FAMILY COURT OF NOVA SCOTIA

Citation: *D.J. v. MR.,* 2019 NSFC 10

Date: 20190808
Docket: FAMMCA-098745
Registry: Amherst

Between:

DJ.

Applicant

v.

M.R.

Respondent

Judge:	The Honourable Judge Samuel C. Moreau
Heard:	April 25, 2019 in Amherst, Nova Scotia
Written Decision:	August 8, 2019
Counsel:	Cassandra Armsworthy, for the Applicant
	Allison Kouzovnikov, for the Respondent

By the Court:

INTRODUCTION

[1] This is the matter between D.J., applicant, and M.R., respondent.

[2] The applicant, D.J., filed a Notice of Application on September 12, 2018. This Notice of Application was in relation to passport applications regarding the children of the relationship. In support of this application, an affidavit sworn on September 7, 2018, was also submitted. The parties resolved the passport issue.

[3] The applicant filed a Notice of Variation Application on October 15, 2018, requesting changes to the Consent Order dated June 15, 2017 that:

a) neither parent is the primary-care parent;

b) neither parent is to change documentation regarding the children that was prepared by the other parent without the consent of that parent;

c) both parents are to refrain from consuming alcohol while the children are in their care; and

d) D.J. shall have final decision-making authority.

[4] M.R. filed a Response to Variation Application on December 19, 2018, with the following claim:

> I would like all Canada Child Benefit amounts received by D.J. since the granting of the 2017 Consent Order to be paid to me, and for all future Canada Child Benefit amounts received by D.J. to be paid to me consistent with the intent of paragraph 14 of the 2017 Consent Order and for paragraph 14 of the 2017 Consent Order to be varied to reflect same.

[5] In support of her Response to Variation Application, M.R. also provided an affidavit sworn December 19, 2018. In paragraphs 50 to 53, inclusive, M.R. stated further claims in addition to the one in her Response to Variation Application:

a) that the relief sought by D.J. be denied;

b) that D.J. disclose his financial information in accordance with the 2017 Consent Order and for the child support amounts to be updated accordingly effective July 1, 2018;

c) that a Child Support Recalculation Order be issued; and

d) that Christmas plans regarding the children be determined. M.R. wished to have the children in her care on December 24th from 5:00pm to 9:00pm.

[6] As noted, the Order sought to be varied is the Consent Order effective June 14, 2017 and issued by this Court on June 15, 2017. Both parties were represented by counsel who executed same Order, "CONSENTED TO AS TO SUBSTANCE AND FORM".

[7] Paragraph 14 of the Consent Order states: "The Applicant, M.R., will claim the children for Canada Child Benefit purposes."

[8] On the front page of the Consent Order directly below the Judge's initials is the following: "To the extent the Court has jurisdiction to do so".

[9] The provisions of the Consent Order were as a result of negotiations and subsequent agreements reached between the parties as evidenced by the signature of their respective legal counsel.

[10] This Court has no jurisdiction to enforce paragraph 14 of the Consent Order. The declaration "To the extent the Court has jurisdiction to do so" directly below the Judge's initials confirms the scope of the Court's ability to enforce the provisions of the Consent Order.

[11] This matter was heard on April 25, 2019. Both parties gave evidence and several Exhibits were filed including affidavits which formed the bulk of the direct evidence. Also, counsel for both parties filed pre-hearing briefs setting out their clients' positions on the issues. As per my previous comments, I have addressed paragraph 14 of the Consent Order issued June 15, 2017. I shall make no further comment on that paragraph.

[12] The applicant, D.J., seeks the following:

a) That the Consent Order be varied to indicate that he have final decision-making authority in issues relating to the children, including decisions regarding the health, education and religious upbringing of the children.

b) That his prospective child support obligation be based on an annual income of $71,869.00.

c) That his share of Section 7 expenses be 71.8% and M.R. 28.2%.

d) That the court reject M.R.'s request for retroactive child support and also M.R.'s position that the lump sum benefit he received from Workers' Compensation in 2017 be included as income for the purposes of child support.

[13] The respondent, M.R., seeks the following:

a) That the status quo be maintained with respect to final decision- making authority and major decisions regarding the children's health, education and religious upbringing.
b) That the Workers' Compensation benefit received by DJ. in 2017 be included as income for the purposes of determining the quantum of child support.
c) That M.R. be awarded retroactive child support and arrears be set at $21,720.00 repayable at a rate of $905 per month over a 24-month period.
d) Prospective child support be set at the amount of $1,120 effective July 15, 2019 and continuing each month thereafter.
e) That the retroactive share of Section 7 expenses be 88% for DJ. and 12% for M.R. and the prospective share be 77% for DJ. and 23% for M.R.
f) Any retroactive adjustments made to D.J.'s income in the future to be included as income for the purpose of a further child support retroactive adjustment.

[14] Both parties seek costs.

ISSUES

[15] 1. What amounts/proportions should prospective child support and Section 7 expenses be based on?

[16] 2. Should M.R. be awarded retroactive child support and Section 7 expenses?

[17] 3. Has there been a material change in circumstances to warrant a variation regarding final decision-making authority with respect to major decisions that impact on the children's medical care, education and religious upbringing currently vested in M.R. as per paragraph 2(e) of the Consent Order?

Prospective Child Support

[18] In order to vary D.J.'s current child support obligation as per paragraph 11 of the Consent Order, I first must be satisfied that there has been a material change in

circumstances; that there has been a change regarding DJ. 's ability to pay child support on a go forward basis. Paragraph 16 of the *Provincial Child Support Guidelines* states as follows:

> **Calculation of annual income**
> **16** Subject to Sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "(Total Income)" in the Tl General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

[19] The parties dispute the amount on which prospective child support should be based. It is the applicant's position that prospective child support be based on the amount of $71,869.00. The applicant, D.J., is employed at the Springhill Penitentiary and is a federal employee. As such his salary is administered by the Phoenix pay system. As addressed by D.J. in paragraphs 6 to 15 of Exhibit 3, there are ongoing issues with the Phoenix pay system. Certainly, these ongoing issues with the Phoenix pay system have been the subject of many media reports.

[20] The problems with the Phoenix pay system have affected and continue to affect D.J.'s rate or level of pay - the amount of money he receives pay cheque to pay cheque is inconsistent. He may receive a certain amount for a pay period and for the following pay period may receive an amount the same, similar or significantly higher or lower. An examination of Exhibits 6 and 10 confirms this.

[21] D.J. contends that his prospective child support should be based on an annual income of $71,869.00. That figure was decided upon by adding together the gross amounts as stated on all of D.J.'s pay cheque stubs for 2018. I confirmed this by conducting my own calculations. I take Judicial Notice of the problems with the Phoenix pay system. As such I find I cannot rely on D.J.'s 2018 paystubs to calculate an appropriate figure on which to base prospective child support. As stated I scrutinized Exhibit 6. The gross amounts indicated on D.J.'s paystubs are inconsistent. Some reveal significant fluctuations. The evidence before me with which to base prospective child support is as contained in Exhibit 6 and Exhibit 9. No other evidence was provided with respect to this issue.

[22] Given my finding with respect to the Phoenix pay system and in accordance with Section 16 of the *Child Support Guidelines* I find I must base D.J.'s prospective child support obligation on his 2018 income – that being his total income as stated on his 2018 Tl General form. The amount as stated on his 2018 T1 General form for his total income is $94,202.73, subtracting union dues in the amount of $1,526.25, the remainder being $92,676.48.

Retroactive Child Support and Section 7 Expenses

[23] The respondent, M.R., seeks retroactive child support based on the rationale that the applicant's income increased in 2017 and also on the rationale that the incomes of the parties as stated in the Consent Order issued June 15, 2017 were incorrect.

[24] I shall first address the Consent Order. Both D.J. and M.R. were represented by lawyers when the terms of the Consent Order were agreed to. There is no evidence before me to suggest that counsel were ineffectual or negligent in the completion of their duties. I find I have no legal or otherwise compelling reason to revisit the Consent Order issued June 15, 2017. I refer to paragraph 65 of *D.B.S. v .S.R.G.,* 2006 SCC 37.

[25] To evaluate the quantum of child support for the period in question I must examine and determine D.J.'s income for the 2017 tax year. As per paragraph 13 of the Consent Order issued June 15, 2017, the parties were ordered as follows:

> 13. The parties shall exchange no later than June 1st copies of their income tax returns, completed and with all the attachments even if the return is not filed with the Canada Revenue Agency. This will commence on the 1st day of June, 2017, and continue every year thereafter.

[26] In my analysis/discussion regarding the most appropriate determination of D.J.'s income with respect to prospective child support, I found that I must base his obligation in accordance with his total income as stated on his 2018 T1 General form. Likewise, my examination and analysis regarding any retroactive award must be based on his tax return information.

[27] Evidence included in Exhibit 9 is a piece of correspondence to D.J. from Nadine Zwicker, Case Manager, Workers' Compensation Board of Nova Scotia. Ms. Zwicker's letter establishes that D.J. experienced a workplace accident on October 28, 2013. As per Exhibit 9, Line 150 of D.J.'s 2017 T1 General form states a total income of $111,599.63. Included in that amount is a payment of $30,445.96. The evidence establishes that this payment/benefit was an amount received from the Workers' Compensation Board of Nova Scotia. D.J. argues that this payment/benefit should not be included in determining his income for 2017 as it was a one-time non-recurring payment.

[28] M.R. rejects this argument and takes the position that the Workers' Compensation Board benefit should be included in determining D.J.'s 2017 income as it was not a one-time, non-recurring payment but fifth consecutive payment/benefit D.J. received from the Workers' Compensation Board of Nova Scotia. Again, in referencing Exhibit 9,

specifically the 2016 tax year, D.J. received a payment/benefit from Workers' Compensation in the amount of $6,413.45 and during the 2015 tax year in the amount of $25,118.63. D.J.'s 2014 Canada Revenue Agency Notice of Assessment - a tax return was not provided for 2014 - Line 236 indicates a deduction from net income in the amount of $31,988. Correspondingly, as contained in his 2017 Tl General form 5 Year Summary shows a payment/benefit received in 2014 in the amount of $31,988.39. D.J.'s 2013 Notice of Assessment indicates Workers' Compensation benefits in the amount of $5,096.00.

[29] I find the evidence confirms D.J. received payments/benefits from the Workers' Compensation Board of Nova Scotia during the years 2013 to 2017, inclusive. The benefit received from Workers' Compensation in the stated amount of$30,445.96 shall be included in determining D.J.'s 2017 income. As per existing case law, *Darlington v. Moore,* 2014 NSSC 358, *Piasecki v. Piasecki,* 2015 NSSC 210, the benefit received from Workers' Compensation shall be grossed up.

[30] The next step is to determine if a retroactive payment should be awarded. In considering this issue I refer to and take direction from the case *D.B.S. v. S.R.G.,* 2006 SCC 37. Justice Bastarache writing for the majority states at paragraph 5:

> 5 Against this backdrop, it becomes clear that retroactive awards cannot simply be regarded as exceptional orders to be made in exceptional circumstances. A modern approach compels consideration of all relevant factors in order to determine whether a retroactive award is appropriate in the circumstances. Thus, while the propriety of a retroactive award should not be presumed, it will not only be found in rare cases either. Unreasonable delay by the recipient parent in seeking an increase in support will militate against a retroactive award, while blameworthy conduct by the payor parent will have the opposite effect. Where ordered, an award should generally be retroactive to the date when the recipient parent gave the payor parent effective notice of his/her intention to seek an increase in support payments; this date represents a fair balance between certainty and flexibility.

[31] Justice Bastarache identified four factors to consider when determining whether retroactive child support should be ordered. They are:

- Reasonable Excuse for Why Support Was Not Sought Earlier;
- Conduct of the Payor Parent;
- Circumstances of the Child; and
- Hardship Occasioned by a Retroactive Award.

<u>An Examination of the Four Factors</u>

Reasonable Excuse for Why Support Was Not Sought Earlier

[32] It is undisputed that M.R. cannot be faulted for any delay in seeking support.

Conduct of the Payor Parent

[33] As aforementioned, paragraph 13 of the Consent Order requires the parties to exchange copies of their tax returns no later than June 1st of each year. The parties have a shared custody arrangement. As per the set off, the Consent Order requires D.J. to pay child support to M.R. As the payor parent, it is incumbent on D.J. to ensure he provides his tax return information to M.R. by June 1st of each year. This is for the benefit of the children, not M.R.

[34] As per Exhibit 12, paragraph 34, M.R. emailed D.J. on May 18, 2018 inquiring about income tax statements. D.J. did not provide his income tax return information until the matter came before the court.

[35] D.J. addressed the issue of income tax disclosure in paragraphs 18 to 20, inclusive, Exhibit 5. Upon being approached by M.R. regarding disclosure of his tax return, D.J. contacted the Maintenance Enforcement Program of Nova Scotia. The Maintenance Enforcement Program informed him that as there was no recalculation clause in the Order he did not need to provide his financial information.

[36] Regardless of the direction provided by the Maintenance Enforcement Program, D.J. was court ordered to provide his tax return to M.R. The language in paragraph 13 is clear. I question why D.J. contacted the Maintenance Enforcement Program as opposed to his lawyer, or even the Family Court Office in the jurisdiction where the Order was issued (Amherst).

[37] M.R.'s request for D.J.'s financial information as stated in her email of May 18, 2018 may not have been worded as a lawyer practising in this field would, however I submit, the intent of her request was clear, and there is no doubt in my mind D.J. understood exactly what M.R. was requesting. As a result of his action/non-action, this issue has to be addressed in this forum.

[38] I find D.J. engaged in blameworthy conduct by not disclosing his income tax return information to M.R. as court ordered.

Circumstances of the Child

[39] At paragraph 113, Justice Bastarache states:

> 113 Because the awards contemplated are retroactive, it is also worth considering the child's needs at the time the support should have been paid. A child who underwent hardship in the past may be compensated for this unfortunate circumstance through a retroactive award. On the other hand, the argument for retroactive child support will be less convincing where the child already enjoyed all the advantages (s)he would have received had both parents been supporting him/her: see *S. (L.)*. This is not to suggest that the payor parent's obligation will disappear where his/her children do not "need" his/her financial support. Nor do I believe trial judges should delve into the past to remedy all old familial injustices through child support awards; for instance, hardship suffered by other family members (like recipient parents forced to make additional sacrifices) are irrelevant in determining whether retroactive support should be owed to the child. I offer these comments only to state that the hardship suffered by children can affect the determination of whether the unfulfilled obligation should be enforced for their benefit.

[40] There is no question that given M.R.'s modest financial means a retroactive award would be of benefit to the children.

Hardship Occasioned by a Retroactive Award

[41] As per the Consent Order, the parties have a shared custody arrangement. D.J.'s earnings for 2018 were $94,202.73 and M.R., $19,009.00. Contemplating D.J.'s expenses as noted in Exhibit 8 and using a total monthly income derived from an annual income of $94,202.73, D.J. has a monthly surplus of $989.80.

[42] As per Exhibit 7, D.J.'s Statement of Property as of April 2019, he has a debt of $9,000.00 - a line of credit in his fiancée's name and credit card debt in the amount of $400.00. I shall not consider the mortgage owing to CIBC as that is the former matrimonial home shared with M.R. D.J. remains on title but as established by the evidence has no actual monthly out-of-pocket financial liability with respect to this encumbrance.

[43] Considering the four factors as reviewed and the evidence before me, retroactive child support shall be ordered.

[44] For the purposes of retroactive child support and retroactive Section 7 expenses for the periods July 1, 2017 to June 30, 2018 and July 1, 2018 to June 30, 2019:

- D.J.'s income for 2017 is $111,599.63 - including an employment income of $81,153.67 and Workers' Compensation Board benefits in the amount of

$30,445.96. As aforementioned the amount received from Workers' Compensation Board shall be grossed up. With the gross up, D.J.'s income for the year 2017, for the purposes of determining the table amount of child support is $132,535.00.

- M.R.'s income for the year 2017 is $18,744.00. The *Child Support Guidelines* changed in the latter part of November, 2017. For the ease of calculations regarding the period July 1, 2017 to June 30, 2018, I shall use the old guideline amount for the period July 1, 2017 to November 30, 2017 and the new guideline amount from December 1, 2017 to June 30, 2018.

- D.J.'s income for 2017 = $132,535.00. Guideline amount for July 1, 2017 to November 30, 2017 = $2,265.92. M.R.'s income for 2017 = $18,774.00. Guideline amount for July 1, 2017 to November 30, 2017 = $333.72. For the period July 1, 2017 to November 30, 2017 D.J. pays M.R. child support in the amount of $1,932.20 per month. D.J.'s income for 2017 = $132,535.00. Guideline amount for December I, 2017 to June 30, 2018 = $2,318.35. M.R.'s income for 2017 = $18,774.00. Guideline amount for December 1, 2017 to June 30, 2018 = $286.32. For the period December 1, 2017 to June 30, 2018, D.J. pays M.R. child support in the amount of $2,032.03 per month. For the period July 1, 2018 to June 30, 2019 D.J.'s income for the purposes of determining the table amount of child support is $92,676.73. Guideline amount= $1,692.69. For the period July 1, 2018 to June 30, 2019, M.R.'s income for the purposes of determining the table amount of child support is $28,167.Guideline amount= $572.94. For the period July 1, 2018 to June 30, 2019 based on the set off, D.J. shall pay child support to M.R. in the amount of $1,119.75.

[45] Neither party provided updated information confirming child support paid to M.R. through the Maintenance Enforcement Program of Nova Scotia. Counsel will have to conclude the calculations (specific amount(s)) regarding retroactive child support owing to M.R.

Final Decision-Making Authority

[46] The applicant, D.J., has made application to vary the current Order with respect to the issue of final decision-making authority. Paragraph 2 of the June 15, 2017 Consent Order contains the provisions which govern parenting. Specifically, paragraph 2(e) provides that M.R. "have final decision making authority with respect to major decisions that impact on the children's medical care, education and religious upbringing". The remainder of paragraph 2(e) reads:

> ... Prior to making any such decision, the Applicant shall consider seriously any opinion or input offered by the Respondent. The Applicant shall attempt as much as possible to reach an agreement with the Respondent before exercising the final decision making authority so long as the welfare of the children is not compromised by doing so. The welfare of the children shall be the paramount consideration when making any such decision. All other major developmental decisions that may affect the children shall be made jointly by the parties while at the acquiescence of the Respondent.

[47] The evidence in this case is replete with examples of the parties' inability to communicate with each other. The three children have been placed squarely in the middle of the parties' conflict. Both parties acknowledge communicating through the children. Given the level of animus the parties have been unable to discuss, furthermore agree on, issues concerning the children. Both parties have previously obtained **Protection of Property Act** Orders against the other.

[48] A glaring example of the parties' inability to communicate is the situation regarding the child, Co.'s, medical checkup. This became an issue of concern as D.J. believed M.R. had taken Co. to see a medical specialist. D.J. was relying on information provided to him by Co. In fact, M.R. had taken Co. for a general checkup but had not relayed any information regarding the appointment to D.J. Likewise the matter concerning the issue of vaccinations. D.J. did not tell M.R. about the children receiving vaccinations. M.R. learnt about the vaccinations from the children.

[49] On cross examination, D.J. indicated he has blocked M.R.'s cell phone number. In his own words, he preferred to communicate with M.R. via email. Paragraph 6 of Exhibit 5 - D.J.'s affidavit sworn April 22, 2019, confirms this. Paragraph 6 states:

> At the present time, the Respondent is blocked from my cell and I understood I was blocked from hers as well. If I need to contact the Respondent, I email or reach her through the children.

[50] Both parties addressed the incident which arose prior to Christmas 2018. Exhibit B of Court Exhibit 4 contains copies of two emails with respect to this issue. D.J. wished to take the children to Halifax for Christmas Eve to visit with his partner's immediate family. M.R. objected to this as she wished to see the children on Christmas Eve and Christmas Day. Paragraph 7 of the Consent Order addresses holidays/special occasions but does not offer a specific schedule or plan for Christmas or any other holiday/special occasion, with the exception of Halloween. Care of the children during Halloween alternates from year to year with M.R. having odd-numbered years and D.J. having even-numbered years.

[51] The paragraph also specifies two weeks of consecutive parenting time (it is

assumed during the months of July or August, as a time period is not stated) with dates and times to be exchanged no later than May 1st of each year.

[52] M.R. had the children for Christmas in 2016 and 2017. Her evidence is that she believed Christmas Eve was “part of the Order”. D.J. believed that Christmas Eve and Christmas Day were to be shared. M.R. wished to see the children for four hours during Christmas Eve, 2018. The initial emails regarding the Christmas 2018 saga were sent on November 29, 2018. As per Exhibit 11, M.R. sent three additional emails to DJ. in relation to the Christmas issue, all of which went unanswered. On cross examination, D.J. explained his non-response to M.R.'s emails of December 6, 8, and 21, 2018 as he found her to be “combative”.

[53] In Exhibit 12, her affidavit sworn April 18, 2019, M.R. provides information regarding two incidents which again highlights the parties’ inability to communicate, seemingly on any level regarding their children. Paragraphs 22 to 32, inclusive, includes information in relation to Co. getting hurt in December 2017 while playing with friends and an incident in March 2019 when M.R. could not locate Ri. In both instances, M.R. attempted to contact DJ. via cell phone but could not speak with him because her number is blocked. During the March 2019 incident involving Ri., M.R. had to contact the child, Ca., who then relayed the information to D.J. D.J. refused to speak with M.R.

[54] I find these incidents of the parents’ non-communication or inability to communicate particularly troubling as the consequences of same could have led to disastrous outcomes for the children. M.R.'s behaviour in relation to the issue of D.J.’s attempt(s) to obtain passports for the children also demonstrates her inability to be reasonable and cooperative with respect to an issue directly related to the children.

[55] I need not cite all the other examples of the parents’ non-communication and inability to cooperate as provided in both their affidavit and viva voce evidence. The bottom line is that the level of animus between the parents has placed and is placing their children squarely in the middle of their conflict and if not addressed has the potential to impact the children in an adverse manner and in their relationships with both parents.

[56] I fail to see how this issue can be rectified by providing DJ. with final decision-making authority. Both parents are responsible for their actions towards each other however the preponderance of the evidence indicates that D.J. has taken steps to cease communication with M.R. by blocking her cell phone number and not responding to her emails. D.J. has resigned himself to communicating with M.R. through the children. M.R. has not made the situation any better by engaging/arguing with DJ. in the presence of the children.

[57] In the case *Hustins v. Hustins,* 2014 NSSC 185, at paragraph 51, Justice Beaton states:

> [51] There is little the Court can do to assist these parties with their fundamental problem, which is an absence of ability to cooperate. Rather, the Court's primary focus must be the child.

[58] In the present case I must focus on Ri., Ca. and Co. and their best interests. Based on the preponderance of the evidence, the present circumstances of the parties and their inability to communicate, there is no doubt the present Order requires variation.

Material Change in Circumstances

[59] In the case *Gordon v. Goertz,* [1996] 2 S.C.R. 27, at paragraph 12 the court enters upon an examination of what suffices to establish a material change in the circumstances of the child. In paragraph 13 the Court states:

> 13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[60] Based on the preponderance of the evidence, I find that there has been a material change in circumstances and as such the Consent Order issued June 15, 2017 shall be varied.

Costs

[61] Both parties seek solicitor and client costs. **Civil Procedure Rule** 77.01(1)(b) reads:

> 77.0 l (l) The court deals with each of the following kinds of costs:
> ... (b) solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation;

[62] In her submissions on the issue of costs, counsel for the respondent took the position that the application filed by D.J. was completely unreasonable and cited D.J.'s conduct as per the evidence heard.

[63] Counsel for the applicant, of course, took the position that D.J.'s application was entirely reasonable and as to late filings indicated oversights and circumstances beyond

her client's control.

[64] After hearing the evidence in this matter and analyzing the issues in relation to the evidence and considering the requests for costs, I will not order solicitor and client costs to either party.

CONCLUSION

[65] In matters which the Court is asked to vary an Order, the existing Order is the starting point. Unless there have been material changes in circumstance since the granting of the existing Order the terms of that Order are to be maintained.

[66] I have found that there have been material changes in circumstance. As guided by *Gordon v. Goertz, (supra),* paragraph 49, I have embarked on a fresh inquiry into what is in the bests interests of the children having regard to all relevant circumstances relating to the children's needs and the ability of the parents to satisfy those needs.

[67] Having considered all of the evidence, I find that a variation of the existing Order pursuant to Section 37(1) of the **Parenting and Support Act** is in the best interests of the children.

[68] I grant the issuing of the following Varied Consent Order.

TERMS OF THE ORDER

[69] The applicant, D.J., and the respondent, M.R., shall have joint custody of the children.

[70] The parties have a shared parenting arrangement. The respondent, M.R., shall have the children for five consecutive days and the applicant, D.J., shall have the children for four consecutive days.

[71] When the children are to go with the applicant, D.J., on a weekday, they shall be picked up after school by him, or the children will take the school bus to his residence.

[72] When the children are to go with the applicant, D.J., on weekends, they will be picked up at the respondent, M.R.'s, residence at 9:00am.

[73] At the conclusion of the applicant, D.J.'s, parenting time, he shall return the children to the respondent, M.R.'s, residence at 7:00pm.

[74] The parties may vary the schedule of parenting time by mutual agreement.

[75] Each party is responsible for day-to-day parenting decisions when the children are in their care.

[76] The parties shall consult with respect to major decisions that impact on the children's medical care, education and religious upbringing. If there is no agreement, the respondent, M.R., shall have final say.

[77] The parties shall notify each other by text message and email as soon as is reasonably practicable following the scheduling of any medical, dental and/or therapeutic appointment(s) for any of the children, and communicate the place, date and time of any appointment to the other party.

[78] The parties shall have independent access to any third-party service provider and/or reports with respect to the children, including but not limited to the issues of health and education.

[79] The parties are authorized to consent to emergency medical care for any of the children when the children are in their care and shall notify the other party as soon as possible of any emergency medical event involving any of the children.

[80] The respondent, M.R., shall make the children's hockey gear available to the applicant, D.J., during his parenting time.

[81] Neither party shall plan activities with the children during the times the children are scheduled to be with the other party unless mutually agreed to.

[82] Both parties shall have liberal telephone or Facetime access with the children when they are in the care of the other party.

[83] Neither party is to relocate the children outside of Cumberland County without the written consent of the other party or by court Order.

[84] In odd-numbered years, the respondent, M.R., shall have the children on Easter Saturday, Halloween and from 5:00 pm on December 24th to 12:00 noon on December 25th**.** During odd-numbered years the applicant, D.J., shall have the children on Easter Sunday.

[85] In even-numbered years, the applicant, D.J., shall have the children on Easter Saturday, Halloween and from 5:00pm on December 24th to 12:00 noon on December 25th. During even-numbered years, the respondent, M.R., shall have the children on Easter Sunday.

[86] Each party shall be entitled to two weeks of consecutive parenting time during the months of July and/or August of each year. Dates and times shall be exchanged no later than May 1st of each year.

[87] All communication between the parties shall be by text message and email. Neither party shall block the other from telephone contact.

[88] All communication between the parties shall be conducted in a polite, respectful and child-focused manner.

[89] Neither party shall communicate through any of the children.

[90] Neither party shall make any negative or derogatory comment about the other party or the party's partner while in the presence or within earshot of the children.

[91] The parties shall ensure that no other person makes negative or derogatory comments about the other party or the other party's partner while in the presence or within earshot of the children.

[92] The applicant, D.J., has an annual income of $92,676.48 for the purpose of determining the table amount of child support and proportionate share of Section 7 expenses.

[93] The respondent, M.R., has an annual income of $28,167.00 for the purpose of determining the table amount of child support and proportionate share of Section 7 expenses.

[94] Commencing July 1, 2019, the applicant, D.J., shall pay child support to the respondent, M.R., in the amount of $1,119.75 per month. This amount is a set-off amount with D.J. obligated to pay $1,692.69 and M.R., $572.94. Child support in the amount of $1,119.75 shall continue to be paid to M.R. by D.J. on the 1st day of each month.

[95] Commencing July 1, 2019, the applicant, D.J., shall pay 77% of the cost towards Section 7 expenses and the respondent, M.R., shall pay 23% of the cost towards Section 7 expenses.

[96] As per paragraph 45 of this decision neither party provided updated information from the Maintenance Enforcement Program of Nova Scotia regarding child support paid to M.R. In paragraph 44 I provide the figures that the parties' child support obligations for 2017-2018 and 2018-2019 be based.

[97] Counsel responsible for the preparation of this Order shall include provisions addressing retroactive child support (July 1, 2017 to June 30, 2018; July 1, 2018 to June 30, 2019) and the sharing of retroactive Section 7 expenses based on the numbers provided in paragraph 44. Counsel shall consult and make all reasonable efforts to agree upon a monthly amount which DJ. pays to M.R. until all child support arrears are paid in full.

[98] The parties shall exchange financial information by June 1st of each year.

[99] All child support and Section 7 expenses shall be paid through the Maintenance Enforcement Program of Nova Scotia.

[100] Counsel for the respondent shall prepare the Order.

Samuel C. Moreau, JFC