

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *R. H. v. L.N.*, 2015 NSSC 116

**Date:** 2015-04-15

**Docket:** *Halifax* No. SFHMCA-089032

**Registry:** Halifax

**Between:**

R. H.

Applicant

v.

L. N.

Respondent

Editorial Notice: Identifying information has been removed from this  
electronic version of the judgment.

Judge: The Honourable Justice Moira Legere Sers

Heard: March 30 and 31, 2015, in Halifax, Nova Scotia

Written Release: April 15, 2015

Counsel: Eugene Tan, Counsel for the Applicant  
Kelsey Hudson, Counsel for the Respondent

**By the Court:**

**History**

[1] On November 29, 2013 the Applicant made application for interim relief seeking paternity testing, specified access to the child and sole custody.

[2] The parties began their relationship in August 2012. This lasted approximately eight months.

[3] Their child T. was born on November [...], 2013. She is currently one year and four months old.

[4] The parents parted ways. After the first interim order they resumed a relationship from late December 2013 to May 2014 when they parted company for the final time.

[5] There is no evidence of a set period of co-habitation.

[6] The father is currently 49 years old. The mother is 34 years old.

**Court Intervention**

[7] There have been a series of urgent motions and five interim orders. This hearing was to produce a final order.

[8] The litigation arose in the file within the first year of a very unstable dating relationship. The conflict that brings these parents to court is their inability to navigate a joint parenting plan after the birth of their child.

[9] As I reviewed the evidence presented there is little new evidence since the first orders.

[10] The single most important issue is the continuing discord in arranging parenting time, pick up and drop off points caused by the geographical distance between the father and mother and their inability to arrive at consensus.

[11] As a result of the evidence concerning the unsettled state of the parents' lives and their work schedule, I have concluded that a final order is not possible at this time.

### **Sibling**

[12] The mother has a daughter from a previous relationship; a daughter who continues to live with her and for whom she is responsible.

### **The child before me**

[13] I know very little about this young child. Neither parent spoke much if anything about her in the 13 affidavits that were filed.

[14] All of the evidence they tendered was directed at their personal and parental conflict.

[15] Mr. H. did not have contact with T. until a month after she was born.

[16] He then commenced an application for sole custody, paternity testing and specified access.

[17] Initially, T. lived primarily with her mother and her step sister in Lower Sackville while the father lived in his parental home in Glen Haven, St. Margaret's Bay, Halifax, Nova Scotia. These homes are about 45 minutes apart.

### **The parent's plan**

[18] While the parties were still functioning somewhat as a couple, the mother and father decided the mother would go back to school for a one year period starting March 31<sup>st</sup>, 2014 to March 2015 to obtain her certificate in continuing care.

[19] They decided that during this time the father would take paternity leave from his job to care for their child during the day up to about 1 p.m. or thereafter while the mother was in school.

[20] Initially, the father came to the mother's home to look after their infant in her home. He would return to his home daily.

[21] During this time they appeared to have an on again, off again relationship. Sometimes he stayed and assisted in overnight care, sometimes not.

[22] During this time the father maintained he was the primary parent even though after school when he returned home the child was in the mother's care.

[23] The conflict between the parents continued and ultimately the father simply picked the child up, returned to his home and after school he returned the child to her care.

[24] Sometimes he asked to keep the child overnight. Sometimes they agreed he could and sometimes they did not and the child was returned.

[25] In November 2014 the father's paternity leave ended. He purchased further time to April 2015 when he returns to work. He is able to do this because he inherited his family home and an unspecified monetary inheritance.

## **Finances**

### **Historic**

[26] The father is regularly employed within the HRM area with the Transit system.

[27] His income in 2010 was \$57,247; in 2011 was \$55,524.97; in 2012 \$18,311.08 in 2013 he was found to have an annual income of \$45,961.

[28] Other than his inheritance, he had no income from November 2014 to April 2015.

[29] From March 2014 to April 2015 he was on an extended paternity leave.

[30] He started paying child support voluntarily early on in the amount of \$430. The obligation to pay child support was vacated in December 2014 when the child began staying with him full time.

[31] In 2011, Ms. N. declared income of \$24,927(\$12,270 from employment and \$9,754 from EI benefits). Her 2012 assessment shows income of \$25,387. Her 2013 income was \$14,282, mostly from employment insurance. In 2014 Ms. N. had student loan income of \$12,274.92.

## **2014-2015**

[32] The mother's financial circumstances have been bleak since enrolling in this one year certification program. It has been a financially arduous year.

[33] Her sole income was a student loan. She has no car, is often without transportation; she sometimes has access to her mother's car and at times no place to stay.

[34] The transit system to the father's home in rural HRM is inadequate to promote mother child contact.

[35] At some point the mother returned to live in her mother's home which also houses her disabled brother and adolescent son. There is some evidence that the brother provides financial support for the household.

[36] The brother suffers the effects of brain injury from a car accident and was unable to manage the stress that arises in the home when the mother and her daughters came to live.

[37] As the conflict between Ms. N. and Mr. H. invaded the maternal grandmother's home, the internal stress in the home grew.

[38] Mr. H. not only entered the home on occasion but he continued to contact the grandmother and brother to obtain information about the mother.

[39] Occasionally, the brother has outbursts. He phoned Mr. H. to complain about his sister. He asked Mr. H. to stop contacting him and involving him in this dispute or asking for information about his sister.

[40] When the living arrangements with the maternal grandmother broke down due to the tenuous relationship between the brother and Ms. N., she was without shelter.

[41] She stayed at least one night in a hotel and a few days in a shelter spending the nights at the Applicant's place. She also stayed with a previous boyfriend, Mr. L., when she had nowhere else to go.

[42] In April 2015 the mother hopes to complete her course and begin work. She believes that she will be working be shift work. These shifts may run from 8a.m. to 4 p.m. or 10 a.m. to 6 p.m. The mother will have no seniority.

[43] She is uncertain where she will be working and thus living and whether she will work eight or 12 hour shifts.

[44] During the past year her residential instability in part occasioned by poverty and in part by conflict with her brother, Mr. H. and Mr. L..

[45] She is anxious to stabilize her life.

[46] The father has a work schedule for his work. On his return, from April 14th to May 2015 he will work Saturday, Sunday, Monday and Tuesday.

[47] This will change every three months. He is mid-level on the seniority list and will have some but not all choice as to shifts. Thus there is no certainty to his schedule.

### **First Interim Order December 9, 2013**

[48] The first consent order on December 2013 granted the mother primary care and the father parenting time Wednesday, Thursday and Friday of each week from 10 a.m. to 2:30 pm. Conflict was high at the time.

[49] The father was to provide the transportation. Two people were designated to take the child from the father's vehicle to the Respondent's home. If one of these two people were not available, the parenting time would not go forward.

[50] The father was to pay child support and maintain the child on his medical plan.

**The Second Interim Consent Order March 20, 2014**

[51] The parents reconciled until May 2014 and thereafter a second consent order was issued with the same provisions.

**The Third Interim Court Order August 19, 2014**

[52] The mother retained primary care. The only stipulation was that she not permit C.L. any contact with the child T..

**The Fourth Interim Court Order March 17, 2014**

[53] This order reflected the change in the mother circumstances. The mother's parenting time was altered to reflect her days off from her clinic placement and class schedule. No changes were made to the custody provisions.

[54] When not on placement or in class the mother was to have parenting time from 10 a.m. to 6:30 p.m. daily and such other parenting times as agreed upon

[55] She was to pick up the child for her parenting time and the father was to return the child, thereby splitting the transportation

[56] The mother could not exercise her parenting time at C.L.'s residence or in his presence.

**The Fifth Interim Order December 24, 2014** (incorrectly identified as the third)

[57] This consent order was required to regulate Christmas access.

[58] Child support was vacated.

**Subsequent Circumstances**

[59] The mother's financial and residential circumstances deteriorated.

[60] There follows a series of communications wherein the parents discuss and fail to agree on pick up and drop off points to meet the directives of the court order regarding the mother's parenting time.

[61] The father is on leave for the full year of these discussions. He has financial stability, a car, sufficient funds to survive, and other than the obligations of his child, no work place responsibilities.

[62] The father assumes more control than he had a right to assume.

[63] He begins to implement rules not found in the court orders.

### **Day Care**

[64] The father does not want his child in day care. He has however proposed a babysitter of his choice close to his home .

[65] Historically the mother has acquiesced in this directive not to enroll the child in a daycare to avoid losing her parenting time and to avoid conflict even though there was no prohibition in the court order.

[66] She is currently proposing day care when she is working.

### **The Maternal Grandmother**

[67] Another rule the applicant imposed was that the mother was not allowed to use her mother, the maternal grandmother, as a babysitter.

[68] There are inconsistencies in the father's evidence regarding the grandmother.

[69] On December 6<sup>th</sup>, 2014 he called the brother and the maternal grandmother talking at considerable length to persuade them to have the mother return to their home.

[70] The child is familiar with the grandmother and she has cared for her in the past.

[71] In September 2014 the mother told the father she would leave T. in her mother's care while she went to school till approximately 1 p.m.

[72] The father expressed concern about the maternal grandmother's state of health. He gave evidence that the grandmother was unable to care for the child due to her diabetes.

[73] He threatened to deny the mother parenting time if she was going to use her mother to babysit.

[74] The father has not raised any objections to her brother or his son being in proximity to the child.

[75] The grandmother testified before the court. She has had diabetes for 15 years. She is a smoker. She is on disability from a work injury. She confirmed that her daughter and child lived with her from time to time.

[76] The grandmother formally worked as a LPN. She slipped at work and is off on disability.

[77] Her diabetes is managed with insulin. While she has had some episodes of hypoglycemia, she manages these well.

[78] She also has her son and grandson in the home should there be a problem.

[79] She described the father's behavior during transitions as confrontational, rude, obnoxious and insulting. She testified he displayed this behavior in front of the children. She advises he frequently had his phone out to video tape the exchange.

[80] She confirmed that the father frequently called her to get information from her about the mother, who she was living with, where she was, etc.

[81] While working as a fulltime caregiver may be too much for the grandmother to manage, prohibiting her from assisting occasionally when needed is simply an unreasonable and arbitrarily restriction the father has imposed on the mother. This effectively limited the mother's options.

[82] Both the brother and the grandmother have advised the father to stop calling them to talk with them.

### **Transportation rules**

[83] The third interim order defined parenting time for the mother and centered on transportation.

[84] This order specified parenting time for the mother every Tuesday overnight Wednesday and Thursday afternoon 1:30 to 7 p.m. except when the mother was on placement. When on placement alternate dates were identified.

[85] The father was to provide transportation for the Tuesday and weekend parenting time and the mother for the Thursday afternoon visit.

[86] The mother was able to borrow her mother's car although it was not always available.

[87] In the clause that identified that the father was to provide the transportation for the weekend visit, it was specifically stated that he was to drop the children off at the maternal grandmother's home.

[88] The clause requiring the father to transport the child to the Tuesday visit did not specify where the father was to deliver the child. The father decided he would use the school as the drop off point as that reduced his driving time. It was suggested that they came to this agreement outside court. While the mother was at the school she agreed with this.

[89] The father was aware that the mother was not always at the school and was sometimes assigned to be at a placement which could be wherever her mentor was working. This schedule was designed to accommodate the changes in the mother's placement requirements.

[90] The mother's January 6<sup>th</sup> Tuesday parenting time had an alternate date because the mother was on placement (as indicated in the order). The Tuesday visit was to take place on the 7<sup>th</sup>. This was the father's day to transport.

[91] The mother was not at school, she was at her home. Mr. H. insisted in driving the child to the school knowing the mother would not be there.

[92] He insisted on going to the school on the 8th as well when she was not at school.

[93] Because the place of drop off was not specifically mentioned for Tuesday's parenting time (as it was on Fridays) he insisted no matter whether she was at school, at home or on placement he would drop the child off at the school no matter the time of day.

[94] The mother would require a bus to get from her placement or her home in Dartmouth to the school.

[95] This caused many arguments and conflict between the parties resulting in missed visits for the mother.

[96] This dispute continued through January interfering with the child's right to have contact with her mother.

[97] On another occasion the mother suggested to the father that since she had a 5:30 a.m. start on a job placement, he come the night before to pick up their child, to avoid having to get the child up early in the morning.

[98] The father wanted to meet her at the job placement with the child at 5:30 am.

[99] Not only is it unwise to bring this conflict to her work placement, one would think the evening before was the better option of the child

[100] The father insisted the mother participate in the transportation since the mother had access to her mother's car. She agreed to the transport on Thursday's.

[101] For the January 22<sup>nd</sup> visit it was snowing. The mother advised she was not comfortable driving her mother's car in the snow as it did not have winter tires. The father advised her that before the next visit she was to obtain winter tires.

[102] In her circumstances, it was impossible to insist her mother equip her vehicle with winter tires when her own finances were already limited.

[103] In the same month, the mother advised the father on a subsequent visit that she had to be at school, some distance from her home so she had to take a bus from her home by 10 a.m.

[104] The father called the bus depot and was advised that she could get a bus at 10:30 a.m. to get her to her destination on time. He then advised the mother he would arrive at 10:25 a.m. and that would give her plenty of time to get to the bus on time.

[105] This kind of negotiation is controlling and arbitrary.

[106] On February 13<sup>th</sup> Mr. H. advised the court by letter that he would no longer deliver the child to the mother at the grandmother's residence. The order predating that letter calls for him to do so.

[107] Although no changes have been made to indicate that primary care changed in law or the mother's parental rights diminished; gradually over the course of these orders and in part because of the mother's circumstances, the father took over *de facto* primary care and the mother's parenting time was significantly reduced.

[108] In large part this was due to the distance between the father and mother, the father's refusal to provide all transportation, the mother's poverty, her lack of a car, lack of adequate public transportation between his home in rural HRM and hers, her school schedule and the growing list of restrictions put on the mother as to with whom and where she could exercise parenting time.

[109] Her circumstances were entirely predictable.

[110] Given the father's better financial status and their joint agreement that the mother would go back to school, his demands on her to provide transportation and the restrictions he put on her, including refusing to agree to day care, were unreasonable.

[111] The mother was left with no support system on which she could rely.

[112] The affidavits document the multiple daily text messages required to complete the transition of their child from mother to father and back. They confirm their often unsuccessful discussions.

[113] The child was the real victim of the parent's failure to come to agreement on this issue.

### **Ability to take care of the day to day needs of the child**

[114] Both parents have been primary caretakers.

[115] Neither parent has testified that the other cannot look after the child.

[116] Over the last year the mother could not always provide a home for herself nor her daughters. That has created a certain instability.

[117] The mother has entered into at least two difficult adult relationships.

[118] It is the relationship between the two parents that causes the chronic conflict.

### **Extended family**

[119] I have no information about the father's family other than the fact that his parents have bequeathed him their home and some undisclosed sum of money. The mother advises the home is in need of repair. It is in the rural area of the HRM and its distance from the mother interferes with the child's contact with her mother.

[120] I have heard the grandmother testify that she is prepared to assist her daughter as she can. I have no evidence from other family members.

### **Religious or cultural considerations**

[121] I have no evidence regarding religious or cultural considerations that either party believe must be considered.

### **Financial circumstances**

[122] Mr. H. is in a better financial situation than Ms. N..

[123] Ms. N. will begin employment soon in an industry with which she is familiar and in which she has trained. She is confident of her ability to obtain employment.

[124] This certificate may well add to her ability to create a stable home and increase her pay scale and her opportunities, all which may benefit the children

### **Maximizing contact**

[125] Neither parent demonstrates an aptitude as parent that is compelling evidence of one preference over the other.

[126] Both have a great deal of difficulty putting aside their personal differences to address as a priority the child's right to have healthy contact with each parent.

[127] The mother however has opted despite their differences to place the child with the father when her own residential circumstances were difficult. This tells me she is able to put her child's needs ahead of her own interests despite the consequences to herself.

### **Sibling contact**

[128] The only sibling is the mother's oldest child. She and the child who is the subject matter of this hearing have had diminished contact due to the conflict between the parties and their inability to agree on and provide appropriate contact between the siblings.

### **Environment**

[129] The mother has made some choices in partners inclusive of Mr. H. and Mr. L. that involves her in a conflictual relationships. The instability caused by her own behavior, her choices and these relationships threatens the stability of the children's home environment.

[130] This on again off again relationship with Mr. L. may be addressed when the mother is able to find her own place to live. She advises that Mr. L. is and has been a step father to her oldest and she is not concerned about her daughter in his care. She will continue to see him.

[131] She agrees to continue the prohibition as it relates to Mr. L. and her youngest daughter.

[132] Although I have little evidence of the father's ability to address the day to day needs of the child, the mother has not raised this as an issue. He is returning to work and his work takes him into the HRM core.

[133] Both parents work in the HRM core and Ms. N. will live within the centre.

[134] Mr. H. lives outside the central HRM area.

### **Proposed schedules**

[135] Their parenting plans are not well thought out in respect to their shift work schedule and possible variations.

[136] The parties have constructed a parenting schedule that would have each parent with parenting time every second weekend. This makes little sense given each are unsure whether they have weekends off. Mr. H.'s current back to work schedule places him at work Saturday through Tuesday.

[137] If the father has every second weekend, should those weekends arise when he is working the child will necessarily be with a sitter.

[138] The only positive aspect to this every second weekend is that it is the time when the child is not in daycare and each parent would have the responsibility to address her care should they be working without the need to have input from the other. It would reduce the opportunity for interchange and thus, conflict.

### **Mother's weekly parenting time**

[139] They each agree to overnight parenting time for the mother every Tuesday.

[140] The mother wants an additional Thursday overnight to Friday while the father wants the Thursday to be a dinner visit only.

[141] With the distance between the parents, the father unprepared to provide transportation, the mother without a car, an evening visit is not a practical suggestion.

[142] The mother shall have overnight Tuesday to Wednesday return to the day care and Thursday to Friday return to the day care every week.

[143] They agree to share vacations; alternate Christmas with the father taking odd numbered years and the mother even numbered.

### **Shared Parenting and decision making**

[144] They differ significantly on the decision-making issue.

[145] The father agrees to consult on major issues however, he wants the final say should a dispute arise.

[146] The mother wants a shared parenting schedule with equal decision making power.

[147] The father proposed that a shared parenting is unworkable due to the historical and chronic high conflict between the couple.

[148] The police and child protection have been called in on occasion to settle their scheduling disputes.

[149] Despite orders to disclose both the police and child protection files, I have neither before me.

[150] While the father has placed limits on the mother's day care options, it is notable he has already made arrangements for a sitter and not fully addressed this with the mother. He maintains he is opposed to day care.

[151] While he accused the mother of failing to keep him informed (and there is some evidence to support that) he has not been prepared to provide the mother with

information about his work schedule, the date he was to return to work and the child care he had arranged.

[152] He has arranged for walk in clinics for his daughter and not advised the mother.

### **Conflict**

[153] The parents have been back to court on four occasions for adjustments to their interim order.

[154] The parents have demonstrated, at least in the first year and one half, that they are unable to be flexible with each other. They cannot agree on basic issues such as pick up drop off times or where the transition will take place.

[155] For this year March 2014- April 2015 the father has been off work and available with far more flexible time than the mother.

[156] The mother has been attending school and placements that took her to various locations in the district. She also had responsibilities regarding her older child.

[157] She is impoverished as she completes this program. She was unable to draw social assistance because she is a student.

[158] While the father was able to absorb the transportation, he created obstacles and demanded the mother perform functions that were impossible.

[159] This tells me that while the child has a better financial base while with the father he is not likely to share that advantage with his child while the child is with the mother.

[160] The mother's course will, however, provide her with future employment in a field with which she has some familiarity.

### **Other restrictions**

[161] During the year the mother lived with her mother for periods of time.

[162] When she had to leave this residence she lived with C.L., a person with whom she had a previous on again off again relationship. He has allowed her to stay with him when he is there and when he is not staying in the home.

[163] Mr. L. stands as a parent to the mother's oldest daughter. He has been in addictions treatment and his relationship with the mother is conflictual at times. On one occasion police became involved.

[164] In July 2013 they signed a lease together for an apartment with an anticipated move in date of August 14<sup>th</sup>, 2014.

[165] Given the concerns expressed by Mr. H. the mother decided against moving in.

[166] When she was unable to stay in her mother's home she eventually returned to the apartment. Mr. L. continues to have contact with the oldest daughter although she testified that the child was not present with Mr. L..

[167] The mother is not concerned about her older child being exposed to Mr. L. and is always around when he is present with her oldest child.

[168] With no money and no car the mother has few options available. The maternal grandmother and Mr. L. are currently the main source of support for the mother. They have allowed her to reside in their homes when she has no other place to live.

[169] The father has made some serious accusations about the safety of the child should she be in the presence of Mr. L..

[170] Mr. L. reported the altercation between he and Ms. N. to the father who then applied to the court in August 2014 to ask for an order prohibiting the mother from having the child with this person.

[171] The parents have agreed that there shall be no contact between the child and Mr. L..

[172] While there have been many serious accusations in the affidavits this is not an issue the court has been asked to decide.

### **Residence**

[173] There have been short occasions when the mother has stayed in a shelter for the day and stayed overnight at the fathers' place due to lack of housing. On another occasion she stayed in a hotel.

[174] However, from the point of view of the child's safety, the mother has put her child's interests above her own.

[175] Each time the mother is concerned about her surroundings being unsuitable, she contacts the father and ask him to keep the child in his home.

[176] This seems to be an approach that focuses on the child despite the conflict between the mother and father.

### **Long term stability**

[177] The evidence I have before me does not speak to either the mother's or father's pre-relationship personal stability.

[178] Without the benefit of a contributing partner and living on a student loan, it is entirely reasonable to see how poverty can affect the mother's lifestyle choices.

[179] I am unable to draw any long term conclusions regarding the mother's employment or personal residential stability.

[180] It will be easier to make that assessment once she is settled into employment and more time has passed when one can have a better sense whether her personal relationship and residential stability have to do with her current situation or pre-existing life issues.

### **Drop off and pick up locations**

[181] There are many examples where the father imposes unreasonable conditions to access. Both parents become locked in battle over the schedule.

[182] While on paternity leave, on one occasion the father proposed access start at 7 p.m. on the mother's weekend when she was off school at noon. He refused a noon hour exchange as he advised he always goes out with his friends at 7 p.m. Friday night and would not make two trips into the city to deliver the child.

[183] In light of his ongoing criticism that the mother has cancelled many visits (when they could not agree on terms) one might reasonably expect the father to promote contact between mother and child when she is free from school and able to care for the child. The father's reasoning and behavior is unnecessarily rigid and controlling.

[184] The father has followed the mother, parked his car outside her residence and waited outside her residence to see for himself if she continued to live with Mr. L.. He does not deny this.

[185] Her evidence is that Mr. L. was not there and when he was there the child was not.

[186] While it is extremely unwise to continue to live with or share the apartment with someone who she has agreed is prohibited from being around her daughter, the mother has no money and no place to live!

[187] Without court intervention the father appears unable to accommodate in a manner that focuses primarily on the child.

[188] The father suggested at one point if the mother continued to insist he drop their child off on Tuesdays at her mother's home he might as well insist she pick the child up in Chester, a considerable distance from Halifax.

[189] In this case the mother offered alternatives and because those alternatives were not the school, they could not reach agreement.

[190] These inane antics achieve nothing of value for the child.

**The Law**

[191] The *Maintenance and Custody Act* governs this application. Section:

18 (6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

(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 or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs; 10 maintenance and custody R.S., c. 160  
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(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(f) 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;

**(g) the nature, strength and stability of the relationship between the child and each parent or guardian;**

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

**(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child; and**

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

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

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

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

(a) the nature of the family violence, abuse or intimidation;

(b) how recently the family violence, abuse or intimidation occurred;

(c) the frequency of the family violence, abuse or intimidation;

(d) the harm caused to the child by the family violence, abuse or intimidation;

(e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

(f) all other matters the court considers relevant. R.S., c. 160 maintenance and custody

(8) In making an order concerning 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, the determination of which, for greater certainty,** includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j). R.S., c. 160, s. 18; 1990, c. 5, s. 107; 2012, c. 7, s. 2; 2012, c. 25, s. 2.

[192] I have highlighted those sections that are most pertinent to the evidence provided.

## **Conclusion**

[193] This is a high conflict relationship. The communication between the two parents is seriously flawed.

[194] There is certain wisdom and case law supporting the proposition that a shared parenting arrangement will be difficult if not contraindicated in circumstances where the level of conflict and inability to arrive at a workable consensus impairs the relationship between the child and at least one of the parents.

[195] Both of these parents have cared for this child as primary parent in her 1 and ½ years of life.

[196] Neither speak of the details of her day to day life, her emotional development or physical needs.

[197] Neither speak to the other parent's inability to actually care for her except for the mother's current residential instability and her poor choice of compatible partners including Mr. H..

[198] The evidence respecting the mother's residential instability arose out of an agreement that was to last one year. The decision to have the mother return to a one year certification course while the father has daily parenting time with the child provided the father with more time with his child than he would ordinarily have.

[199] Both parents made this agreement before their relationship, such as it was, ended. That year has now ended.

[200] The father admitted in cross examination that previous to this year the mother had four years of residential stability in one area.

[201] While the father has made many allegations about the mother's general lack of stability and suggested she has a personality disorder, I do not have evidence at this stage to draw any conclusions regarding whether the current instability is a function of previous history and personality fragilities or the current economic circumstances that arise out of their joint decision to facilitate her completing her course.

[202] When the authority to make decisions was gradually placed in the father's hands by life's circumstances, he did not exercise his authority as is expected by law and in particular by sections 18 (6)(b)(d)(i) and (8) of the *Maintenance and Custody Act* noted above.

[203] The evidence supports a conclusion that the father wished to be a significant part of this child's life, that he voluntarily supported his child without need for court order and that he provided many necessary items to establish the child on her return from hospital.

[204] However, according to section (6) of the *Maintenance and Custody Act* parents are expected to cooperate and facilitate healthy contact between the child and their other parent.

[205] His exercise of authority did not focus on the best interests of the child. It resulted in limiting the mother's contact with her child and the child's contact with her step sister.

[206] Some of the father's concerns are legitimate. The primary problem of residential instability resulted from the party's choice to support the mother's training certification. This in itself has long term benefits.

[207] However, she lived with a person both agree ought not to be in close proximity to her child (for whatever reasons they agreed on that term.)

[208] Her current poverty is not necessarily long term. Once she is no longer a student she may be in a position to seek financial assistance.

[209] Her circumstances are poor. However, when she was unsure of her residence she placed the child with the father.

[210] She has little access to transportation and could not reasonably transport her child from the grandmother's place to the father's residence outside the city core.

[211] That was the frailty of the arrangement that placed the child with the father somewhere in late 2014.

[212] Public transportation was not easily available and the mother could not afford to pay for transportation.

[213] The father did not agree to transportation, times of transfer or place unless the details were in accordance with his preferences and his schedule. He continued to require to have "a plan" which she had to disclose to him before the visit.

[214] He has the greater ability to be flexible and he was not.

[215] Other than best interests and the factors the court is compelled by law to consider, the Province has legislated that the willingness of a parent to facilitate contact with the other parent is a factor to be considered.

[216] In these circumstances, the courts are obliged to consider which parent will best facilitate healthy contact with the other parent the goal being to preserve for the child that which is good and healthy in the relationship between the parents and the child.

[217] He has not facilitated the child's contact with the mother in a manner that promotes the child's connection with the other parent.

[218] Placing more authority with the father will likely result in less contact between the mother and child and the child and her step sibling.

[219] The evidence provided is ample proof that when the father has control he will impose restrictions to control and exert his authority.

[220] These restrictions do not have, as their primary objective, the best interests of his child.

## **Schedule**

[221] There are considerable uncertainties associated with the parent's schedule, the mother's residence, the day cares/child care providers, the parent's schedule.

[222] The mother is predicting a variable schedule.

[223] The father's April work schedule includes Saturday, Sunday, Monday and Tuesday. His schedule will change every three months. If he works weekends, he should be off during part of the week.

[224] He has not provided the court with workable information on that point.

[225] The current residential and financial stability rests with the father. However he resides outside the city area which is inaccessible for the mother and thus her older daughter at this time.

[226] The parents cannot agree on day care.

[227] If I place the child with the father outside the city and she is cared for by a day care provider outside the city historical conduct indicates the child will have little contact with her mother and her step sister.

[228] He is returning to work which requires him to come into the HRM area. He has the ability and means to transport himself and the child back and forth.

[229] The conflict and the mother's lack of resources coupled with the father's unwillingness to transport into the city have separated the child from her mother and older step sister who was with her up until the parents separated

[230] I cannot now place the child with the mother because her residential instability remains.

### **Order**

[231] I find it in the best interests of the child to preserve as much healthy contact with both parents as is possible.

[232] The child shall be in the joint legal custody of the two parents.

[233] When she is with either parent that parent has the right to make decision regarding her day to day care.

[234] I have lifted the prohibition against the grandmother helping out occasionally. Thus, in getting the child established in a day care the grandmother may be an intermittent child care provider should she agree.

[235] Each shall be responsible to keep the other informed as to any issues relating to the child's safety.

[236] They shall consult and agree on all major decisions respecting continuing major health education and medical intervention.

[237] They shall keep each other apprised of their telephone numbers and address and be available to provide ongoing information concerning the child's health and welfare.

[238] They shall each have reasonable access to third party service providers to keep themselves informed of their child's needs.

[239] Health information shall be communicated one to the other within 24 hours after medical intervention except in the case of emergency when the parent in whose care the child is at the time of the emergency shall address the emergency with appropriate intervention and thereafter as soon as practicable immediately inform the other parent.

[240] Given the limitations of the parent's current circumstances including their inability to agree on child care options that focus on the child's needs and connection with each parent for the interim, I order the parents to immediately research day care options close to the central region where the mother's intends to reside.

[241] The child will be placed in a day care close to the mother's intended place of work and residence.

[242] The opportunity to have contact with both the father and the mother and her step sister is increased considerably if the child is in a location closer to the mother.

[243] In the central region, when it is the mother's parenting time she can manage public transit and have the child with her during her off times without the chronic negotiations that occurred while she was in school. Transportation will not be an issue.

[244] In addition, because the father has to travel into the city or within the HRM district, he has the opportunity, the money and the car to do so without interfering with his parenting time.

[245] The mother shall immediately provide the father with information about available day cares in reasonable proximity to her residence.

[246] She shall consult him on this and they shall attempt to agree.

[247] In the event they disagree the mother shall have the final decision.

[248] This child care provider must be a registered and accredited daycare.

[249] In the event both parents agree on a private daycare, they may do so in writing.

[250] The day care will be a consistent child care provider rather than the proposal that the child be cared for by someone in the father's area and then another in the mother's.

[251] The day care will also be an objective third party eye on the child during the day. There will be objective third party evidence of the welfare of the child should there be ongoing dispute between the parents.

[252] This decision on day care shall be made within 30 days of the date of the decision.

[253] The costs of that day care shall be paid immediately by the father initially until the mother's income has been disclosed and the parents can determine through negotiation or court authority their respective contributions.

[254] Should the father fail to comply the mother may make immediate application to the court to determine child support and section seven expenses.

[255] Since both parents will likely be occupied by shift work immediately after obtaining their work schedule they shall provide the schedule to each other by email to assist each other in arranging adequate daycare as necessary.

[256] Should the father be free from work every second weekend he shall notify the mother immediately in advance as soon as he receives his three month schedule.

[257] While he is on that shift permitting him to have every second weekend free, the parents shall share every second weekend from Friday after day care to Monday return to day care.

[258] However, while the father works weekends should the mother be off work the child shall be in the mother's care.

[259] Pending stabilization of the parents' work schedules and the mother's work and residential circumstances and further order of the court the mother shall have parenting time every second weekend from Friday night to Monday morning.

[260] In the interim should she be able to stay at her mother's home the parenting time may be exercised there.

[261] Should the mother work weekends and the father be off work the child shall be in his care.

[262] Should both be working weekends each is responsible to obtain suitable child care arrangements and inform the other.

[263] Should the father be working weekends during **his parenting time** he may have alternate parenting time from Wednesday at 7:30 am. or earlier pick up at the mother's home to Friday at 7 p.m. after which he must deliver the child to the mother's residence or if she is working to such other place in close proximity to the mother's residence as the mother dictates.

[264] His alternate weekend parenting time shall not interfere with the mother's alternate weekends.

[265] Should he opt for week day parenting time to replace the weekend he is working, the mother shall have an alternate to the overnight Wednesday to Thursday during that week or weekend.

[266] This will put the child with each parent during their off time minimizing but not eliminating the need for third party care.

[267] Should the mother work weekends equal alternate time shall be allotted to her as agreed upon or on review.

[268] Should the mother be unable to provide a residence in the interim as she has in the past she shall ensure the child remains in the father's care until such time as she establishes a residence for herself and her child.

[269] The prohibition against living with or in Mr. L.'s apartment continues and the mother shall not exercise parenting time in his apartment whether or not he is physically present.

[270] The mother shall be responsible on her parenting time to deliver the child to day care on Monday mornings of her weekend parenting time.

[271] She shall also have the child with her Tuesday after day care to Wednesday mornings return to day care and Thursday to Friday mornings return to day care.

[272] The parents shall find a medical clinic or medical provider near the mother's residence and continue with the one nearest the fathers as necessary.

[273] They shall be responsible to ensure that each is advised of the child's health situation where necessary to assure the child's medical treatment is consistent and safe.

[274] They shall inform each other should the child attend and advise of any recommendations including prescription medication to ensure there where ever the child is she has access to the recommended treatment.

[275] At this time and until further order the father shall **provide all transportation to and from his home to the mother's residence.**

[276] When it is his parenting time and he is required to deliver the child to day care he shall be responsible for that transportation to day care.

[277] Once the mother has established a more permanent residence and employment stability, the transportation clause and the schedule may be reviewed on application of either party.

### **Vacations and holidays**

[278] Should birthdays or mother's and father's day fall on a day when the child is with the other parent, the father shall have the right to have the child with him on his birthday and father's day, the mother on her birthday and mother's day between the hours of 10 a.m. and 6 p.m. after which the child shall be returned to the other parent.

[279] The parents agree to share vacations including Christmas, Easter.

[280] In all odd numbered years the father shall have the child in his care Christmas Eve at 4 p.m. to Christmas day at 4 p.m. and thereafter with the mother from 4 p.m. Christmas day to Boxing day The balance of the vacation shall be shared equally.

[281] Likewise on every even numbered year the father shall have the child with him at 4 p.m. Easter eve to 4 p.m. Easter Sunday and thereafter with the mother at 4 p.m. Easter Sunday. Thereafter, the ordinary schedule resumes.

[282] The mother shall have the child with her on even numbered years for Christmas and odd numbered years for Easter.

[283] Thereafter, the ordinary schedule continues.

[284] There is no need at this time to consider March break.

### **Summer**

[285] Given the age of the child each parent may have one week during the summer when they may have the child with them for their vacation. As the age of the child progresses and the parties agree or a court has more information about the parent's vacation periods, this may be expanded.

### **Review**

[286] I anticipate the necessity of a review once the parents have a set schedule of work and their lives stabilize and I direct the matter return to fine tune the parenting schedule.

[287] Two week before any review brought on by either party, each party shall file an affidavit outlining the course of parental contact concerning the child and any outstanding issues that require the courts attention.

### **Counselling**

[288] I am aware that the parties attempted couple counselling and were unsuccessful in achieving a peaceful co-parenting strategy.

[289] I recommend that each take individual counselling to asset in developing strategies to reduce the conflict between the two.

[290] In the event this matter returns to court, the response of each parent to this expectation may be considered.

### **Transportation**

[291] The father is responsible for all transportation between his home and the mother's home or his home and the day care while the child is in his care .

### **Child Support**

[292] The father is responsible to pay all child care expenses until further order of the court.

[293] The parties may bring this back to court once the mother is employed.

[294] Counsel for the father shall draft the order.

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Moira Legere Sers, J.