conversation between I.M. and T.M. when T.M. called her mother's home.

[83] D.P. describes G.M. as being "back in good form" at the time of her affidavit, that he is happy and became the kid he used to be, was not disrespectful anymore and that things have improved significantly. She says that neither G.M. nor I.M. are coming home from their father's angry or in tears as they had been before and she feels this was promising.

[84] In the final affidavit sworn on October 18, 2017 G.G.M. denies any alcohol problems, denies any difficulties with respect to relationships with T.M.'s daughters.

[85] In her final affidavit sworn October 13, 2017, T.M. provides quite similar evidence and denials as G.G.M. and describes any contact with the children as incidental. She said she moves out of the home when the children are with their father and she stays with her parents. Her children remain with G.G.M. during such time.

[86] In her viva voce evidence at the hearing, D.P. provides evidence of incidents that occurred since the filing of her last affidavit. She describes further turmoil for the children in their relationship with their father and further upset. She said I.M. is, again, refusing to go to see her father.

[87] She confirms that the children will begin seeing a child psychologist, Barbara MacLean on October 25, 2017 for the first visit. It should be noted that there was prior therapist who provided closing letters for the children on August 17, 2017 which were then provided to Ms. MacLean for her review prior to their first visits with her.

[88] Unfortunately, D.P. describes G.M. as regressing, that he was screaming at her and I.M. as if they were inferior. To address this, her common-law partner told G.M. he would not go hunting with him until his behaviour stopped which seemed to work. She further describes G.M. engaging in body shaming with his mother and sister.

[89] In cross-examination, D.P. agreed that many of the calls between G.M. and T.M. were quite lengthy. She states that though G.M. may like to speak with T.M., she was not satisfied that these conversations were always good for him. She notes that she did not know the nature of the calls until she listened to the recordings.

[90] When asked why she delayed taking action once the offensive calls were identified in or around September 2016, D.P. says that she wanted the advice of the

current therapist and was trying to work on the issues with the children. She describes periods when G.M. was well behaved but then would become rude and aggressive. She says she became alarmed when she had the February 1, 2017 call transcribed and she took action.

[91] When asked about the Child's Needs Assessment, D.P. says that she did not feel that the report reflected I.M. accurately, that I.M. was not warm and fuzzy, that she was reluctant to participate and did not cooperate with the assessment well. She says that I.M. does not have a learning disability according to her school.

[92] Respecting the Voice of Child Report, D.P. said that she offered and tried to leave the assessor alone with I.M. when she provided one-word answers and that I.M. "marches to her own drum".

[93] When asked about future contact between T.M. the children, D.P. says that it may be appropriate after T.M. attained some education about what would be appropriate to discuss with the children and suggested supervision of 6 to 12 months. She does not believe that G.G.M.'s mother would be an appropriate supervisor given the conflict between the parties and that G.G.M. would not be an appropriate supervisor as he did nothing prior to stop these various behaviors.

[94] D.P. agrees that there had been no contact between G.G.M. and I.M. since August 2017. She says that she tried to encourage I.M. to see her father, telling her that she was never going to know if dad has changed if she didn't go to see him.

[95] T.M. testified at the hearing. She describes having a close relationship with G.M. and I.M. and that she misses them. She provides evidence of the incidents and incidental contact with I.M. when she called her mother's home and at the parade. She describes her role in the relationship as supporting the parents and their parenting of the children.

[96] In cross-examination, she agrees that of her three daughters, one lived with her and two lived with their father in Afton. When asked why, she described that teens don't like rules.

[97] Respecting alcohol, she denies it being an issue in the home and says that she and G.G.M. have never been intoxicated in the presence of the children. She says that she may have had a glass of wine in the call of February of 2017, did take prescription medication and had worked long hours that day. This may have affected her behaviour.

[98] She agrees that in her conversation with G.M. on February 1 of 2017 she described G.G.M. as stubborn, OCD and ADD. She agrees she told the child "I have to go by what he wants and not by what we should do as a family", that she was "better off talking to a wall". She agrees she referred to G.G.M. as having to change his way of thinking, that he is not good at that. She variously admitted that he is stubborn and referred to her sister having dated G.G.M., that they had rows that were "just beyond".

[99] Respecting the discussions with G.M. that he could move in with them, she admits to these, that she had discussed child support and that she suggested an enticement for him to move.

[100] T.M. describes D.P. as a good mom and that she parents well. When asked about the offer of makeup to I.M., she admits she knew that I.M.'s mother may not like the use of makeup and that she was ignoring her mother's wishes.

[101] G.G.M. provided evidence at the hearing. He testified that he had been superintendent for a construction company with a project currently in Labrador and anticipates his employment will continue. He says that D.P. is 65 km away and it is a struggle to have parenting time. He says the drives are brutal in the winter and a constant struggle. He says sometimes he wants to give up and that she lives too far away for frequent contact.

[102] He proposes that if he is laid off work he should have shared parenting of the children and when working away, he should have the children when he is home.

[103] He says telephone contact is better now and that the phone is answered when he calls.

[104] If supervision is required, he proposes that a friend of his provide this supervision. He says that she is very busy with her own children, may be moving soon and he has not discussed this with her.

[105] When asked about a Christmas schedule, he agrees he was unsure when he would be home but does expect be home December 15.

[106] When asked about the use Barbara MacLean as a psychologist he said he was not involved in the decision to use her and had no issues with the choice of Ms. MacLean for therapy. When questioned about T.M.'s children, he describes

himself as a stepdad to these teens and that they do not want any rules imposed. He agreed that he is very disciplined but denies that he was stubborn.

[107] In discussing one of the children, he says that she had gone to out west live in early January, was home in July to live with a grandmother and her father. Another of the children moved to the grandmother's home about seven weeks before the hearing. He says now both girls were living with their father.

[108] When asked about his affidavit of August 14, 2017 in which he denies discussing inappropriate matters and denies that T.M. discussed inappropriate matters with the children, it was his evidence that he does not think that T.M. had done anything wrong. He says G.M. had asked about living with him many times and he "runs the roads" in Sherbrooke where he lives with his mother.

[109] G.G.M. admits that the contents of the transcript in which he discussed with G.M. not sharing anything with his mother about his lawyer, that he was cranky and that he said things that he shouldn't say was all correct and that he was discussing matters with the child.

[110] When asked about the first order in which he was required to attend for anger management, his evidence was that he denies suffering from attention deficit disorder but agreed he is diagnosed with obsessive compulsive disorder and he didn't want things done his way, he "wants things done the right way". He denies depression and denies any anger issues. He says he participated in a parenting skills course 14 months after the order was granted.

[111] When asked about the Child Needs Assessment, he says that I.M. made up stories about yelling in the home between him and T.M. in the presence of the children and that he would never do so in front of I.M.

[112] When asked his opinion about why I.M. didn't want to go see her father, he describes her being caught in a loyalty bind and that it was her mother's fault.

[113] The Child Needs Assessment was admitted by consent in this matter. The author, Angela Ellsworth, was qualified as a child psychologist and reports in part as follows:

I.M. is young girl who appears to experience heightened fear and worry across settings based on information gathered from multiple sources and corroborated with behaviors observed within the current assessment. Furthermore, I.M.

engages in avoidant behaviors when facing fears or situations she perceives as distressing (E. G., schoolwork, not wanting to return to the assessment, not returning to her dad's after he "screamed").... I.M. would likely benefit from a cognitive behavioral therapy approach which addresses the negative thinking style....

[114] In the Voice of Child Report conducted by social worker Michael Craig in 2016, he met with I.M. on October 13, 2016 and D.M. was present. He noted:

I.M. said that she has not seen her dad "in a while". When asked if she misses seeing him, she answered emphatically "no". To the question why she said this "because he screams at me" and "I am afraid of him" holding up her fist.

To the question of my meeting her and her dad together she replied "no".

[115] The assessor could not say whether I.M. was expressing her genuine wish and did observe I.M. making eye contact with her mother in answering each question. His recommendation was that I.M. work with a professional outside the court system to manage her feelings around visiting with her dad.

## The Law

[116] To properly assess the evidence in this matter, it is important to review the applicable law, including the applicable legislation and case law.

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

In any proceeding under this act concerning the care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[118] Section 18 (8) further directs that

In making an order concerning the care and custody or access and visiting privileges 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.

[119] In determining what I should consider in assessing what is in these children's best interests, Section 18 (6) sets out some of the relevant considerations

to be considered, though this list is not exhaustive. The relevant considerations that apply in this case 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 views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;
- f) the nature, strength and stability of the relationship between the child and each parent...;
- g) the nature, strength and stability of the relationship between the child and other significant person in the child's life;
- h) 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....

[120] There are other factors listed in this subsection, such as reference to family violence, cultural, linguistic, religious and spiritual upbringing and heritage, all of which I find inapplicable in this circumstance.

[121] The analysis of the children's best interests, however, does not end with the factors set out under Section 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 section 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 are 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:

- i. Statutory direction ...;
- ii. Physical environment;
- iii. Discipline;
- iv. Role model;
- v. ...
- vi. Time availability of a parent for a child;
- vii. ...
- viii. The emotional support to assist in a child developing self-esteem and confidence;
- ix. The financial contribution to the welfare of a child.
- x. The support of an extended family, uncles, aunts, grandparents, etcetera;
- xi. 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. ...;
- xii. The interim and long range plan for the welfare of the children.
- xiii. 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
- xiv. 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.

## Credibility

[122] Credibility is an issue in this case as in most matters before the court. In assessing credibility, the decision of *Baker-Warren v. Denault*, 2009 NSSC 59, a decision of Forgeron J., is very helpful to the analysis when she wrote in part as follows:

**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*).

**21** Ultimately, I have considered the totality of the evidence in making credibility determinations. I have thoroughly reviewed the *viva voce* and documentary evidence in conjunction with the submissions of counsel, and the applicable legislation and case law.

## Analysis and Decision

[123] I have carefully reviewed all the evidence in this matter and the law which I must apply to that evidence. In doing so, I can make several findings that I will now set out and explain.

[124] Respecting the history of care for the children, I note that they have been in their mother's primary care since separation several years ago. While the father is critical of the mother's care of the children in some respects and blames her for any difficulties the children are experiencing now, for reasons that I will set out later in this decision, I do not accept that evidence. I find that the evidence supports the

mother's position that she has cared well for these children and they have generally thrived in her home under her a parenting since separation. There is no doubt that they have suffered certain emotional traumas and stressors but I am satisfied that they have a strong home life, a thriving school life, do well in their education and have friends and extended family on both sides.

[125] Likewise, I find that the mother has properly dealt with the children's physical, emotional, social and educational needs. I find that the evidence supports that she has sought out stability and safety for the children, particularly considering the stresses to which they have been exposed in the breakdown of the relationship of the parents and the various allegations made in this proceeding.

[126] It is important to note that there is much to be said in favour of each of the adults involved in this circumstance. Both parents and T.M. all love these children deeply. Of course, this is not a contest as to who loves the children more. Rather it is an analysis of what is in the children's best interests given all the circumstances they face within the family and otherwise.

[127] It is clear to me that the mother has done the very best she can, given the circumstances she faces. It is also clear that she is not been a perfect parent, nor can any parent be expected to meet that standard. I have no doubt that she has made some errors along the way, but there is little evidence to support that she has caused any stress herself or is responsible for the dysfunctional behaviour of the children that arise from time to time.

[128] I find that the evidence is also clear that the children have struggled. The mother describes G.M. as progressing and regressing in his behaviors, becoming more disrespectful, using vulgar language, become physically aggressive and engaging in various physical and emotional behaviors that indicate he is under stress and inappropriately coping with difficult circumstances. Fortunately, there have been periods of time when G.M. has done better than at other times.

[129] The mother says that this improvement was particularly evident when T.M.'s time with the children was limited under the interim order but these problems have arisen again. I accept that evidence. I find her evidence to be balanced and credible.

[130] Likewise, I.M. is experiencing difficulties, has refused to visit with her father for an extended period and this will no doubt affect her, as will the underlying cause of her refusal to spend time with her father and his partner.

Again, there is nothing in the evidence to suggest that the mother is responsible for this issue. I find her evidence to be credible as to her experience with I.M. and her efforts have I.M. visit with her father as well as her decision not to promote such parenting time for either children once her concerns rose to a much higher level after the recorded conversations were reviewed.

[131] On the other hand, both T.M. and G.G.M. face significant credibility challenges and their evidence gives rise to significant concerns respecting their level of insight into the problems the children are facing.

[132] At various times in the evidence, both G.G.M. and T.M. denied having any inappropriate conversations with the children or otherwise attempting to undermine or interfere with their relationship with the mother. That, I find, was clearly disproven by the transcripts of the calls and other evidence.

[133] For the father, the transcripts clearly demonstrate several things. First, he admits that that he acted inappropriately when he spoke to G.M. about keeping secrets from his mother about what he said to G.M. during a visit. He admits that he sometimes says things when cranky or cross and that he should not be saying such things. G.G.M.'s admonishment to G.M. not to discuss what was said with anyone including his mother makes clear to me that what he said previously was quite significant and I find it highly probable that this was not the first time that such comments were made.

[134] More specifically, I find the evidence is clear that the father is a rigid thinker with a temper. He gives his own evidence that he doesn't always want things his way but wants things done the right way. This is no doubt an asset in his work but, I find, presents a problem in his parenting.

[135] T.M., in the transcript of her conversation with G.M. of February 1, 2017, T.M. makes clear to G.M. that the father is stubborn, difficult to deal with, that he is at risk of damaging his relationship with the children as they grow and opined that many of the father's issues with the mother were due to his stubborn way of thinking. That was certainly consistent with the impression he gave in his testimony at the hearing.

[136] I find the evidence of the change in parenting arrangements for T.M.'s daughters to be material in this context as well. Keeping in mind the findings of this Court respecting the father's mindset and approach to parenting, as well as the evidence of T.M. and G.G.M. in cross-examination, I find it is probable that the

reason that two of T.M.'s daughters no longer live with her is at least partly due to conflict between those children and G.G.M. I find that it is probable that this is in large part due to his rigid thinking and inability to adapt his parenting style as children age.

[137] T.M. admitted that she described the father as stubborn, that "I have to go by what he wants and not by what we should do as a family", that she was "better off talking to a wall". All of this reinforces that he is rigid, unbending and is not insightful as to what is in the best interests of his children and his family.

[138] It is well understood that young children can be controlled and managed through firm parenting for a time. Rigid thinking may do well, or at least be sufficient, in parenting children who have no voice or are unable to resist or push back in the face of inflexible parenting.

[139] This, however, quickly disappears as children age and become more independent. It is appropriate and healthy that they find their voice, demand to be heard and begin to push back against parenting, particularly as the approach and enter teen years. This is when they may push back too far and appropriate parenting must be sensitive to this, adapt, grow and mature along with the child to serve the child's best interests. The father has been unable to do this with his own children and his step-daughter's either.

[140] Further concern respecting the father arose in that same transcript when he spoke with G.M. about the mother not being fair with requests for additional time, describing details of the requests and engaging in further criticism of the mother. This is entirely inappropriate and I find that it is highly improbable that this was the only time that he engaged in such conversations. I find that it is much more probable that these conversations, and others similar to them, have been ongoing with the father and T.M. from time to time when the children are with him.

[141] Respecting T.M., concerns arise in a different context. The transcript of her conversation with G.M. of February 1, 2017 is replete with serious problems. I find that there was an attempt throughout to manipulate G.M. in various ways. There was a discussion of a weeklong hunting trip to Toronto which was played up to G.M. and was combined with reference to how much money the father was spending and that he had a lot of bills to pay.

[142] Most seriously, T.M. attempted to persuade G.M. to come live with her and G.G.M. in the clearest of terms. She indicated this was endorsed by the father's

lawyer, that the decision was up to G.M., that this would reduce the father's child support. All of this, I find, left G.M. emotionally challenged at which time he became quiet and the conversation ended. This was, without exception, entirely inappropriate and demonstrates a staggeringly bad level of judgment on the part of T.M. in engaging in any of this conversation with the child. I find that it was manipulative and directly intended to affect his relationship with his mother and to entice G.M. to move in with the father in part to reduce child support obligations.

[143] I do not accept T.M.'s evidence that she was somehow compromised by prescription medication or long working hours or a glass of wine. There is nothing in the transcript to suggest that she was impaired or compromised. She did most of the speaking and was clear in what she was requesting. I do not find her evidence on this issue to be credible.

[144] To a lesser extent, other conversations in the transcript are also troubling. Discussions regarding period blood, G.M. becoming father a later point in his life and discussions of I.M. having makeup and hiding that from the mother all illustrate that T.M. does not have the insight to understand the impact her conversations would have on G.M. and I.M. Though she now says she understands, I do not find her to be credible in her explanation of why she did what she did and her belief that she has gained any insight today.

[145] I do not find that T.M. violated the interim court order through the incidental contact she experience with I.M. at the parade and on the phone. I find these were innocent, short-lived and would not constitute a breach of the order.

[146] There is no doubt in my mind that the G.G.M. and T.M. have a significant, meaningful and loving relationship with these children. On the other hand, the evidence before me indicates that they have no level of insight into the damage they are doing to that relationship and to the children by the constant criticism of the mother, undermining that relationship, attempting to persuade G.M. to live with them, and blaming everyone except themselves for the state they find themselves in.

[147] I.M.'s voice is heard in a limited way through the Voice of Child Report and Child Needs Assessment and she makes clear that she has some level of fear of her father's anger which reiterates my earlier finding respecting his behaviors. I accept that the mother has encouraged I.M. to visit with her father but to little avail.

[148] Returning to the issue of insight, most significant was the testimony of the father on cross-examination when he said that he did not think that T.M. had done anything wrong in her conversation of February 1, 2017. He immediately turned the blame to the mother in describing G.M. as “running the roads” in Sherbrooke. He also blames the mother for I.M.'s failure to visit with him, showing no insight into the impact his own behaviors have had on that situation.

[149] This was a stark contrast to his affidavit evidence where he said that he understood how inappropriate these conversations between T.M. and G.M. were. In the end, I find that his cross-examination testimony on this issue demonstrates his true thinking. He simply cannot avoid his linear and self-centered approach to problems and criticism. He constantly deflects blame to others and does this in an emotional and unhelpful way.

[150] In the end, where the evidence of the mother disagrees with that of the father and T.M., I accept the evidence of the mother and reject the evidence of the father and T.M. I find D.P. to be generally credible and trustworthy and I find that she is taken all reasonable steps to attempt to manage the children's circumstances, to support the relationship with their father and T.M. and to do so despite the behaviors of the father and T.M. She has engaged with therapy for the children, has supported this throughout and, though she might be criticized for not discussing all of this with the father in advance, all agree that the therapy is necessary. If she were opposed to any relationship between the children and their father, I have no doubt that she would likewise oppose this therapeutic intervention. That fact that she engaged it, supported it and continues it, supports the finding that she is supportive of their relationship.

[151] Unfortunately, I do not find the same to be the case for the G.G.M. and T.M. The transcripts speak for themselves. The behaviors of the father make clear that he will blame anyone but himself and force responsibility towards anyone but himself. T.M. is complicit in this, in part, I suspect, because she wants to maintain a relationship with the father and feels she has no other choice. This is reflected in her comments to G.M. in the transcript before the court.

[152] I am concerned that if the father were granted more parenting time he would continue to undermine the relationship between the mother and the children. I have some concern that T.M. would similarly engage in this behaviour if permitted.

[153] It is the mother's position that the father's parenting time should be supervised for now and there be no contact time for T.M. The father says he should

not be supervised but if he were to be, he proposes options for that supervision. Unfortunately, neither party has presented a clear plan for such supervision, except to say that it is required or may be required. Each has valid objections to the supervisor suggested by the other and I find no supervisor offered is appropriate.

[154] As a result, I am left to determine what to do in the face of several bad options. I am not prepared order supervision of the father's parenting time not because it is inappropriate but because it is impractical. I find that it is more important that the father have parenting time with the children than that his time with them be restricted by a lack of a realistic plan for such supervision. This is consistent with the maximum contact principle set out in the *Act*.

[155] I find the same does not apply to T.M. Though she has been a significant person in the lives of the children, I find her behavior to be so concerning and her involvement so recent that it is not in the children's best interests that she has contact time with them on an unsupervised basis. I am also not satisfied that the supervision plan as proposed by either parent is appropriate.

[156] As well, I find that it is in the children's best interest that they begin to rebuild their relationship with their father first and that T.M.'s contact time be reviewed at a later time once she gains some insight into her role in this circumstance.

[157] Considering the evidence in its totality and applying the law to that evidence, I find that it is in the best interests of children to be an order as set out below.

[158] The parties shall have joint custody of the children. Each parent shall have equal access to all information respecting the children from any third-party service provider including, but not limited to, schools, teachers, doctors, dentists and therapists. The parents will meaningfully consult on all major issues concerning the education, health and general welfare of the children and attempt to arrive at a joint decision. If they cannot arrive at such a joint decision, the mother will have final decision-making authority and the father will be permitted to make application to the court for review of that decision without having to establish a material change in circumstance.

[159] Either parent may authorize emergency medical care for either child and shall immediately notify the other parent of any such authorization and medical

care and from that point forward each will involve the other parent in any further joint decisions respecting those issues.

[160] The mother will have primary day-to-day care and control of the children.

[161] The father shall have parenting time as follows:

- a) When he is in the province, he shall have parenting time with the children every second weekend from Friday after school until Sunday at 3 PM. If the children are not in school on Friday or Monday or both as a result of an in-service day and statutory holidays, the father's parenting time will begin on Thursday and end on Monday as the case may be.
- b) The parents may agree from time to time respecting any further parenting time arrangements but such arrangements must be by consent.
- c) When the father is out of the province for work, he shall have reasonable interaction time with the children via telephone or video conferencing if available, generally to include contact every second day.
- d) The father's parenting time shall not be supervised.
- e) The exchange of the children for parenting time shall take place at the parking lot of the Atlantic Superstore in Antigonish or at any other agreed upon location.

[162] The following special parenting time provisions shall apply and during these times, the normal parenting time provisions set out above shall be suspended:

- a) Christmas - The mother shall have the children with her each Christmas from Christmas Eve at 9 AM until Christmas Day at 2 PM and the father shall have the children with him from Christmas Day at 2 PM until Boxing Day at 5 PM.
- b) School Spring Break - The father shall have one additional day parenting time with the children during school spring break such that if his weekend precedes the school spring break week, he shall have the children with him until Monday and if his weekend follows the school spring break, he shall have the children commencing Thursday.
- c) Easter - For Easter the father shall have the children with him from Thursday after school until Saturday at 2 PM and the mother shall have the children with her from Saturday at 2 PM until they return to school on Tuesday.

- d) Mother's Day and Father's Day - Each parent shall have the children with them for Mother's Day or Father's Day, as the case may be, from 9 AM to 5 PM.
- e) School Summer Break - During the school summer break, each parent shall be entitled to have the children with them for up to two, nonconsecutive weeks of block parenting time for vacation. Each party will notify the other in writing by text or email on or before March 30 of each year when they wish to have their weeks of vacation. If there are no conflicts, those vacation weeks will apply. If there is conflict in the dates, the mother will have priority for her dates in even numbered years and the father will have priority for his dates in odd numbered years. If a parent fails to provide the notice by the time required, that parent shall lose priority of vacation dates for that year.

[163] Either parent may travel with the children, including travel outside of Canada, upon reasonable notice for reasonable periods of time. Either parent, upon providing notice to the other, may arrange to obtain passports for the children. Either parent may also obtain picture identification for the children as are required by airline authorities. The passports and picture identifications shall be made available to the parent traveling with the children from time to time. The passports shall be held by the mother and provided to the father upon request.

[164] Either parent proposing to travel with the children shall provide the other party with reasonable notice and if travel includes travel outside of Canada, the other parent shall provide the traveling parent with a letter confirming the parents have joint custody of the children but that the traveling parent is traveling with the children with the knowledge and consent of the other.

[165] Should policy regarding travel outside of Canada change in the future, the parents shall modify the arrangements set out in this paragraph such that the traveling parent shall receive the cooperation of the other parent as may be necessary to carry out traveling plans. The traveling parent shall provide to the other parent a general itinerary and telephone contact shall be arranged between the children and the other parent as is reasonably consistent with the traveling plans and the availability and cost of such telephone contact.

[166] Both parties are absolutely prohibited from making any negative or derogatory comments about the other parent or anyone in that parent's family any time that they have care of the children, whether the children are present at the time or not. Each parent is also responsible to ensure that no other third party makes any such comments and if such comments are being made, that parent shall

ensure that the comments stop immediately, the other party is removed from the vicinity or the children are removed from the vicinity.

[167] Both parties are absolutely prohibited from discussing any legal proceedings or related matters with the children including, but not limited to, change of residence of the children, financial issues including child support or any other similar issues at any time.

[168] All communication between the parents shall be conducted in a polite, respectful and businesslike fashion. The primary means of communication shall be by text message. For any urgent or emergency matters the parents may communicate by phone or in person.

[169] Each parent shall be supportive of the relationship of the other parent with the children and shall take all reasonable steps to encourage this including supporting any therapeutic interventions for the children as may be required or recommended.

[170] The parents shall participate in and follow the advice of any therapist involved with either the children and shall seek out the therapist's advice and follow such advice with respect to any issues that arise from time to time including, but not limited to, communication with the children, changes to the parenting arrangements and introduction or reintroduction of any other adults in the children's lives.

[171] The father shall immediately seek out counselling and/or an education program with respect to his parenting style and, in particular, seek out counselling or programming that addresses issues of appropriate communication with children, isolating children from conflict and appropriate and healthy communication strategies for separated parents.

[172] T.M. is prohibited from having any contact whatsoever with the children whether in person, via telephone or by any electronic means including social media.

[173] The father shall not facilitate or encourage contact between T.M. and the children and shall take all reasonable steps to ensure that such contact does not occur. This includes contact that may occur during the father's parenting time with the children at their home or otherwise.

[174] T.M. shall immediately seek out counselling and/or an education program with respect to appropriate communication strategies with the children, the role of a step parent in a high conflict separation and how to isolate children from conflict in such circumstances.

[175] Both T.M. and the father will provide to the mother confirmation of the registration with such therapy or programming and upon completion of such therapy or programming shall provide written confirmation of that participation and, where appropriate, a final report in writing as to any progress achieved.

[176] The issue of the father's parenting time and the contact time for T.M. will be reviewed in four months.

[177] The father shall pay to the mother child support in the amount of \$1,571 per month based on an annual income of \$118,116.

[178] The cost of any counselling intervention for any of the children shall be shared on a proportionate basis between the parties after all insurance contribution are factored in.

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