SUPREME COURT OF NOVA SCOTIA
Citation: *McIntyre v. Veinot*, 2016 NSSC 8

Date: 2016-01-07
Docket: No. 1204-4420C/ SKD 48891
Registry: Kentville

Between:

Roy St. Clair McIntyre

Applicant

v.

Natasha Lynn Veinot (McIntyre)

Respondent

Judge:	The Honourable Justice Pierre L. Muise, J
Heard:	October 26, 27, 28 and 29, 2015, in Kentville, Nova Scotia
Final Written Submissions:	Received December 14, 2015
Counsel:	The Applicant, Roy St. Clair McIntyre, self-represented Matt Conrad, representing the Defendant Natasha Lynn Veinot

By the Court:

INTRODUCTION

[1] The parties were married in July 1998 and divorced in May 2008.

[2] There were, and continue to be, the following three children of the marriage: Alexander James McIntyre, born in January 5, 2002; Rebecca Kathleen McIntyre, born August 28, 2003; and, Rachael Lynn McIntyre, born September 14, 2005.

[3] Alexander is autistic. No such special needs conditions have been identified in relation to Rebecca and Rachael.

[4] The Consent Corollary Relief Judgment dated May 21, 2008 provided that the parties were to share joint custody of the children, with their primary residence being the home of the Respondent in this application, Dr. Natasha Veinot. However, it also provided that the children were to be parented every alternate week by the Applicant herein, Roy McIntyre, such that each party parented the children 50% of the time. It further provided that the parties had joint decision-making authority in relation to Rachael and Rebecca. In addition, they were to continue to consult with respect to Alexander's health, education, religious training

and extracurricular activities. However, in the case of disagreement, Dr. Veinot had the final decision-making authority.

[5] That the same parenting arrangement continued until Mr. McIntyre moved to Alberta in late July 2015, except that a variation order issued December 17, 2009 provided that Mr. McIntyre was free to enroll Alexander in the SMILE Program on the Saturdays that Alexander was in his care, irrespective of whether Dr. Veinot agreed.

[6] In addition, a variation order issued August 13, 2010 provided, among other things, that the residence of the children was not to be moved from West Hants, Nova Scotia, without the consent of the other parent or upon application to the Court.

[7] On April 30, 2013, Mr. McIntyre lost his full-time employment in Nova Scotia due to his employer, Sepracor Canada Ltd., closing its operations. He secured part-time employment in Nova Scotia starting July 7, 2013, with Slanmhor Pharmaceutical Inc. By June, 2015, he lost his part-time employment with Slanmhor due to it closing its operations.

[8] Commencing in 2013, he searched for full-time employment in, and then also outside, Nova Scotia. In June 2015 he accepted an offer for a full-time job in Olds, Alberta, it being the first firm offer he had received.

[9] On June 17, 2015, he filed the within Notice of Application to Vary based upon the above described loss of employment and the need to move to obtain new employment. His Application requested an order varying the Corollary Relief Judgment to: change the parenting arrangement such that he would have custody of all three children and they would reside primarily with him in Alberta, and such that Dr. Veinot would have access; and, reduce child support obligations retroactive to April 1, 2015. He also proposed corresponding changes to the distribution of the Canada Child Tax Benefit and the Universal Child Care Benefit.

[10] The application is opposed by Dr. Veinot. It is in her position that the children should remain in Nova Scotia and be parented primarily by her, with Mr. McIntyre exercising access in Nova Scotia only, except for access in Alberta once per year, with Rebecca and Rachael only, during their Spring Break. It is her view that there should be no access with Alexander in Alberta until a concrete and doctor approved plan is in place to ensure he will be able to cope with the travel. She further seeks a retroactive increase in Mr. McIntyre's child support obligations, dating back to 2009.

[11] Mr. McIntyre proposes that neither party be required to pay prospective child support irrespective of where the children reside, to account for high access costs.

[12] Dr. Veinot proposes a reduction in Mr. McIntyre's child support obligations to account for increased access costs on the assumption the children will remain in Nova Scotia, unless the access costs are split.

[13] Mr. McIntyre initially also sought elimination of the requirement to maintain their life insurance policies with each other as trustee and the children as beneficiaries. However, he withdrew his request for that relief because his employment is suitable to permit him to pay that premium.

[14] Both parties agree that Mr. McIntyre's move to Alberta constitutes a material change in circumstances warranting an assessment of the parenting arrangement, including where the primary residence of the children should be.

[15] At all times, up to and including the last variation application, there was no indication, and it was not envisioned, that Mr. McIntyre would be moving out of Nova Scotia.

[16] More likely than not, the move is more than temporary. Mr. McIntyre indicated he was not currently continuing his job search to attempt to locate

employment in Nova Scotia. He secured his current position in Alberta after an extensive job search which included Nova Scotia and proved unfruitful in Nova Scotia.

[17] The distance between the parties makes the established shared parenting arrangement unworkable.

[18] Rebecca and Rachael have expressed a desire to move to Alberta and live with their father.

[19] Therefore, I agree that there has clearly been a material change in circumstances.

[20] Each party challenges the credibility and reliability of the other and some of their witnesses.

ISSUES

[21] Therefore, the following issues are to be determined:

1. Did the witnesses provide credible and reliable evidence?
2. What parenting arrangements are in the best interests of the children?
3. What, if any, retroactive change should be made to child support obligations?
4. What, if any, arrears of child support are owing?

5. What, if any, child support is payable prospectively?
6. What, if any, order should be made regarding distribution of the Canada Child Tax Benefit and the Universal Child Care Benefit?

LAW AND ANALYSIS

ISSUE I: DID THE WITNESSES PROVIDE CREDIBLE AND RELIABLE EVIDENCE?

[22] Factors to consider in making credibility determinations are discussed in **Baker-Warren v. Denault** 2009 NSSC 59 at paras. 18 to 20, 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. c. Gagnon, 2006 SCC 17 (S.C.C.), 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. M. (R.E.), 2008 SCC 51 (S.C.C.), para. 49.
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> 19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:
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> 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: Novak Estate, Re, 2008 NSSC 283 (N.S. S.C.);
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> 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. Chorny (1951), [1952] 2 D.L.R. 354 (B.C. C.A.);

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 (Ont. C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in Novak Estate, Re, 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., [1966] 2 S.C.R. 291 at 93 and R. v. J.H. supra).

[23] Credibility factors are also set out in *Novak Estate, Re,* 2008 NSSC 283, at paragraphs 36 and 37, as follows:

[36] There are many tools for assessing credibility:

> A) The ability to consider inconsistencies and weaknesses in the witness's evidence, which includes internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the testimony of other witnesses.
>
> B) The ability to review independent evidence that confirms or contradicts the witness' testimony.
>
> C) The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in ***Faryna v. Chorny***, [1951] B.C.J. No. 152, 1951 CarswellBC 133, it is "in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those

> conditions", but in doing so I am required not to rely on false or frail assumptions about human behavior.
>
> D) It is possible to rely upon the demeanor of the witness, including their sincerity and use of language, but it should be done with caution ***R. v. Mah***, 2002 NSCA 99 at paragraphs 70-75
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> E) Special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate evidence. ***R. v. J.H.*** [2005] O.J. No. 39 (Ont. C.A.) at paragraphs 51-56).

> [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 paragraph 93 and ***R. v. J.H.*** *supra*).

Credibility and Reliability of Roy McIntyre's Evidence

[24] Mr. McIntyre has an interest in the outcome of the proceedings.

[25] However, he still provided fair and balanced evidence. For example, despite being of the view that Alexander sometimes understands that he has misbehaved and that there is a consequence for his behavior, he readily conceded that sometimes he doesn't. Similarly, he testified that change sometimes bothers Alexander, and sometimes it does not.

[26] He testified in a straightforward un-evasive manner, readily providing answers that were directly responsive to the questions posed, and volunteering to

provide additional information on the issues raised if desired by the cross-examiner.

[27] With the exception of the errors he highlighted in his statement of expenses and in recalling the breakdown of his income from severance and bonuses, his oral evidence was internally consistent, and consistent with his prior affidavit evidence and filed statements. He made no attempt to mask his errors. He readily conceded and corrected them. Therefore, in my view they did not detract from the credibility and reliability of his evidence.

[28] His evidence was also consistent with the portions of the communication books and text messages entered into evidence, to the extent the relevant information was contained in those documents.

[29] He maintained a calm and respectful demeanor, even during prolonged questioning on points of minimal relevance, and during questioning which was based upon an inaccurate representation of other evidence, such as the suggestion that, in the communication books, it was not said that the girls were scared of Alexander. In such circumstances, he clarified what, in his view, was the proper representation, and answered the questions on that basis.

[30] He readily conceded points against interest. Those included that: Dr. Veinot's father, Murray Grant Veinot, played a large role in the upbringing of the children; the children feel fondly of Shaun Savoy, Dr. Veinot's fiancé; and, the cost of living in Alberta is much closer to that in Nova Scotia than he initially thought, so it is not an issue that needs to be considered.

[31] He readily acknowledged that: he was in the best position to bring forward more detailed information regarding the school arrangement for Alexander in Alberta; but, it was not something he thought of. He did not try to make excuses. He accepted responsibility for the information not being before the Court.

[32] Similarly, he admitted that he did not think of the angle of applying for an emergency application in relation to the issue of protecting the girls from Alexander, and, did not think to delay the commencement of his employment.

[33] He readily agreed: Rebecca was a fast runner; Alexander had difficulty running; and, Rachael was also faster than Alexander. He also readily admitted that he had not been personally aware of Alexander chasing the girls with scissors.

[34] He clearly distinguished what he had observed himself from what he had learned from other sources, so as to not leave to court with a distorted impression.

[35] He presented as genuine, and avoided drama or theatrics.

[36] The manner in which he gave his evidence presented more as evidence of a witness without an interest in the proceedings doing their best to provide accurate, complete, fair and balanced evidence.

[37] I found him to be a very credible and reliable witness.

Credibility and Reliability of Dr. Natasha Veinot's Evidence

[38] She readily agreed the girls did not need to have been injured to the point of going to the hospital to be afraid of Alexander.

[39] She volunteered that, since Mr. McIntyre moved to Alberta, the children have been missing him and Alexander had started bedwetting again. She also stated that the children love Mr. McIntyre.

[40] These were points which bolstered her credibility and reliability.

[41] However, there were a significant number of points which detracted from the credibility and reliability of her evidence, and raised significant concerns.

[42] In her affidavit sworn October 25, 2015, at paragraph 7, she deposed that "the girls still do not convey to me directly that they want to move to Alberta to live with Mr. McIntyre". In my view, that statement is at least misleading. Attached as exhibit A to Mr. McIntyre's Supplemental Affidavit, sworn August 4,

2015, is a copy of a letter hand printed by Rachael, and addressed "dear Mom", which was left on Dr. Veinot's bed. In that letter, Rachael states, among other things, "I want to live with dad". Rachael and Dr. Veinot knew at that point that Mr. McIntyre was going to move, or had already moved, to Alberta. In my respectful view, that letter is direct communication of the desire to live with her father in Alberta.

[43] When that letter was put to Dr. Veinot on cross-examination, to show that Rachael had expressed her wish to her directly, Dr. Veinot responded: "I said verbally they have never said it to me." However, that was the first time she used the word "verbally". In my view, Dr. Veinot was being misleading when she indicated the girls had not told her directly about their desire to live with their father.

[44] In addition, on further cross-examination, Dr. Veinot stated that, in fits of anger, Rachael had said she wanted to go live at her dad's house and stormed out to her room, only to come down shortly after and tell Dr. Veinot that she loved her. That is inconsistent even with her statement that Rachael never verbally told her directly she wanted to live with her father.

[45] Mr. McIntyre referred Dr. Veinot to a statement she made in communications between them that she was concerned about Rebecca's belief that she would be living with Mr. McIntyre. He asked whether Rebecca had verbalized that to Dr. Veinot. Dr. Veinot's response was that she could not say if Rebecca verbalized it or Mr. McIntyre said it. She also made reference to talking to mothers of Rebecca's friends and teachers about what Rebecca said to them. She ended by saying she did not recall how she came to know. She acknowledged that she at least had information regarding Rebecca's wish to live with her father. However, she stated she did not take it to be a serious thing.

[46] Dr. Veinot would have received this information, from whatever source, at a time when Mr. McIntyre had an outstanding application to have Rebecca and Rachael move out and live with him in Alberta. The application was based, on, among other things, their desire to live with him. Therefore, Dr. Veinot's evidence that she does not know the source of the information does not appear to be "in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions". One would reasonably expect that, in such circumstances, Dr. Veinot would have listened with keen interest and total attention to such information, and would have had a vivid memory of the source of the information. In addition, in those

circumstances, it does not make sense that she would not think Rebecca's expression of her wish to live with her father to be a serious thing.

[47] It is also inconsistent with Rebecca's statement to the Children's Wishes Assessor that she told both of her parents how she felt about who she wanted to live with.

[48] In my view, Dr. Veinot was less than forthright on this issue.

[49] At paragraph 22 of her October 25, 2015 affidavit, Dr. Veinot also stated that she did not recall the girls bringing up to her, "directly", the incident where Alexander chased them with scissors. Given the misleading and less than forthright affidavit evidence she gave in relation to not being informed "directly" of the girls wishes, I have reliability concerns regarding the evidence that they did not tell her about the scissors incident.

[50] Dr. Veinot, in her July 28, 2015 affidavit, and in her oral evidence, acknowledged that Alexander: is unpredictable; has been physically aggressive towards the girls; and, does have violent safety concerns with his behaviors, though she is "more" concerned for his own personal safety. She also stated that she would not leave Alexander alone with the girls.

[51] In addition, she signed, on July 21, 2015, a parenting statement which was filed with the Court on July 22, in which she described Alexander's special needs or disabilities as being "ASD (autism), severe with violent behaviors and major safety concerns atypical of most autistic children".

[52] She further added that they have to tell Alexander to be careful around his great-grandmother because she has osteoporosis and a hug from Alexander could break her bones.

[53] Despite all of that, she indicated that she does not believe the girls would be scared of Alexander. She explained that was because they would understand him. In my view, even though they understand that his behavior stems from his disorder, that would not make it such that they would not fear injury themselves. In addition, it is not a reasonable explanation for Dr. Veinot not believing that they would not be scared of him, particularly when she has stated that she believes all of her children. She explained that she believed that they said that they were scared, but she did not believe that they were really scared. She said she does not see it in her home.

[54] She stated she had no "major" the safety concerns regarding Alexander.

[55] Her comment that she is "more" concerned about him hurting himself is based upon the following.

[56] Since he needs pressure, he will push against things, even things as hard as a cinder blocks. He does not feel pain. For instance, he has kicked things to the point of breaking his foot, without feeling the pain one would normally expect him to feel. He is uncoordinated. He often falls quite hard. He does not differentiate between gentle and rough. He might let himself flop from a full standing position. He has injured himself more than anyone else. He may also fling things forcefully without intending to do so. He may unintentionally break a window by closing a door too hard. The girls understand the potential risk. If she sees a situation where the girls look uneasy, she may step in.

[57] In my view, Dr. Veinot's use of language reveals a recognition of concern for the physical safety of others that she is minimizing. I highlight, for instance, the references to: having no "major" safety concerns; being "more" concerned about him hurting himself; he injuring himself "more" than anyone else; and, that she "may" step in if the girls look "uneasy".

[58] She also displayed some evasiveness when being asked questions regarding the safety of the girls. I give the following example. She was asked whether she

really did not understand why the girls would feel unsafe in her home. It was a clear that Mr. McIntyre was referring to safety risks posed by Alexander. She answered that she could think of 100 reasons why they would not feel safe in her home, such as if she did not lock the door at night. In my view, this was a tactic to attempt to evade the question. Mr. McIntyre had to bring her back to the fact that he was referring to safety risks from Alexander before she addressed the question.

[59] In my view, Dr. Veinot minimized the safety risk posed by Alexander towards others, particularly the girls.

[60] Dr. Veinot also explained the wording used in the parenting statement by indicating that that is the way it is characterized in the actual diagnosis obtained from the psychologist. We did not hear from the psychologist to get his or her interpretation of the statement. However, on its face, the statement does not limit the safety concerns to concerns for Alexander's own safety. It also does not limit the violent behaviors to violent behaviors involving only himself and inanimate objects.

[61] Dr. Veinot displayed evasiveness when being questioned regarding whether or not she knew that Rebecca was being bullied at school. She stated that when Rebecca comes in they talk about things. She was asked directly whether Rebecca

told her she was being bullied in school. Dr. Veinot responded that Rebecca did not use the term "bullying" but she told her good and bad things that happened at school. However, she did not specify what those things were so that the Court could assess whether or not it was a reference to bullying activity.

[62] Similarly, Dr. Veinot was asked whether she was aware that Rebecca was saying that she felt that she could not talk to her mother. Instead of addressing the question, she answered that Rebecca talks to her a lot, such as every night when she puts Rebecca to bed, at which time Rebecca talks to her about her day, how it went and what is going on. Her attention was brought to the text exchange between Rebecca and Lisa McIntyre, at page 81 of Exhibit 10A, where Rebecca stated: "I don't want to call on the odd chance mom would overhear" and "it's personal and mom wouldn't understand". Then, Dr. Veinot was asked again whether she was aware the Rebecca didn't feel she could talk to her about things. She responded again that she felt that Rebecca talks to her about a whole lot of things. She did not provide specifics from which it could be gleaned whether or not Rebecca talked to her about serious matters, such as bullying. She did not answer the question.

[63] In my view, Dr. Veinot's evasiveness in answering the questions regarding knowledge of bullying and Rebecca's comments regarding not being able talk to

her mother were to avoid conceding Rebecca had not confided in her regarding being bullied at school.

[64] If Dr. Veinot was trying to convey that Rebecca talked to her about serious things, such as bullying, it is inconsistent with the text message, which was admitted only for the fact that it was said. It is also inconsistent with Rebecca's comments to the Ms. Reimer during the interview for the Children's Wishes Assessment that she had told her father about her thoughts self-harm having returned and that her father was going to talk to her mother about it. I infer from that comment that Rebecca did not talk to her mother about that very serious issue.

[65] Dr. Veinot was asked if she became aware of Rebecca's thoughts of self-harm having returned because she saw it in the Children's Wishes Report. She responded by referring to a historical situation of self-harm. In my view, that was an evasive answer, which bordered on attempted deceit.

[66] It was suggested to Dr. Veinot that she was not aware Rebecca had recently been feeling like hurting herself. She responded by stating that she booked an appointment with Dr. Banks because she knew Rebecca would be upset and did not want her to get back there. Once again, she, in my view, evaded conceding that she was not aware of that.

[67] Then, Mr. McIntyre referred her to her own email of September 23, 2015 to him, in which she said the children had not been distressed. He suggested to Dr. Veinot that she had no idea that Rebecca was in distress. Dr. Veinot responded by stating that Rebecca was upset because she had started school and that she missed Mr. McIntyre; but, that she was not stressed or distressed beyond the normal point. She referred to a situation where Rebecca was upset about not being able to open her combination lock at school, but was fine the next day.

[68] Mr. McIntyre, once again, suggested to Dr. Veinot that she had no idea what Rebecca was going through. Dr. Veinot responded that Rebecca had not said those things to her. In my view, that is the closest she came to providing a non-evasive answer to the question regarding knowledge of Rebecca's thoughts of self-harm. However, it still did not completely answer the question.

[69] Dr. Veinot was asked whether it was possible that the girls did not feel that they could talk to her about important issues. She responded: "No, sometimes they choose to tell people different things". In my view, Rebecca not talking to her mother about her thoughts of self-harm shows that she feels she could not talk to her about that important issue. Consequently, Dr. Veinot ought reasonably have conceded at least that point.

[70] Dr. Veinot's attention was brought to a text message from Rebecca to Lisa McIntyre at page 93 of Exhibit 10A. It is a comment in relation to Dr. Veinot and states: "She is a dramatic women (sic). She thinks everything I say, do and breathe is dramatic." Dr. Veinot's attention was also brought to an email dated October 6, 2015 from Dr. Veinot to Mr. McIntyre in which she stated that she was "not bogged down by the dramatic flare Becca often exudes". Dr. Veinot was then asked whether she agreed that Rebecca was dramatic. She initially attempted to evade the question by stating that Rebecca takes drama. She then stated that Rebecca was emotional and liked flair. She was reminded that, in her email, she had said "dramatic flare". However, she resisted conceding that she considered Rebecca to be dramatic. In my view, more likely than not, she does consider Rebecca to be dramatic.

[71] Dr. Veinot, in her affidavit sworn July 28, 2015, at paragraph 27, stated that each time Alexander has been physically aggressive towards his sisters, either she or her father have told Alexander that his behavior is not appropriate. At paragraph 29, she indicated that when Alexander displays behavioral issues, after he has calmed down, they speak to him to help him deal with the situation in a different way. It sometimes has an effect upon him, and sometimes does not. In my view,

there is some inconsistency between these statements and Dr. Veinot's evidence at trial that Alexander does not understand that he has misbehaved.

[72] Dr. Veinot also provided some inconsistent evidence and some evasive evidence in response to questioning regarding respecting the privacy of communications between the children and Mr. McIntyre or their step-family.

[73] She stated that she tried not to invade their privacy. However, she monitored Internet usage because, due to safety concerns, she wanted to know who they were talking to, what was being discussed and what sites they were on.

[74] That is obviously a reasonable explanation for monitoring Internet usage.

[75] However, when Dr. Veinot was asked whether she respected the privacy of conversations between the children and Mr. McIntyre, his wife, Lisa McIntyre, or their stepsiblings, she responded: "Yes, I pretend I don't know". She juxtaposed this answer with an emphasis on her familiarity with professional confidentiality. In my respectful view, maintaining confidentiality is far different from respecting privacy. For that reason, I found this answer to be evasive.

[76] It was brought to Dr. Veinot's attention that Rebecca was saying that she checks their texts. She responded with the explanation that she did not want them writing anything they would regret when they were 19 and in Dal Dentistry. In my

view, that answer was given to deflect attention from the fact that she does check their texts, even those exchanged with their father and stepmother.

[77] Dr. Veinot was asked whether she checked their text messages on the Sunday preceding the hearing of this Application, while he was having lunch with them. She initially responded in the affirmative and that she often checks their texts. Then she stated that she sometimes picks up their phones to charge them and might accidentally have touched the screen, as she is not a person who is technologically inclined. Mr. McIntyre pointed out to her that he received a notification, while he was at lunch with the girls, that their text messages were being checked from a location identified as 4912 Highway 14, which Dr. Veinot acknowledged was her house. She then stated that she checked their text messages periodically, and looked at them, even if they were from Mr. McIntyre, Lisa McIntyre or the girls' stepsiblings. However, she still refused to concede that she did not respect their privacy.

[78] Rebecca's comment of August 20, 2015, to Lisa McIntyre, that her mother told her she could not Skype with anyone except Mr. McIntyre, was put to Dr. Veinot. She explained that direction by stating they were having problems getting Skype working, Lisa's email was not working, Rebecca was waiting for a password from Mr. McIntyre, and Dr. Veinot did not understand how it all worked

because Rebecca is the one who sets it up. In my view, that explanation did not make sense. It was not a reasonable explanation for forbidding Rebecca from Skyping her stepmother and stepsiblings. If Rebecca is the one who sets Skype up, and she was able to make it work to communicate with her stepmother and stepsiblings, I see no reason to prevent such communication.

[79] At page 15 of Exhibit 10A, there is text message dated August 21, from Rebecca to Mr. McIntyre, in which she stated, among other things: "Mummy told me that the reason the judge won't talk to me is because that I would be better off in Nova Scotia because I was born and raised there … ." Dr. Veinot agreed that Rebecca said that. However, in my view, the explanation she provided for why Rebecca would have said that did not make sense. She stated that, during a conversation she had with Rebecca, Rebecca was saying that sometimes she did not feel that she had a voice. She wanted to be able to speak for herself and choose for herself. Dr. Veinot responded to Rebecca by telling her that sometimes we all feel like we do not have a voice or a choice, even as adults. In my view, this conversation, assuming it occurred, would not reasonably prompt Rebecca to say that the judge would not talk to her because she was better off in Nova Scotia, where she was born and raised.

[80] Further, Dr. Veinot used the statement regarding adults sometimes not having a choice, as a springboard to denigrate Mr. McIntyre for the fact that he is the one who left the relationship, by giving, as an example, that they were no longer together as a family. In my view, this displays continued animosity towards Mr. McIntyre for the fact that he left the relationship. That is a further factor which diminishes the credibility and reliability of Dr. Veinot's evidence.

[81] At page 47 of Exhibit 10A there is a text message from Rebecca to Mr. McIntyre noted as having been sent October 13 at 6:52 PM. It states: "Our Mom just had an hour conversation with about me being too young to have real perspectives … ." The Children's Wishes Assessment Report was delivered to the court the morning of October 13. This text, and the relationship between its timing and the timing of the filing of the Report were put to Dr. Veinot. Dr. Veinot explained the text as follows. Rebecca had just talked to the assessor the night before. Dr. Veinot had not read the assessment because her best friend who lives in Nunavut was in Nova Scotia for a week and a half and that was the only night that she would have a chance to visit her. So she did not have a chance to read the Report that day. She hired a babysitter to look after the children so she could go visit her friend. Before leaving, she went to see Rebecca. Rebecca seemed distressed. She asked Rebecca how she was doing. Rebecca responded that she was

frustrated because Dr. Veinot did not trust her on the Internet. She told Rebecca that she trusted her, but did not trust others. For example, there could be a photo of her room on the Internet that would be improperly used. Rebecca told Dr. Veinot that she felt that she might not always be there for her and did not love her. Dr. Veinot told Rebecca that an example of how much she loved her was when she had slept on the family room floor all night when Rebecca was sick and throwing up so that she would be there when Rebecca needed her. Rebecca responded that it sometimes did not feel like it. At that point, Dr. Veinot referred Rebecca to the poem "Footprints". After reading the poem, Rebecca was silent. Then Dr. Veinot told Rebecca that that is what life is about and that that is what love is. Rebecca seemed happy with that.

[82] In my view, the conversation described by Dr. Veinot would not reasonably explain Rebecca's comment that her mother had a conversation with her about being too young to have real perspectives.

[83] In addition, it does not appear to make sense that Dr. Veinot would not have at least taken a quick look at the Report even though she made arrangements to go visit her friend. If her description of the conversation is true, she would have spent a fair amount of time with Rebecca. It would have taken some time for Rebecca to read and digest the poem. Therefore, she was not so pressed for time that she did

not have at least a few minutes to look at the Report. The substantive portion of the report is less than three pages long. It is straightforward and easy to read. It contains close to a page of the direct quotes from the children. The Report was an important element in the Application which the parties had been awaiting. The relief sought in the Application is for the children to move to Alberta with Mr. McIntyre. In those circumstances, it seems unlikely that Dr. Veinot would not at least take a quick look at the Report. Even if Dr. Veinot only read the final thoughts of the assessor, which is three short paragraphs on the last page, she would have been aware that the children had expressed a wish to live with their father. In my view, that knowledge is what would most reasonably explain Rebecca's description of the conversation Dr. Veinot had with her.

[84] In describing some of her conversations with Rebecca, in my view, Dr. Veinot, in an attempt to portray emotional interactions between her and Rebecca, incorporated a level of theatrics into her presentation of evidence. Her description came across as forced and exaggerated at best. It did not appear genuine and heartfelt.

[85] At the hearing, Dr. Veinot testified that her primary residence was 4912 Highway 14, in Windsor. However, in her communication book entry for June 1, 2014, she stated that she did not reside in Windsor, and, in her communication

book entry for January 30, 2015, she stated that her primary residence was in Queensland.

[86] As an explanation for these inconsistencies, she stated that she was a layperson and did not keep the terms consistent. In my view, that explanation does not make sense.

[87] An alternate explanation she provided was that, during the week that she did not have the children with her, her primary base was in Queensland. That explanation that does make some sense. However, if it is the real explanation, one would have expected her: to provide that as the explanation, and not resort to using inconsistency of terminology as an excuse; and, to say that in the communication book, rather than make unconditional statements that she does not reside in Windsor, and that her primary residence is in Queensland.

[88] Dr. Veinot acknowledged that Alexander has less difficulty when there is a male presence. However, she indicated that what he needed was "work man" time, and she resisted acknowledging that Mr. McIntyre could provide that positive male influence. She stated that Alexander sees her father and her fiancé as "work men", because he sees them do handyman things, even though it is not their job. She agreed that Mr. McIntyre also did some "work man" or handyman things.

However, she disagreed that Alexander would see him the same way as her father and fiancé, stating that he would see Mr. McIntyre as a chemist, not a worker man.

[89] In my view, it does not make sense that Alexander would perceive his grandfather and his mother's fiancé as "work men" due to them occasionally doing some handyman tasks, but would not perceive Mr. McIntyre in the same way when he occasionally does handyman tasks also. Alexander had very frequent contact with all three males. Therefore, there does not appear to be any logical reason why he would have a different perception of them as "work men".

[90] Further, as highlighted in the rhetorical question posed by Mr. McIntyre as to whether Alexander even knows what a chemist is, it is unlikely that Alexander would understand what Mr. McIntyre does for a living.

[91] In my view, Dr. Veinot's refusal to concede that Alexander might benefit from Mr. McIntyre's male presence highlights the biased nature of her evidence.

[92] In general, she heavily slanted her evidence so as to exaggerate points she perceived to be in her favor, and minimize or deny points in Mr. McIntyre's favor. It was clear that it was evidence given as an interested party.

[93] Considering these points, I have concerns over the reliability of her evidence, and her credibility to the extent of providing her evidence in a way which was, at times, misleading.

[94] Except as otherwise indicated, where her evidence conflicted with that of Mr. McIntyre, I accepted Mr. McIntyre's evidence over hers.

Credibility and Reliability of Murray Grant Veinot's Evidence

[95] He did not appear to deliberately provide false evidence.

[96] However, even during a very brief cross-examination, he became aggressive and argumentative with Mr. McIntyre, displaying a confrontational and accusatory tone which revealed obvious bitterness/animosity towards him.

[97] He took the opportunity to state to Mr. McIntyre that he had left the family before Rachael was one year old, when such information was irrelevant, both to the question asked, and to parenting ability. Further, the tone of his testimony revealed his significant level of animosity.

[98] Much of his affidavit evidence was worded very similarly to parts of the affidavit evidence of his daughter, Dr. Veinot, indicating collaboration between the two of them.

[99] He has a very close relationship with Dr. Veinot and her children. He is a large part of their lives. He has helped look after them since they were small. He naturally would miss them if they moved to Alberta. Therefore, he has an interest in providing evidence in support of his daughter.

[100] Even though he did not try to completely evade questions, he was reluctant to acknowledge that Rachael had told him she wanted to live with her father, stating instead that he had heard her say that she wanted to go live in Alberta after grade 5. Even if that's all she said, the only logical inference is that she was referring to living with her father in Alberta. Therefore, in my view, Mr. Grant was resisting making a reasonable concession.

[101] In my view, his interpretation of the events he witnessed and his evidence were biased in favor of Dr. Veinot.

[102] He testified that the girls did not tell him they wanted to live with their father prior to the preparation of the Children's Wishes Assessment, nor prior to him swearing his affidavit. In his affidavit sworn July 28, 2015, he stated that when he was around the children there were no discussions about the girls wanting to live with Mr. McIntyre.

[103] The interview for the Children's Wishes Assessment occurred on October 12, 2015. Rebecca stated that she had told both her parents and that her grandfather, Mr. Grant, knew.

[104] In his affidavit of August 4, 2015, Mr. McIntyre stated that he had witnessed, in his own driveway, the children telling their grandfather, Mr. Veinot, that they wanted to live with Mr. McIntyre. For reasons already noted, I found Mr. McIntyre's evidence to be credible and reliable.

[105] Therefore, in my view, more likely than not, Rebecca communicated, in some fashion, to Mr. Veinot, prior to the Assessment, that she wanted to live with her father. She may not have used those exact words. Just like Mr. Grant did not interpret Rachael saying she wants to live in Alberta as meaning that she wants to live with her father, he likely would have capitalized on such indirect communication to answer that he had not been told, instead of, again, making a reasonable concession. Consequently, I cannot accept his evidence as being accurate. In my view, at least Rebecca did communicate her wish to live with her father to Mr. Veinot prior to when he swore his affidavit on July 28, 2015.

[106] As with Dr. Veinot, where Mr. Veinot's evidence conflicted with that of Mr. McIntyre, I accepted that of Mr. McIntyre.

Credibility and Reliability of Lisa Whitehead 's Evidence

[107] On direct examination, Lisa Whitehead gave her evidence in a straightforward manner. However, she had a tendency to provide long-winded answers which went beyond the questions asked.

[108] Her evidence was internally consistent. Since she did not provide an affidavit or other type of statement in advance, unlike the other witnesses, it was not possible to assess whether or not she was consistent with such a prior statement.

[109] Her description of Alexander's behaviors and needs was relatively consistent with that of Dr. Veinot, except that Dr. Veinot minimized the danger posed by Alexander to other individuals more than Ms. Whitehead.

[110] She has spent a significant amount of time with Alexander. That started when she was his aid at school. For the past seven years she has been providing respite care with him, for Dr. Veinot, on a regular basis, three days per week, plus for special events as needed. Before Mr. McIntyre moved to Alberta it was every second week. It is now every week. She also provided minimal respite care for Mr. McIntyre. Therefore, she has had significant opportunity to observe Alexander.

[111] She seemed to have a fairly good recollection of the events she described; and, she readily acknowledged what she could not remember.

[112] On the other hand, there was a notable change in her attitude and demeanor on cross examination, compared to direct examination. She became somewhat confrontational. She was bordering on aggressive at times. She was more rigid and uptight. On direct examination she had been relatively relaxed.

[113] On cross examination, she was somewhat evasive in answering some questions. For example, she was asked by Mr. McIntyre whether he was involved in the meetings with her and Dr. Veinot to determine the best way to deal with Alexander. She answered: "If you want to be", even though he was not involved.

[114] She made accusatory comments towards Mr. McIntyre, indicating animosity towards him, and/or bias against him. For example, she told him that she thought he had asked that she be removed as Alexander's "ER" (assistant) in elementary school.

[115] In addition, the minimal amount of respite work she did for Mr. McIntyre was in her own home. That was because Mr. McIntyre required her to sign a confidentiality agreement before allowing her in his own home, so that she would not bring information regarding what was happening in his home back to Dr.

Veinot. She refused to sign that confidentiality agreement. When she gave that evidence, she presented as though she still harboured negative feelings against Mr. McIntyre because of that. That provides a further basis for animosity and bias.

[116] In addition, it is Dr. Veinot who regularly hires her to provide respite care to Alexander. Dr. Veinot also brought her on their family trip to Walt Disney World in Orlando, for her to care for Alexander and prepare him for changes and the unknown, so that they could better enjoy the experience. Therefore, she has reason to provide evidence biased in favor of Dr. Veinot.

[117] Further, her continuing to provide services as Alexander's respite care worker, depends upon there being a need for such services. Therefore, she has an incentive to describe Alexander's needs, and the steps required to accommodate those needs, in a way which justifies her services, even though Mr. McIntyre did not require them while Alexander was in his care.

[118] In my view, Ms. Whitehead consciously did her best to provide credible and reliable evidence. However, her animosity towards and bias against Mr. McIntyre, her close connection with and bias in favor of Dr. Veinot, and her natural inclination to bring import to her services as Alexander's respite care worker, caused her to tend to provide evidence more favorable to Dr. Veinot. She did that

by somewhat minimizing the danger posed by Alexander to others, and by overemphasizing to some extent, or somewhat exaggerating, Alexander's needs.

Credibility and Reliability of Debra Reimer's Evidence

[119] Debra Reimer prepared the Children's Wishes Report in relation to Rebecca and Rachael, entered as Exhibit 11. She was appointed by the Court to do so.

[120] She was qualified as the Court's expert, capable of giving opinion evidence in relation to communicating the voices of the children to the Court, including assessing: whether there had been any coaching or undue influence; the basis for the views of the children; and, whether the views were genuine, mature and appropriately motivated.

[121] She was completely independent of both parties. There was no indication in her evidence that she was advocating for one party or the other.

[122] She prepared her report based on notes taken during her interviews of the children. It contains many direct quotes. The children were asked to review her notes at the end of the interview and given the opportunity to correct any mistakes, as well as to indicate whether anything should be left out. Apart from the spelling of Rachael's name, there were no errors, nor anything they wanted left out.

[123] I am of the view that Ms. Reimer honestly and reliably related Rebecca and Rachael's wishes in the report.

[124] I will address the credibility and reliability of the expressed wishes of the children in the course of discussing those wishes as part of the best interests analysis.

ISSUE 2: WHAT PARENTING ARRANGEMENTS ARE IN THE BEST INTERESTS OF THE CHILDREN?

Guidelines and Considerations for Assessment of Parenting Arrangement for the Children, Including the Relocation Issue

[125] The guidelines and considerations for assessment of relocation requests and parenting arrangements, as provided for in both statute and case law, overlap significantly.

[126] The application is made under the ***Divorce Act***, R.S.C. 1985, c. 3 (2nd Supp).

[127] S. 17 of the ***Divorce Act*** provides, among other things, that:

> "17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively, …

> (*b*) a custody order or any provision thereof on application by either or both former spouses or by any other person.
>
> ….
>
> (3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.
>
> ….
>
> (5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.
>
> ….
>
> (6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.
>
> ….
>
> (9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact."

[128] ***Gordon v. Goertz,*** [1996] 2 S.C.R. 27, is still the leading mobility case in Canada.

[129] At paragraphs 10 to 16, Justice McLachlin (as she then was), for the majority, provides direction in relation to the determination and impact of material change in circumstances in mobility variation cases. There is agreement that a material change exists. Therefore, I will not cite the test for determining whether

such a change exists, contained at paras 13 to 16. However, Justice McLachlin's comments at paras 10 to 12, provide guidance on the premise to a material change, and the impact of such change in deciding issues of relocation and parenting. She states, with references omitted, the following:

> 10 Before the court can consider the merits of the application for variation, it must be satisfied there has been a material change in the circumstances of the child since the last custody order was made. …
>
> 11 The requirement of a material change in the situation of the child means that an application to vary custody cannot serve as an indirect route of appeal from the original custody order. The court cannot retry the case, substituting its discretion for that of the original judge; it must assume the correctness of the decision and consider only the *change* in circumstances since the order was issued ….
>
> 12 What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way … . The question is whether the previous order might have been different had the circumstances now existing prevailed earlier …. Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order. …

[130] Also, at paragraphs 40 and 47, she approved of the following points advanced in argument:

> Until a material change in the circumstances of the child is demonstrated, the best interests of the child are rightly presumed to lie with the custodial parent. The finding of a material change effectively erases that presumption. The judge is then charged with the fresh responsibility of determining the child's best interests "by reference to that change". To reinstate the presumption in favour of the custodial parent at this stage would derogate from the finding that the child's interests may, by reason of the change, no longer be best protected or advanced by the earlier order. It would be to reinforce the earlier order when its continuing propriety is the very issue placed before the court. This in turn would depreciate potential adverse effects of the established material change. In short, the two-stage procedure required by the *Divorce Act* supports the view of Morden A.C.J.O. in

> *Carter v. Brooks, supra*, that once the applicant has discharged the burden of showing a material change in circumstances, "[b]oth parents should bear an evidentiary burden" of demonstrating where the best interests of the child lie ~~(p. 63)~~.

[131] At paragraphs 49 and 50 of ***Gordon v Goertz***, Justice McLaclin (as she then was) provided the following often-cited summary of the principles and factors to be considered in mobility cases:

> 49 The law can be summarized as follows:
>
> 1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
>
> 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
>
> 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
>
> 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
>
> 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
>
> 6. The focus is on the best interests of the child, not the interests and rights of the parents.
>
> 7. More particularly the judge should consider, *inter alia*:
>
> (a) the existing custody arrangement and relationship between the child and the custodial parent;
>
> b) the existing access arrangement and the relationship between the child and the access parent;
>
> (c) the desirability of maximizing contact between the child and both parents;
>
> (d) the views of the child;
>
> (e) the custodial parent's reason for moving, *only* in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;

> (f) disruption to the child of a change in custody;
>
> (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> 50 In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[132] McLachlin J. (as she then was) expressed the best interests test generally in ***Young v. Young,*** [1993] 4 S.C.R. 3 ¶203, as follows:

> The ultimate test in all cases is the best interests of the child. This is a positive test, encompassing a wide variety of factors. One of the factors which the judge seeking to determine what is in the best interests of the child must have regard to is the desirability of maximizing contact between the child and each parent. But in the final analysis, decisions on access must reflect what is in the best interests of the child.

[133] In ***Foley v Foley***, [1993] N.S.J. No. 347 (S.C.), the court, at paragraphs 15 to 18, stated:

> In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.
>
> **16** Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:
>
> 1.. Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);
>
> 2. Physical environment;
>
> 3. Discipline;
>
> 4. Role model;

5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;

6. Religious and spiritual guidance;

7. Assistance of experts, such as social workers, psychologists- psychiatrists- etcetera;

8. Time availability of a parent for a child;

9. The cultural development of a child:

10. The physical and character development of the child by such things as participation in sports:

11. The emotional support to assist in a child developing self esteem and confidence;

12. The financial contribution to the welfare of a child.

13. The support of an extended family, uncles, aunts, grandparents, etcetera;

14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. The Divorce Act s. 16(10) and s. 17(9);

15. The interim and long range plan for the welfare of the children.

16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and

17. Any other relevant factors.

> **17** The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.
>
> With whom would the best interest and welfare of the child be most likely achieved?
>
> **18** The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

[134] The ***Maintenance and Custody Act***, R.S.N.S. 1989, c. 160 is not applicable to the within Application. However, Section 18(6) of the ***Maintenance and Custody Act*** enumerates specific best interest factors which are useful to consider in applications under the ***Divorce*** Act. It states:

> 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;
>
> (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.

[135] Many of these factors and circumstances echo or overlap those outlined in the ***Divorce Act*** and the caselaw. However, it is still useful to consider them as articulated in Section 18(6) because it can prompt recognition of points not specifically mentioned otherwise, or different perspectives on points otherwise addressed.

[136] As stated at paragraph 25 of ***Burgoyne v. Kenny***, 2009 NSCA 34:

> **25** The list does not purport to be exhaustive nor will all factors be relevant in every case. Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors. As Abella J.A., as she then was, astutely observed in **MacGyver v. Richards** (1995), 11 R.F.L. (4th) 432 (Ont. C.A.):
>
> > 27 Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. Deciding what is in a child's best interests means deciding what, objectively, appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention. Because there are stages to childhood, what is in a child's best interests may vary from child to child, from year to year, and possibly from month to month. This unavoidable fluidity makes it important to attempt to minimize the prospects for stress and instability.
> >
> > 28 ... the only time courts scrutinize whether parental conduct is conducive to a child's best interests is when the parents are involved in the kind of fractious situation that is probably, in the inevitability of its stress and pain and ambiguity, least conducive to the child's or anyone else's best interests.
> >
> > 29 Deciding what is best for a child is uniquely delicate. The judge in a custody case is called upon to prognosticate about a child's future, and to speculate about which parenting proposal will turn out to be best for a child. Judges are left to do their best with the evidence, on the understanding that deciding what is best for a child is a judgment the accuracy of which may be unknowable until later events prove -- or disprove -- its wisdom.

[137] In ***Parent v. MacDougall***, 2014 NSCA 3, at paragraphs 24 to 26, the court, at least by implication, approved of the statement that: "A proposed move is less likely to be approved where caregiving and physical custody has been equally shared between the parents."

[138] In ***Lockhart v. Lockhart***, 2008 NSSC 271, at para 24, the Court stated, in the context of a mobility case: "Most Courts of Appeal differentiate between situations in which one of the parents is a primary care giver from those circumstances where both parents have a shared parenting arrangement."

[139] The Court then discussed the meaning of "co-parenting" and, at para 26, stated:

> I accept that it would not describe a sole custody arrangement, but I stop short of describing it as meaning only equal parenting or excluding arrangements where time, duties, and roles are not equal. Specifically, the word's meaning does not preclude circumstances where one parent is a primary care giver.

[140] At para 30, the Court stated, with apparent approval:

> The current (2007) edition of **Annual Review of Family Law** by James MacLeod and Alfred Mamo, makes the following observations respecting mobility cases:
>
> 1. In deciding whether to approve or deny a proposed move, the Court should balance the benefits and detriments of allowing the move against the benefits and detriments of refusing the move.
> 2. Most parenting assessors appear inclined to the view that it is in the best interests of children for parents to live in close proximity to each other unless it is not possible in the circumstances.
> 3. The fact that parties share joint custody does not prevent a primary care giver from moving.
> 4. The existence of an agreement or court order which restricts freedom to move or provides for notice before moving does not establish a presumptive rule against moving.

5. The effect of children's wishes to move or stay depends largely on the children's age and maturity.

6. A short distance move usually has insufficient effect on children's relationship with the stay behind parent to induce a Court to prevent the move.

7. The children's interests usually have little to do with a proposed move. Most parents want to move for personal, career or employment reasons and, not unnaturally, want to take their children along. The Court's task is to balance a parent's right to move ahead with his or her life against the other parent's right to continue his or her relationship with the children. Most mobility cases, by necessity, involve a comparison of the benefits of the proposed move with the extent of the disruption in access. Regardless of the reasons for the move, the decision to allow or deny relocation must be focused on the pros and cons to the children, not by reference to the interests of the parents.

8. The Court is unlikely to approve a proposed move if it is satisfied that the parent proposing the move will use the opportunity to frustrate or deny access to the other parent.

9. The Court is inclined to deny a proposed move if a parent seeks permission to move prematurely or with a poorly thought out plan.

10. Courts allow moves that are proposed in good faith and not intended to frustrate access so long as the primary care giver parent is prepared to accommodate the interests of the children and the access parent by restructuring access and, where appropriate, the increased cost of access.

[141] The Court in ***Wood v McGrath***, 2009 NSSC 384, like in the case hand, dealt with a move to a relatively distant Province, in that case, Ontario. At paragraphs 38 and 43, the Court made the following apt comments:

> "**38** Whether the children are allowed to move to Ottawa or the children remain with the father and the mother moves to Ottawa, there will be a major disruption in the children's lives. They are used to spending a great deal of time with both parents.
>
> ….

> **43** The current shared custody arrangement is working well for the children and the continuation of the parenting arrangement is in the best interests of the children. However, should the mother decide to move to Ottawa, it is in the interests of the children that they remain in Dartmouth with their father. The children's life is in Dartmouth, including their father, school, activities, church and some of their extended family. Both parents have had the children in their care since the children were born. There would be much less disruption and more advantage to the children if they remain in the life they know with their father than if they are taken out of the life they know with their mother.

[142] In my view, these comments were based on, and illustrative of, the following applicable principles.

[143] If a child has been in one parenting arrangement for a sufficiently long period of time, and that arrangement has worked, it is usually in the child's best interests not to disturb that **status quo**. Determining whether that *status quo* exists involves considering the relationships the child has formed and the way of life he or she has come to know, where he has lived, at the school attended, with extended family, with friends, etc.

[144] If the proposed new plan is not obviously better, absent a compelling reason to do so, it makes no sense to substitute an unproven and unpredictable plan for what is known to have worked. That is particularly so on an interim motion, but also applies to a final determination.

[145] Our Court of Appeal, in ***Mahoney v. Doiron***, 2000 NSCA 4, also impliedly approved of this approach and these principles by upholding the decision of the trial judge and, at paragraph 22, citing, with apparent approval, the following portion of his decision:

> In this case both parents can meet the child's needs but one plan must emerge as being better able to support those various factors contributing to the child's best interests. These factors include not just the physical needs of the child, given his age, sex and activities, but the ability to promote a productive life style that is both stable, predictable, and consistent. The ability to continue to draw support from both parents and extended family and the ability of a particular environment to address the needs of a child at a given stage of development are critical. ...
>
> At this time, a permanent move to Halifax is a major change and disruption for Jeremy from the day to day life he has known. The plan proposed by Mr. Mahoney essentially maintains the status quo in terms of schooling and extended family and extra-curricular activities. While the court acknowledges the most significant contribution Ms. Doiron has made to Jeremy's development, her plan is not yet so established that it offers the type of stability Jeremy has known in Antigonish. While Jeremy may adjust well to a move, it is never wise to interfere with an established successful life style unless there are compelling reasons for doing so. While it is important to try and maintain day to day contact with his Mom, this factor alone does not outweigh all the other factors, the most important of which is the child's attachment to his father and the ability of the father and the extended family to sustain what has heretofore been a very successful life style for Jeremy.

[146] Similarly, absent a compelling reason to do so, Courts generally avoid separating siblings. In that regard, the court in ***Hill v. Hill***, [2008] O.J. No. 4730, stated, at paragraph 42:

> It is extremely rare for a court to separate children resulting in one child residing with one parent and the other child residing with the other parent. There must be very compelling evidence to separate siblings.

[147] However, the need for a child to have undivided attention may provide the compelling reason needed to separate siblings.

[148] A case which illustrates this approach, while recognizing the usual approach of maintaining the status quo if it has worked, is ***Rail v. Rail***, 1999 BCCA 587. In that case, the Court, at paragraphs 19 to 21, stated:

> **19** I accept that if all else is equal it could not be in any child's best interest to substitute an uncertain situation for a certain one. I do not accept that a custodial parent who seeks to alter the status quo must establish that the current arrangements are not in the best interest of the child and should be changed. What is required under the Family Relations Act or the Divorce Act is that both parents bear an evidentiary burden of demonstrating where the best interests of the child lie, once good reason is established for a fresh inquiry into a child's best interest. A trial judge's consideration of the child's best interests must not be controlled by a view of the inquiry as adversarial. She is charged to inquire into the best interests of a child, not to find fault with a parent or arrangements custodial parents have put in place. One cannot begin with presumptions with articulated premises.
>
> **20** The identification of the children's special needs was good reason for a fresh inquiry into their care arrangements. There is very significant evidence in the s. 15 report, the school records and the medical records to suggest that Darcy has a need for structure that his mother has not been providing that his appears able to provide. This is not a case of "let the other parent have a try" as suggested by the mother but rather a trial judge's careful assessment of the evidence to determine where each child should live, having regard to the special needs of both and the difficulties inherent in raising two special needs children, whether a single parent or in a two-parent family. On the basis of the evidence, the father accepted that Juliane's best interests would be served by continuing to live most of the time with her mother. The only real question for the trial judge to decide was whether Darcy should have his primary home with his sister and mother or live with his father and Mary Sicotte. Ms. Sicotte has not only a good relationship with Darcy, but prior experience as a child care worker. She currently works on a part-time basis.
>
> **21** Essentially the appeal comes to a submission that the parents chose the mother as a primary caregiver at separation, and the identification of the children's special needs is insufficient reason to change those arrangements. The trial judge

> arrived at a different view, concluding that it would be in the best interests of both children if each of them could have the full attention of one parent most of the time, with the children spending their leisure time together with one parent. This seems to me to be an eminently sensible division of the parental resources in the best interests of both children.

Best Interest Factors in the Case at Hand

Status Quo / Existing Custody & Access Arrangement

[149] Since at least 2008, the parties have shared joint custody of the children. The Corollary Relief Order has provided that their primary residence was with Dr. Veinot. However, until Mr. McIntyre moved to Alberta, the children were parented equally by each parent, on a week on/week off basis.

[150] This parenting occurred at the parties respective homes in the Windsor, Nova Scotia area, except when Dr. Veinot took them to the residence she occupies with her fiancé in Queensland.

[151] Rachael is in grade 5 at Windsor Forks Elementary School. Rebecca and Alexander are in West Hants Middle School which comprises grades 6 to 8. Last year, while in grade 6, Rebecca was the editor of the school paper. Next year, Rebecca and Rachael will be in the same school if they remain in Windsor. Alexander is in grade 8. Therefore, if he remains in Windsor, he will be in the local high school next year.

[152] Even though the children experience changes in schools in the Windsor area, for the most part, their same school friends and classmates also move to the same school.

[153] Naturally, the children have friends in the Windsor area, though Alexander has few.

[154] Windsor is a relatively small community, in which the children already know most of the people in the neighborhood.

[155] Rebecca is involved in guitar and piano. She enjoys skiing at the local ski hill. Rachael plays soccer and has tried numerous other activities.

[156] The children also spend a lot of time with Dr. Veinot's fiancé, Shaun Savoy, in Queensland. There they participate in activities such as going to the beach, swimming, kayaking fishing and sailing.

[157] The children's maternal grandparents, particularly their grandfather, have been a large and regular part of their lives. They live in the Windsor area also.

[158] The girls have always lived with Alexander. As a result of his autism they have learned empathy, patience and the ability to compromise.

[159] The children had been doing reasonably well overall in the parenting arrangement in existence prior to Mr. McIntyre's move to Alberta. There had been an issue related to self-harm by Rebecca in the past. That had stopped. However, since Mr. McIntyre's move to Alberta it has resurfaced.

[160] Further, Mr. McIntyre's move to Alberta appears to have exacerbated the impact of the girls', particularly Rebecca's, inability to communicate freely with Dr. Veinot, as they no longer have him to physically parent them every second week, and must rely mostly upon long-distance communication with him.

[161] In my view, now that Mr. McIntyre has moved to Alberta, the parenting arrangement is no longer working for Rebecca and Rachael.

Disruption to Child in Changing the Parenting Arrangement

[162] If they move to Alberta, the children's physical contact with their mother, extended family and current friends will be significantly reduced.

[163] They will be in a community where they will not, at least for some time, know most of the people in the neighborhood.

[164] If they move to Olds, Alberta, Rebecca and Rachael will be in the same school this year.

[165] More likely than not, Alexander, if he moves to Alberta, will be in a separate school for special needs children. In that situation Alexander would have to adjust to a whole new routine. Adjustment to such change is often difficult for him.

[166] The schools, students and personnel, except for their stepsister, Emily, will all be new to them.

[167] However, Olds, Alberta, is only slightly larger than Windsor, where the children have been living, and has a population only approximately 8500 people. It has a "small town feel". Therefore, the children would still be in the type of community they have been accustomed to living in.

[168] Also, irrespective of whether any of the children move to Alberta with their father, there has been significant disruption already. Rebecca has moved on to middle school, while Rachael has remained in elementary school. Their stepsister, Emily, who would have been in middle school with Rebecca, now attends middle school in Olds.

[169] The children are no longer able to move back and forth between the homes of their parents on a week on/week off basis. They go for a much longer period of time between being parented by their father with him being physically present.

[170] One option that was presented to the Court, in the event that the Court was of the view that it was not in the best interests of Alexander to move to Alberta, was to permit Rebecca and Rachael to move there, with Alexander remaining in Nova Scotia with his mother. Such a separation would disrupt the status quo even further. In addition, it would likely diminish the number of individuals Alexander has social interaction with.

[171] However, when the children have been with Mr. McIntyre, Alexander has spent a significant amount of time with him alone, while Rebecca and Rachael have been engaged in other activities. They quite often, without Alexander, would play, socialize in the neighborhood, go out with Lisa McIntyre, and, swim in the pool. In addition, they have had sleepovers with their cousins while the family was staying with Mr. McIntyre's parents, with Alexander remaining at the grandparents' home with Alexander. They have been separated from him for up to five days duration. That has occurred approximately 3 times. Though Alexander asks when they are returning, he does not exhibit distress over their absence.

[172] Alexander's routine was changed last year when he moved from elementary school to middle school. That resulted in a change in physical environment and in personnel. He has successfully adapted to that change. Even if he continues to live

in Nova Scotia, there will be a similar change next year when he transitions to high school.

[173] Further, when Alexander was parented by Mr. McIntyre in Nova Scotia, his stepbrother, Kyle, and his stepsister, Emily, were present. Kyle has gone to university and Emily has moved to Alberta with Mr. McIntyre and his wife, Lisa. Thus, Alexander already has experience with being separated from the stepsiblings he was with half of the time. There is no indication of any detrimental impact.

[174] The evidence did not establish that the children, particularly Alexander, had a large friend base in Nova Scotia. I accept Mr. McIntyre's evidence that Dr. Veinot intentionally limits that friend base. Therefore, in that respect, there would be diminished disruption for the girls, and minimal disruption for Alexander.

[175] However, his respite worker, Lisa Whitehead would no longer be able to work with him 3 days per week as she does now. That would be a significant disruption for him.

[176] If the children are living in Alberta with Mr. McIntyre they will be reunited, on a regular basis, with their stepsister, Emily, and, whenever Kyle is home from University, with him as well. That will soften the impact of any disruption.

Assistance from Experts

[177] As already indicated, Debra Reimer, MSW, RSW, interviewed Rebecca and Rachael and prepared a report to relate, to the Court, their wishes relating to the arrangement for their parenting.

[178] Within her report, she commented that she believed the children were honest with regard to their wishes and that they had given a great deal of thought to their wishes. These comments did not strictly meet the test for admission as expert opinion evidence.

[179] However, a children's wishes assessment is a special breed of report which the Court has asked to be prepared by someone with specialized skills in the area of interviewing the child witness.

[180] As noted in ***John v. John***, 2012 NSSC 324, the Court expects the writer of such a report to touch on issues of credibility, motivation and thoughtfulness. Therefore, I allowed and considered these comments as the observations of the assessor.

[181] In the Report, in the second from last paragraph, on the second from last page, Ms. Reimer outlined the constellation of factors she considered in concluding that Rebecca had given the matter a great deal of thought. It is also clear from the reading of the Report as a whole that her opinion regarding Rachel's

thoughtfulness is also based upon the constellation of considerations she articulated.

[182] Those constellations of factors, which I will discuss later, in my view, make it reasonable to conclude that the children did give a great deal of thought to the matter.

[183] Ms. Reimer did not outline, in the Report, the basis for her belief that the children were honestly expressing their wishes, as opposed to their expressed views being the product of undue influence. However, she testified that she worded her questions in a way to fish out undue influence. In addition, as a result of her training in interviewing children and her expertise in assessing body language arising from her education and experience in neurolinguistic psychology, she can usually tell from body language whether or not there has been undue influence. She did not make reference to the issue of undue influence in the Report because she did not see any indication of it.

[184] These points, in my view, warrant attaching some weight to Ms. Reimer's observations.

[185] Ms. Reimer's level of expertise, as well as the weight to attach to her observations, will be further discussed in the course of assessing the credibility and reliability of the views expressed by Rebecca and Rachael.

The Children's Views, Preferences and Wishes

Assessment Factors

[186] Our Court of Appeal, in ***Parent v. MacDougall***, 2014 NSCA 3, at paras 30 to 34, stated the following in relation to children's wishes:

> 30 When the home study was done, the children were nine and six years old. Mr. Parent says that, as a result, the judge should not have taken their wishes into account. The appellant acknowledges that this argument was not specifically made to the judge.
>
> 31 In support of his position, the appellant relies on the following passage from: Professor Julien D. Payne, Q.C., Payne on Divorce, 4th ed (Scarborough: Carswell, 1996) at p. 397:
>
> > 'The best interests of the child are not to be confused with the wishes of the child. Children's perceptions of their needs and best interests, including their views as to the parent with whom they wish to live, are matters which should be logically considered as falling within the perimeters of the children's best interests. When children are under nine years of age, courts do not usually place much, if any, reliance on their expressed preference for either parent. The wishes of children aged ten to thirteen are commonly regarded as an important, though not a decisive, factor in parental custody disputes. The wishes of the children increase in significance as they grow older. A court may refuse to interfere with the wishes of a child who is intelligent and who has developed an expressed valid reasons for any preference. In matters of both custody and access, the preferences of older children carry significant weight, even though the parents may have influenced their choices. ... [Emphasis added]
>
> 32 As I stated earlier, s. 18(6) of the Act sets out various factors to be considered in determining the best interests of the child. It includes:

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

33 Mr. Parent argues that, given their ages and development, the judge erred in considering the views of the children. He says that in D.(C.) v. D.(K.), 2010 NBQB 22 where the child was eight years old, Tuck, J. referenced the above passage from Payne on Divorce in disregarding the child's preference. With respect, that is not an accurate recounting of that decision. After the quote, Tuck J. continued:

> 110 I reference this quote not because the Court gives any weight to the opinions expressed in scholarly journals or writings without the presence of an individual to testify. However the quote is useful to the extent that this quote references established case law; even that which the Court is not bound by; but takes note of particularly if it finds the logic compelling.
>
> 111 I say that because the quote may in fact be what has often happened in courts in this country. However I don't believe that you can make such statements as broadly applying in every case. I think each case is unique and I think in some cases the "Voice of a Child" of a ten year old child, may be more influential on a Court than a "Voice of a Child" at 16.
>
> 112 I think it's imperative that the Court look at all the facts and all the indicia with respect to what weight would be placed on the views of a child. Just as Mr. K.D. has argued that's very often why professionals are elicited not to decide the factor but to provide assistance to the Court when he Court requires that assistance.

34 Earlier at my para. 27, I set out a portion of the judge's reasons, which includes his references to the children's wishes as communicated to Ms. Alexander. I agree with Tuck J. that each case and child is unique, and that it is for the judge to decide the weight to be given to the wishes of the children.

[187] The Court in ***Decaen v. Decaen***, 2013 ONCA 218, at para 42, provided the following guidance in assessing a child's wishes:

> **42** In assessing the significance of a child's wishes, the following are relevant: (i) whether both parents are able to provide adequate care; (ii) how clear and unambivalent the wishes are; (iii) how informed the expression is; (iv) the age of

> the child; (v) the maturity level; (vi) the strength of the wish; (vii) the length of time the preference has been expressed for; (viii) practicalities; (ix) the influence of the parent(s) on the expressed wish or preference; (x) the overall context; and (xi) the circumstances of the preferences from the child's point of view: See Bala, Nicholas; Talwar, Victoria; Harris, Joanna, 'The Voice of Children in Canadian Family Law Cases", (2005), 24 C.F.L.Q. 221. …"

Children's Expressed Wishes and Reasons

[188] Rebecca and Rachael's voices were brought to the Court through the Children's Wishes Report prepared by Ms. Reimer.

[189] They both expressed a wish to live with their father in Alberta and to visit with their mother in Nova Scotia.

[190] Rachael told Ms. Reimer that she was disappointed that her father had to move to Alberta for work because: she liked the house and neighborhood they lived in; all her friends were here in Nova Scotia; and, she would miss her mother. These comments show that she did give thought to the downsides of moving to Alberta with her father.

[191] The reasons she gave for wanting to live with her father include those which follow.

[192] She did not "like traveling back and forth to Queensland on the weekends" to Shaun's, who is her mother's fiancé. She stated: "Alexander bugs me a lot and no one does anything about it except Dad." She explained that Alexander called

her names, chased her and hit her. She added that he had chased her and Rebecca with scissors once. She is also of the view that she gets blamed for Alexander's actions, stating: "I get in trouble a lot because of him. If I'm sitting on the couch he comes and lays down and tries to kick me. I'll tell him to stop and I get in trouble because I make him do it, apparently."

[193] Rachael also told Ms. Reimer that she feels safer with her father and that he does more things with her than her mother does.

[194] Further, Ms. Reimer testified that Rachael told her that, with their Dad they do things together as a family; but, with their Mom they tend to stay at home.

[195] Rebecca's comments indicate that she is aware of the significance of extended family that she would be leaving behind in Nova Scotia. In relation to her maternal grandfather she stated: "I trust him as much as I trust my Dad. I'm really close to my Grandfather, he's one of the reasons I really thought about this, I care about him a lot."

[196] Her comments also indicate that she has given a lot of thought to the practical implications of a move to Alberta. She stated: "I would love to go right away but that probably wouldn't be practical. I want to move as soon as realistically possible. I want to say goodbye to my family and friends and get

things together. … I've thought about where I'd be better off and it's been really hard."

[197] The reasons Rebecca gave for wanting to live with her father include those which follow.

[198] She stated: "I have more of a bond with him, I can trust him." She also stated: "Having Dad away is hard on me, in grade 5, I was bullied and thought about suicide. I've never really let that thought go. In grade 6, I was really stressed and I cut myself in the bathroom at school. That's returned again and it scares me. I've told Dad and he's going to talk to Mom. … He wants me to see a psychologist about it."

[199] In contrast, though Rebecca noted that she knew that her mother cared about her, she stated her mother "doesn't show emotions most of the time, she's stonefaced regardless". In addition, she feels her mother "blames a lot of things on [her] being … a dramatic teenager" and "over exaggerating".

[200] Rebecca had read the communication book which gets passed back and forth between her parents. In it, she read that her mother had been upset because her father had allowed her to pierce her ears for second time, and had stated that it was "irresponsible and that it would lead to [Rebecca] doing other things like sex,

drugs and tattoos". Those comments hurt Rebecca. She felt like her mother did not think she was "a good enough person in general". She said she did not feel that way with her father.

[201] She also advised that she was afraid of Alexander. In that regard, she stated: "I love him but I'm afraid of him. When he starts to giggle my reflex is to grab a pillow to protect myself. He can get quite riled up. We've had to hide behind closed doors - he came at us with scissors once." She added that Alexander does not behave like that at their father's.

[202] Further, she stated, in relation to her stepmother, her father's current wife: "I feel like sometimes she's more my mom than my Mom is."

Credibility and Reliability of Children's Expressed Wishes

[203] The parties, as a general comment, agreed that the children were honest.

[204] Therefore, the relevant inquiry is into the reliability of their expressed wishes in the sense of being motivated by legitimate reasons, rather than improper or undue influence from their father, or someone or something else, including the questioning approach of the assessor.

[205] In the course of the trial, I rendered an oral decision in relation to the admissibility of the children's hearsay in the Report. In doing so, I discussed points enhancing or detracting from the reliability of the child hearsay in the report. Those same discussions apply to determination of the ultimate reliability of their expressed wishes. They cover many of the points noted as being applicable to assessing the weight to attach to children's wishes generally. Therefore, I reproduce a large part of them here. I stated the following:

> "I will first discuss factors or circumstances which may enhance the reliability of the child hearsay in the Children's Wishes Report.
>
> The children were interviewed in the home of their mother, in Nova Scotia, with her present in the home, and they being in a private area of the home with Ms. Reimer. They had just finished communicating with Mr. McIntyre. However, he was in Alberta. Yet, their statements clearly express that they wish to live with their father and feel better protected and nurtured by him than by their mother. Their statements indicate that they were cognizant of the fact that they would not be moving immediately with their father. Consequently, if anything, they would have felt pressure to provide a statement favorable to their mother, rather than one favorable to their father. The fact that they gave statements which were unfavorable to the one they would have to continue to live with at least for some appreciable length of time, in my view, increases the reliability of their statements.
>
> Ms. Reimer is clearly a neutral court-appointed person. In my view, she has developed skill in interviewing children. According to her CV, she has conducted 56 children's wishes assessments from 2010 to the present. She is on the list of approved assessors to provide court ordered assessments. From 2004 to the present she has been qualified as an expert in court 15 times, including in the areas of child development and attachment. In addition to graduating with a Masters of Social Work in 1994, she has: from 1994 to the present attended multiple workshops, training sessions and conferences including some relating to, among other things, working with high conflict families, perspectives on Canadian youth and attachment, assessment and interventions re attachment, and motivation interviewing; in 2004, attained the status of Certified Practitioner in the area of Neurolinguistic Programming; and, in 2005, attained the status of Master Practitioner in the area of Neurolinguistic Programming. One component

of neurolinguistics is the acquisition and/or development of skills relating to interpreting communication based on body language.

I accept her evidence that her assessment of the children's statements was based, at least in part, on the skills she has developed in interviewing children, including reading their body language. I also find that her approach to questioning, such as by asking them to tell her about a certain subject, rather than asking more pointed questions, was used because it was the proper approach to interviewing children.

Her questioning remained open and not suggestive or leading because of her approach.

She made notes as the children were speaking to her. Her report contains numerous exact quotes from the children. In my view, their statements were accurately and objectively reported.

Dr. Veinot questioned the reliability of the hearsay in the report because it was not prepared in accordance with the Voice of the Child-Support Guidelines and Ms. Reimer did not ask additional questions she would likely have asked if she had been made aware of certain collateral information.

In my view, those arguments were inconsistent because the Guidelines note that: "In most cases, the Voice of the Child Report process will not involve the assessor's reviewing the court file or other materials." Therefore, even if the guidelines had been followed, more likely than not, Ms. Reimer would not have had the necessary information to be alerted to the pertinence of those questions.

Having a child's wishes assessor approach the interview without collateral information apart from the parenting plans, in my view, ensures that the assessor approaches the interview with an open mind, thus eliminating the risk of leading or influencing the child's expression of his or her wishes. In my view, that increases the reliability of the report and warrants the associated cost of making unavailable information which might lead to alternate lines of questioning to challenge the children. Those costs include, as noted by Ms. Reimer, that the unavailability of all the surrounding evidence makes it harder to assess whether there has been undue influence, particularly if that influence is subtle.

It is consistent with the limited purpose of child's wishes reports. They are not meant to bring into play an in-depth assessment leading to recommendations.

Further, it is significant to note that the Guidelines are advisory only. They were distributed for the first time on or about October 21, 2015, to Department of Justice staff, and on or about October 23, to lawyers at a family law conference and any judges who happened to be in attendance. The report in question in the case at hand was prepared before those dates. It was prepared pursuant to the order I referred to earlier. The order did not state that the report was to be prepared in accordance with the Guidelines, a direction now contained in clause 2 of the draft Voice of the Child Report Order attached as Appendix A to the Guidelines. In addition, no one has been applying the guidelines yet. Therefore, in

> my view, the fact that the advisory guidelines were not followed, in and of itself, does not detrimentally affect the reliability of the hearsay in the report.
>
> However, if there are particular recommended procedures in the Guidelines which, if not followed, detract from the reliability of the statements, those are still relevant to assessing reliability.
>
> Ms. Reimer did acknowledge in her evidence that there were some questions she could have asked to probe deeper. I will address the associated negative impact of the failure to ask those questions, and other shortfalls, later.

[206] Justice Jollimore, … in ***John v. John***, 2012 NSSC 324, at paras [19] and [20], stated:

> "**19** A children's wish report is one way of providing information about the children's views to me. It does not allow the children to determine what their parenting arrangement will be. It does allow someone who is far more skilled than I, to elicit the children's wishes, to assess whether children have been coached, manipulated, coerced or subtly influenced in their views, and to identify the basis for their views: whether their preference is genuine, mature and appropriate or motivated by inappropriate reasons.
>
> **20** I conclude that Mr. John has shown that a professional opinion is needed. Children's wishes are a relevant factor to be considered in determining their parenting arrangement, according to *Foley*, 1993 CanLII 3400 (N.S.S.C.). A children's wish report will satisfy the need for unbiased information about the children's preferences. It will also provide unbiased information about what motivates those preferences and whether their views are uninfluenced. This information is not otherwise available."

Dr. Veinot argues that the Report in the case at hand falls short of what is articulated in ***John*** as being expected of a children's wish report, making it unreliable. In my view, although Ms. Reimer does not give a detailed review of her analysis, she does comment on her assessment regarding: whether the expressed wishes are genuine and well thought out; and, the motivation or reasons for the wishes. She does not express any assessment of whether or not there has been coaching or undue influence. However, she testified, and I accept, that she watches for it and would only make comments on that issue if she suspected it existed. Even after being referred to information which it was suggested raised concerns regarding coaching or undue influence she maintained that she was not of the view that it existed, and that the children's views were genuine and appropriately motivated.

Expert opinion directly on credibility is not admissible. However, it is still significant that Ms. Reimer has not raised concerns related to the credibility of the children.

The lack of such concerns and an independent and skilled child interviewer being of such a view have a positive impact on … reliability.
…

Both children are straight-A students, indicating, more than likely, an above average level of intelligence and ability to understand.

They are 10 and 12 years of age. Thus they are of an age where they can be expected to have a good appreciation of their own wishes and the motivation for those wishes.

Although most of the comments relating directly to their mother were negative, they did make positive comments about their maternal grandfather and their mother's fiancé. Rebecca also provided, as a possible explanation for why her mother had more difficulty controlling Alexander, that Alexander appears to be more comfortable with males. Therefore, she was deflecting blame from her mother.

Further, the comments of the children are not all in support of their father. Rachael stated that she was disappointed when her father moved to Alberta because she liked the house and neighborhood they lived in. She also would like to finish the school year in Nova Scotia. Rebecca acknowledged that it probably would not be practical for her to move to Alberta right away.

These points indicate that the children were not completely one-sided. I also accept Ms. Reimer's testimony that it is not uncommon for a child to simply focus on the complaints they have against a particular person, rather than also relate good points about that person.

Both children provide multiple logical reasons for their wish to reside with their father. There was much discussion and questioning of Ms. Reimer over when the events leading to Rebecca's fear of Alexander occurred and Rachael's likely contribution to Alexander bugging her. Even if those reasons are weak, they also describe their father doing more things with them and, Rebecca in particular, described her mother as being stone-faced and giving Rebecca the impression that her mother does not think she is "a good enough person in general", which is in contrast to the way she feels with her father. In essence, they are describing a more nurturing relationship with their father, which is a logical and appropriate motivation.
….

Ms. Reimer describes the children as being "delightful". She indicated that they were thoughtful and/or that they had given a great deal of thought to their wishes. They presented their views in a forthcoming and clear manner. Although they were initially

nervous, once she got upstairs, in a private area, with them, they were fine. Such a display of demeanor, in my view, supports reliability.

Ms. Reimer's assessment of the evidence of the children was that they were honest. Although, ultimately, the task of making findings of fact is for the Court, the fact that the statements of the children did not raise credibility concerns with the trained and experienced child interviewer is at least an indication of the absence of the credibility concerns … .

Rachael's statement to Ms. Reimer regarding: wanting to live with her father but wanting to finish grade 5 here; not liking the way she is treated by Alexander; and, her father being the only one to do something to stop it, is clearly consistent with the letter she had previously written to her mother and left on her bed for her mother to read just before leaving for her father's house.

Similarly, Rebecca's statement to Ms. Reimer that her stepmom is more of a mom to her than her own mother is consistent with her prior statement to Mr. McIntyre to that effect.

Rebecca's statement that she wants to live with her father is consistent with her statement to her maternal grandfather. Racheal's statement that she wants to live in Alberta after she finishes grade five is consistent with what her maternal grandfather thinks he recalls her telling him.

Rebecca told Ms. Reimer that her father told her to just tell the truth about how she felt. Impressing upon a declarant the importance of telling the truth enhances reliability.

I will now address the factors or circumstances which may detract from the reliability of the child hearsay in the Children's Wishes Report.

The fact that the statements were made in the midst of litigation creates a timing issue which is not supportive of a finding of reliability. However, all child's wishes reports would be in that same situation. In addition, Rebecca indicated that she's been thinking about living with her father since she was eight years old.

Dr. Veinot raises, as a reliability concern, the suggestion that the text messages exchanged between the children and their father, the photographs of the interactions amongst the two girls and Alexander, and the communication book do not support the assertion that the girls are frightened by Alexander.

As acknowledged by Ms. Reimer, the fact that the communications on certain subjects do not appear in the text messages, does not mean that the communications did not occur. Attached to Mr. McIntyre's supplemental affidavit, is a text from Rebecca noting that she is at school and stating "it is much easier to text here without mom checking my texts". The concern over their mother checking texts is a reasonable reason to avoid communicating about sensitive issues via text. Rachael understandably had difficulty

confronting her mother with her wishes to the point where she had to eventually communicate them to her in a letter. So it is also understandable that, since she had concerns over her mother checking her texts, she also understandably would avoid including communications which could upset her mother.

Similarly, out of respect for the children's difficulty in confronting their mother with their wishes, it is understandable that Mr. McIntyre would avoid including references to their wishes in the communication books until they were ready to face their mother with those wishes. That time came at the latest when Mr. McIntyre prepared his communication book notes for the week of June 5-12, 2015. In that communication he informs Dr. Veinot that the girls brought it to his attention that they feel unsafe at her home, that Alexander acts differently at her home and is more aggressive towards them, and that they are fearful of him. He added that they have both said that they wanted to live with him. In my view, the timing of that communication is reasonable. It does not detract from the reliability of the statement of the girls to the child's wishes assessor. To the contrary, in my view, although it is a statement to a parent, which itself carries reliability concerns, it is a consistent statement made well in advance of the statement to Ms. Reimer, and even in advance of the filing of Mr. McIntyre's application, which was filed June 17, 2015. It further provides an explanation for why Mr. McIntyre would seek primary care instead of just an access arrangement to accommodate the distance between the households of the parents.

As noted by Ms. Reimer, the fact that siblings show affection to one another, look out for each other, or are upset if a third-party is mean to one of them, does not mean that there are not times when one is frightened of the other. Children will stick up for their siblings even if they are scared of that sibling. Being scared does not mean they are scared every day or all of the time. As such, the photos of the interactions between the girls and Alexander, as well as their school work promoting understanding of autism, does not diminish the reliability of their expressed dissatisfaction with the way he treats them in any significant way.

Attached to the affidavit of Murray Veinot sworn October 21, 2015, is a letter prepared by Rebecca for her schoolteacher. Among other things, it indicates that she is looking forward to getting "the full middle school experience these next two years". That is, on its face, inconsistent with her desire to move to Alberta with her father. However, as pointed out by Mr. McIntyre, in her communications with him, Rebecca voices putting on a brave face or a strong exterior, while being in turmoil inside. As agreed by Ms. Reimer, this letter could simply be an example of her putting on a brave face. However, it is still an inconsistent statement to be considered in assessing lack of reliability.

I do agree with Dr. Veinot that the failure of Ms. Reimer to follow up with the questioning regarding when the incidents causing them fear of Alexander occurred and/or how often they occurred creates lacunae of information which detrimentally affects reliability in the sense that it makes it more difficult for the court to assess whether there

is a logical basis for the fear at this point. However, that only relates to one of the reasons given for wanting to live with their father … .

I also agree that Rebecca using the expression that her mother feels she is a "dramatic teenager" when that same expression was sent to her in a texts from her stepmother, raises some concerns over influence impacting upon reliability. However, the fact that Rebecca used an expression she had heard does not show improper or undue influence. The discussion between her and her stepmother would, more likely than not, have arisen as a result of Rebecca's complaints regarding her mother. There is no evidence showing that her complaints arose as a result of undue influence.

Ms. Veinot pointed to communications between Mr. McIntyre and one of their girls in which he stated that she and him were more alike than her and her mother. In my view, that does not demonstrate undue influence. Rightly or wrongly, it is an observation.

I note a text message at page 15 of Exhibit 10B which suggests there may be more concern over undue influence from their mother. There, it is stated, in a message from one of the daughters: "Mummy told me the reason the judge won't talk to me is because that I would be better off in Nova Scotia because I was born and raised there".

In my view, the evidence presented to date does not show that Mr. McIntyre is engaging in alienating or excessively permissive type of conduct which would create a situation of undue influence upon the children. It would be preferable if there were consent between the parents prior to ear piercing occurring. However, given Rebecca's age at the time, it is not an action of such extreme permissiveness as to constitute undue influence.

However, Ms. Reimer acknowledged that Rachael spontaneously responding to being asked about how things are at her mother's by saying she does not like traveling back and forth to Queensland on weekends is an odd response. Even though it is the not unusual for children to dislike traveling between locations, the existence of such an unusual spontaneous response does negatively impact reliability.

Rebecca knowing that the interview was about court raises a risk of her skewing her statement to achieve a desired result. That has a negative impact on reliability. …

Dr. Veinot noted that Ms. Reimer interviewed each child for only 45 minutes on the early evening of October 12, 2015 and provided her report to the court the morning of October 13, 2015. She suggested that the interview and preparation of the report was rushed, diminishing its reliability.

I agree that more extensive interviews would flesh out more information from which to assess the ultimate reliability. However, in my view, the duration of the interviews was not so short as to detract from threshold reliability. Threshold reliability may be established in the statement of any length.

> Given the limited scope of child's wishes reports, and given that Ms. Reimer is already prepared 56 of them, I do not have any appreciable reliability concern over her having the report prepared the day following the interviews. I accept her evidence that she was not rushed and that a day or two turnaround time is not unusual for this type of report."

[207] I add the comments which follow.

[208] It is noteworthy that Rebecca acknowledged that she knew her mother cared about her. That indicates that her comments regarding her mother's emotional disconnect were not meant to demonize her mother. In addition, I observed emotional rigidity or disconnect in Dr. Veinot when she testified. Even when she was attempting to describe her relationship and emotional connection with Rebecca, it came across as forced, artificial and presented with exaggerated enthusiasm. This lends credence to Rebecca's view of her mother being unable or unwilling to display emotion.

[209] When Dr. Veinot testified regarding whether or not she considered Rebecca to be dramatic, she was initially evasive, indicating that she was in drama. Her subsequent comments on the issue, though attempting to skirt around it, indicated that she does consider Rebecca to be dramatic at times. That further indicates that Rebecca's perception is well-founded.

[210] I find that both Rebecca and Rachael told their grandfather, Mr. Grant, and their mother, Dr. Veinot, that they wanted to live with their father, even though

Rachael's communication with her mother may have been limited to writing a letter.

[211] Lisa Whitehead testified in relation to Alexander's "behaviors" or meltdowns, including those involving application of force. Both Ms. Whitehead and Dr. Veinot testified that he required constant supervision. Although, Dr. Veinot attempted to portray the need for supervision as being to protect Alexander, I accept Ms. Whitehead's evidence that it is also to protect others. For example, it was acknowledged that there was a fear of even letting Alexander hug his maternal great grandmother because, as a result of her osteoporosis, he might break her bones, as he does not feel pain nor how much force he applies.

[212] Some of his behaviors are nonphysical, such as yelling words that are inappropriate for the circumstances like: randomly yelling "butt crap", "penis", or "gun"; giggling; or, crying.

[213] He sometimes also responds physically, such as by flailing his arms, pushing, kicking or throwing something.

[214] Alexander is older, larger and stronger than the Rebecca and Rachael. Although they are more agile than him, and could outrun him given the

opportunity, because of his lack of coordination, I agree with Mr. McIntyre that that would not be of assistance in closed or confined quarters.

[215] Ms. Whitehead testified that even she braces herself for Alexander's hugs. That is because he does not feel pain so he does not know how hard he is hugging. She, though not a large woman, appeared to be very solid physically. She certainly presented as much more solid physically than Rebecca and Rachael appeared in the photographs. Therefore, she would, more likely than not, be able to handle such physical contact better than them. She agreed that young children, perhaps in primary, might be scared if Alexander came at them.

[216] She also testified that, even though she allows him to play with her two-year-old grandson, she does not leave them alone. She indicated that would be a disaster. She agreed that he may push the two-year-old. She agreed it would be unsafe to leave her two-year-old grandson alone with Alexander. Although she has never seen him do it, in addition to pushing, he may hit with something like a toy truck.

[217] She stated that Alexander's force could be a full on push with both hands, a one-handed push or the throwing of a ball.

[218] Despite acknowledging that Alexander pushes, Ms. Whitehead stated that she did not fear he would hurt her two-year-old grandson because Alexander could not get to him fast enough. That comment, in my view, was based upon her being immediately present at all times. That way she can step in if a problem arises. I did not take her evidence as stating, and I do not accept, that her two-year-old grandson would be free from danger because of his own ability to evade Alexander.

[219] Similarly, Rebecca and Rachael, if in confined quarters, may not be able to escape. The evidence did not establish that there would always be someone in close proximity to intercede should such circumstances arise.

[220] Further, as indicated during my assessment of credibility and reliability, in my view, Ms. Whitehead, likely unintentionally, tended to somewhat minimize the risk posed by Alexander to others, particularly those more frail than him.

[221] In those circumstances, in my view, it is reasonable for Rebecca and Rachael to fear physical harm from Alexander, even though they recognize that it may not be intentional.

[222] Ms. Whitehead testified that Alexander may engage in behaviors, such as pushing, even during his preferred activities, and simply because people did not respond to his cues or actions which he perceives as communication.

[223] She gave, as an example, that if he was laying on the couch and pushing his feet against Rachael he was communicating that he wanted pressure. If, instead of giving him pressure, Rachael were to push back or respond in some other way that he was not seeking, it might set off a behavior.

[224] Dr. Veinot used the same example of pushing for pressure as an explanation for Rachael's comment that Alexander kicks her. She stated that Rachael sometimes pushes back on Alexander with her feet, in what Dr. Veinot sees as retaliation. If that happens, she tells Rachael not to do it and that she can move if he does it again. In my view, Rachael, at her age, would reasonably see this as her being blamed for Alexander's actions, and Alexander's actions being justified by her reaction to his pushing for pressure.

[225] She gave a further example implicating Rachael. If Alexander calls Rachael names, and gets a reaction from her, the name-calling escalates and, at least impliedly, can lead to further negative behaviors.

[226] She also stated that Rachael sets him off simply because she is giggly as she is a child. Ms. Whitehead tries to keep Alexander away from children who might cry or be silly, to help prevent behaviors. Noise generally, particularly silly noise, is a trigger for Alexander.

[227] She testified that when Alexander "uses his words" (i.e. verbally expresses what he wants) with adults, he gets what he requests. If someone does not respond to his requests, it may trigger a behavior. For example, if he asks whether he can watch a movie and they ignore him, he may push them because they are not responding to his request expressed in words.

[228] Also, children may not understand what he is asking for.

[229] She has to prepare him for when Rebecca and Rachael have friends over. She may need to remove him from the environment.

[230] She also finds it hard to keep him content in crowded areas.

[231] These circumstances highlight the ease with which Alexander can switch into physically aggressive behavior. They add to the reasonableness of Rebecca and Rachael's fear of physical harm from him. The fact that they were used as examples by Ms. Whitehead, who follows Dr. Veinot's rules regarding techniques

for dealing with Alexander, supports Rachaels statements that she gets blamed for Alexander's behaviors.

[232] Ms. Whitehead testified that when Alexander starts to giggle, it is not a positive sign. It is a "behavior". It foreshadows and is almost always followed by a negative action. That lends credence to and supports Rebecca's comment that "when he starts to giggle" her "reflex is to grab a pillow to protect" herself.

[233] Both Dr. Veinot and Ms. Whitehead testified that Alexander does not have the mental capacity to recognize that his "behaviors" are wrong, nor to understand that actions such as removing privileges are consequences for improper behavior. Dr. Veinot stated that Alexander cannot make the rational connection between behavior and punishment. They also take the view that it is up to the girls to avoid action or inaction which will prompt such "behaviors". Even something as simple as reacting to Alexander pushing his feet against them on the couch by pushing back, rather than simply applying the pressures that he is communicating he is seeking, was described as something which would set off Alexander and something which the girls should avoid. Therefore, it is clear that both Dr. Veinot and Ms. Whitehead do indeed blame the girls for some of Alexander's behaviors. Rachael, being the younger of the two, would, more naturally, engage in the usual behaviors of a child her age and react negatively to Alexander's actions.

Consequently, it is reasonable that she would be the one to express feeling that she is being unfairly blamed for him engaging in “behaviors".

[234] In Exhibit 10A, at pages 20 to 22, there is an exchange of texts between Mr. McIntyre and Rebecca in relation to an incident at the beach where a stranger, unaware of Alexander’s autism, made negative comments to him when he dumped the crabs out of a bucket the children were using and killed one. Rebecca expressed upset over the woman’s lack of sensitivity and ignorance. Mr. McIntyre asked whether her mother said anything. Her mother’s advice was simply to ignore it. Mr. McIntyre said he would have said something to that stranger to explain the situation; but, that he and her mother did things differently. He added that he and Rebecca tended to respond more similarly.

[235] Dr. Veinot suggested that this incident of wanting to stick up for Alexander was inconsistent with Rebecca being scared of him. Ms. Reimer was of the view that the children would stick up for their siblings even if they were scared of them. She did not get the impression that they were scared of him every moment of every day. I agree with Ms. Reimer’s assessment. The girls would only be afraid of him when he is engaging in “behaviors” which manifest themselves in physical actions towards them. As Rebecca stated to Ms. Reimer, she is afraid of him even though she loves him.

[236] Whitehead also provided evidence that, if Alexander is engaging in a behavior, such as flailing his arms, Rebecca wants to step in and be the one to calm him down, instead of letting Ms. Whitehead deal with the situation. Rebecca and Ms. Whitehead have butted heads over that propensity. While she is there, Ms. Whitehead sees it as her job to look after Alexander.

[237] This might suggest a lack of fear on the part of Rebecca. However, again, as indicated by Ms. Reimer, Rebecca expressing fear of Alexander doesn't mean that she fears him all the time. Further, with Ms. Whitehead present, she would, more likely than not, feel safer than if she were in Alexander's company without an adult immediately present.

[238] Mr. Grant Veinot and Dr. Veinot have provided evidence regarding: their relationships with the girls; the girls' demeanor while with them; the way they conduct themselves in Alexander's presence; the school projects they have completed showing an understanding of autism; and, the activities they participate in while in their care. They suggest that these raise concerns over the reliability of their expressed wishes, and/or that they lack a valid basis.

[239] Prior to the Childrens' Wishes Assessment, Mr. Veinot stated that which follows.

[240] He is of the view that Rebecca and Rachael are not afraid of Alexander because of the following points. They love him, and he loves them. Even though his disease makes it such that he requires attention and supervision, and even though he does struggle with behavior at times, he is a good child, and not violent, nor malicious. The girls do a great job of trying to understand him. They assist him with tasks such as application of medication, helping him with his iPad, or fixing him something to eat. When in grade 5, Rebecca gave a school presentation in which she demonstrated an understanding of Alexander's behavior and attempted to dispel the common misconception that he was harmful.

[241] The girls had not discussed with him wanting to live with Mr. McIntyre.

[242] After the Childrens' Wishes Assessment, Mr. Veinot stated that which follows.

[243] Though he recalled being told of the scissors incident after-the-fact, with the issue being raised as a result of previous court dealings, he does not know whether or where it occurred.

[244] He disagrees that Mr. McIntyre does more things with the girls than Dr. Veinot does.

[245] He, himself, participates in a lot of activities with the girls. He and Rachael, on a daily basis, do such things as playing soccer, going to the pasture to see the cattle, playing cards and games, going to 4H, going to his and his wife's pool, skating, and various school activities. Although Rebecca prefers solitary activities, he does discuss her daily school activities with her. He also takes Rebecca to her activities and helps with homework. He is of the view that Mr. McIntyre simply does more "glamorous" things with them, such as going to the movies, visiting Prince Edward Island or shopping.

[246] He described the attitude of the girls regarding life in Windsor as being that of "two happy girls who love their mother, brother, grandparents and friends".

[247] When Mr. McIntyre was living in Nova Scotia he would pick up the children from Mr. McIntyre's house every second week. There are usually no issues at transition time. The children would come out to his truck and be ready to go to their mother's house. However, during his oral evidence he acknowledged a recent event where the children were standing in the driveway crying for 30 to 35 minutes when they had to return to their mother's care. Once they entered their mother's home they went to their bedroom and were still crying. Rebecca had told him at that point that she wanted to go live with her father. She seemed relieved after telling him that.

[248] Rebecca's letter dated October 2, 2015, to her teacher, Mrs. Davies, is inconsistent with her being unhappy living with her mother and wanting to move to Alberta with her father. It speaks positively about: summer at the beach house belonging to her mother's fiancé; enjoying school and her extracurricular activities; and, getting the "full middle school experience" in the next two years.

[249] However, Mr. Veinot, not being present with the children when they are with Mr. McIntyre, would not know the extent of the activities they engage in with their father. Therefore, his activity comparison comments carry little weight. Further, more likely than not, he is exaggerating the activities done with the children, and ignoring their reasons to be fearful of Alexander. I do not find that his evidence detracts from the credibility and reliability of Rebecca and Rachael's expressed concerns and wishes.

[250] I also accept Mr. McIntyre's evidence regarding having observed the children being upset while being picked up by Mr. Veinot at exchange time.

[251] Dr. Veinot also attributes the comment, that Mr. McIntyre does more with Rachael than she does, to him having a tendency to engage in more expensive activities and activities which result in them getting something, such as going shopping and going to the movies. In contrast, she indicated that she takes them to

the Park, for walks, to the library, to the market, skating or to the beach. However, she did acknowledge that Mr. McIntyre took them to the museum and camping. In addition, she has taken them on a Disney Vacation in Florida. There is no evidence that Mr. McIntyre has engaged them in an activity as extravagant and expensive as that. In my view, their desire to live with their father is not based upon more extravagant or expensive activities. It is based upon him being more responsive to their concerns and emotional needs, rather than dismissing them as being unfounded or an exaggerated product of excessive drama or display of emotion.

[252] Having heard Dr. Veinot's evidence, in my view, she does consider Rebecca to be an emotional and dramatic teenager. Therefore, irrespective of whether Rebecca learned the expression from Lisa McIntyre, it is an accurate description of the way her mother perceives her. In my view, that makes it such that the use of that expression by Rebecca does not detract from the credibility and reliability of her expressed wish.

[253] Dr. Veinot has dismissed the girls' expressed fear of Alexander as being unfounded. She expresses confusion that they would feel safer at their fathers simply because, apart from Rebecca's ski accident, they have not suffered injury in her care. Obviously, injury does not have to occur for there to be fear of injury. She states that they do not act scared. Again, one need not exhibit an outward display

of fear, to be afraid of the risk of injury. Dr. Veinot's attitude supports the reasonableness of their view that they feel better protected when with their father.

[254] Dr. Veinot stated that the children did not fully understand the consequences of a move to Alberta, including: the diminished contact with her and extended family; and, the loss of their friends, teachers and coaches. However, in my view, their comments indicate that the do have a significant understanding of such consequences. Rachael made reference to: the friends she would be leaving behind; preferring to stay in Nova Scotia to finish this school year; and, knowing that she would miss her mother. Rebecca spoke of: her close relationship with her grandfather and how much she cared about him; her mother caring about her; her liking her mother's fiancé; the impracticality of a move immediately after the interview for the children's wishes assessment; and, thinking about where she would be better off.

[255] Dr. Veinot suggests that the girls' desire to live with their father is motivated by his more permissive parenting. She stated: "Historically, Mr. McIntyre has more lenient rules and allows the girls more slack in terms of bedtimes, leaving them home alone, which friends they hang out with, what movies they see, the use of Internet, whether or not they get their ears pierced and walking around Windsor alone to name a few examples." However, since 2008, she has not been in Mr.

McIntyre's household while he has been parenting the children. Therefore, apart from Mr. McIntyre acknowledging that he allowed ear piercing, there is no indication that Dr. Veinot's comments are based upon anything but hearsay comments from the children. It was agreed that, apart from the comments made by the children to Ms. Reimer, the children's comments were not admissible for their truth. I have already expressed my view that allowing the second ear piercing, in the circumstances, did not constitute a level of permissive parenting that would motivate the children to want to live with their father.

[256] I accept Mr. McIntyre's evidence that he has not improperly influenced the children in their expressed desire to live with him. In my view, the only influence he has had on them is that resulting from him being an engaged, loving and responsive father. I accept that he has encouraged the children to be open and honest about what they want. He has made them aware that he would not be upset with them if they wish to live with their mother. They have an open and honest relationship with him.

[257] While cross examining Ms. Reimer, Counsel for Dr. Veinot suggested a lack of communication regarding the girls' fear of Alexander prior to commencement of the within application, including in the course of the 2013 application to medicate Alexander as a result of his violent tendencies. However, there are a number of

entries in the communication book where Mr. McIntyre mentions their fear of Alexander. Those include entries for the parenting periods of July 17-24, May 22-24, and June 5-12, 2015. In addition, I accept Mr. McIntyre's evidence that the girls informed them of their fear before that. He simply does not always write what they tell him in the communication book. That is clear from his delay in writing about Rebecca's most recent thoughts of self-harm. In addition, it emerged in the evidence presented in this Application, that in the 2013 Application, there is a paragraph in his affidavit referring to the girls being afraid and that fact being noted in the communication book in 2012.

[258] These prior communications did not cause Mr. McIntyre to make an emergency application, contact the child protection agency or delay his start date. Nevertheless, in my view, they still support the reliability of the girls' expressed wishes, and minimize or eliminate the diminishment of the weight of the Children's Wishes Assessment associated with the fact that Ms. Reimer would have asked further questions if such lack of prior communication had existed and she had known of it.

[259] The concerns had been there since before 2013. Mr. McIntyre simply trusted that Dr. Veinot would provide sufficient supervision to adequately protect the girls from serious injury.

[260] On cross examination, Mr. McIntyre confirmed that, at the time of the 2013 Application, Alexander had engaged in a number of violent acts against the girls. They included him pulling a handful of hair out, biting, and attempting to push them down the stairs.

[261] These historical violent acts against them are also supportive of their fear and of the reasonableness of their fear.

[262] Rebecca has been telling Mr. McIntyre, for over two years, that she wants to live with him. That was admitted for the fact that it was said. It is a prior consistent statement regarding wanting to live with her father, made prior to his even considering a move to Alberta. She has continued to tell him the same thing over the years, including shortly before he provided his testimony.

[263] I accept Mr. McIntyre's evidence that both Rachael and Rebecca now appear excited to move to Alberta, with Rebecca appearing even more excited than Rachael. He has observed Rebecca researching Alberta in general and the town of Olds in particular.

[264] Rebecca has also told Mr. McIntyre that Lisa McIntyre is more of a mother to her than her own mother. That is a prior consistent statement admitted for the fact that it was said.

[265] In my view, they were very "clear and unambivalent" in their wish to live with her father. Rebecca in particular was anxious to express her wish and expressed it very strongly, and has been expressing it for a long time.

[266] They have put a lot of thought into their decision. It is well-informed and based upon proper considerations. Either way they will be separated from one parent for extended periods of time. They recognize the difficulty of frequent visits given the distance between the households.

[267] Their mother's inability to fully connect emotionally with them, and her prioritizing giving attention to Alexander's needs, leaving little time or energy to look after their needs, has caused them to turn to their father for the emotional support they are seeking.

[268] The evidence strongly supports the reliability of their expressed wish to live with their father and their expressed wish to live in Alberta.

[269] The evidence showed that, more likely than not, they are very mature and intelligent 10 and 12 year old girls.

[270] Therefore, I attach a lot of weight to their expressed wishes.

The Nature, Strength and Stability of the Child's Relationship with Each Parent

[271] It is clear that the children love both parents and that both parents love them. However, Mr. McIntyre has a much more open, responsive, trusting and emotionally connected relationship with the girls than Dr. Veinot does.

[272] Rebecca's comments to Ms. Reimer show that she cannot communicate about serious things such as bullying at school and thoughts of self-harm with her mother. Her inability to communicate with her mother about at least some serious personal issues has been raised in the past by Mr. McIntyre in comments written in the communication book for Dr. Veinot to read. However, Dr. Veinot failed or refused to acknowledge any issue with communication. In my view, she either dismissed or ignored the problem, more likely than not, because she did not want to acknowledge any weakness or failure on her part. As a result, she has been unable to build the communication links required to establish a relationship with Rebecca that is as close as the relationship Rebecca has with Mr. McIntyre.

[273] Rebecca described Dr. Veinot as being stone-faced and not showing emotion. It was clear from the manner in which she testified on the stand, and from the screenshots of the communications between the children and Mr. McIntyre, that Dr. Veinot does not possess the same emotional flexibility and ease of empathetic communication Mr. McIntyre does. He is able to provide the emotional

support, in the manner and at the time required by the children. Dr. Veinot, instead, maintains an emotional rigidity.

[274] In response to Rebecca's comment that she does not show emotion, Dr. Veinot stated: "Rebecca told … this to me directly and commented that Dad cries for her." That statement was only admitted for the fact that it was said, not for its truth. However, Dr. Veinot making a point of commenting on it suggests that she sees such expression of emotion as a weakness or an undesirable trait.

[275] In an email to Mr. McIntyre, on October 6, 2015, at 22:13:49, Dr. Veinot stated, in relation to Rebecca: "She has been very philosophical and has been sharing deep thoughts and discussions openly." The content of that and the surrounding emails makes it clear that Rebecca had not been telling Dr. Veinot about being bullied at school and the impact it was having on how she felt, as well as her thoughts of self-harm. The words used by Dr. Veinot to describe Rebecca and her discussions belies a detached, unemotional and almost a scientific approach to her interactions with Rebecca. They do not reveal a close and warm connection.

[276] These points may explain why she considers Rebecca to be an emotional and dramatic teenager. She may be comparing the level of emotion and expression exhibited by Rebecca, to her own diminished level.

[277] Dr. Veinot loves her children. However, she is of the view that it is sufficient to express her love by doing things such as staying up to care for them when they are sick and in protecting them from harm, including harm through the Internet. She presents as overly protective and overly risk-adverse, except in relation to the safety risks posed by Alexander. That attitude resulted in her making comments such as that Rebecca having her ears pierced for second time would lead to Rebecca doing other things such as engaging in sex, drugs and tattoos. The effect upon Rebecca has been to make her feel inadequate and untrustworthy. That attitude is further reflected in her comment that, since the children know most of the people in the neighborhood in Windsor, if they yell for help someone who knows them or one of their parents will likely hear.

[278] It is understandable and commendable that Dr. Veinot would take reasonable steps to protect her children from Internet predators, and malevolent friends or acquaintances. However, her Internet and text message monitoring has extended far beyond what is reasonably required to effect that purpose. She has, in my respectful view, unreasonably invaded the privacy of Rebecca and Rachael's

communications with their father and their stepfamily. That has also resulted in the girls the feeling as though they are not trusted, and has detrimentally impacted their ability to communicate freely with their father and stepfamily. Instead, they have to engineer their communications so that they take place at times or in manners which Dr. Veinot will not be able to monitor.

[279] Rebecca's comment that her stepmother is more of a mother to her than her own mother, encapsulates the deficiencies in her relationship with her mother.

[280] It is also clear from the evidence that Dr. Veinot sees Alexander as requiring constant attention. She attributes all of his negative behavior to his autism, taking the view that he bears no personal responsibility for it. Instead, she blames the girls, particularly Rachael, for doing things to trigger Alexander's negative behavior, when Rachael knows or ought to know better.

[281] Since Rachael is only 10 years of age, it is difficult for her to put Alexander's needs and wants, ahead of her own. That fact was recognized by Lisa Whitehead in her evidence. However, it appears that Dr. Veinot expects Rachael to exhibit the understanding and behavior of a more adult person. That explains Rachael feeling that she gets blamed for Alexander's negative behavior.

[282] In an email to Mr. McIntyre, on September 23, 2015, Dr. Veinot stated: "I'm surprised that Becca is still telling you she wants to live with you. I do not talk to her about where she wants to live." Therefore, Dr. Veinot was aware that Rebecca was saying she wanted to live with her father.

[283] In or before August of this year, Dr. Veinot found a hand printed letter on her bed addressed to "Dear Mom" from Rachael. Among other things, it stated: "I want to live with dad because of Alexander treating me like a peace (sic – piece) of garbage and you are not helping enough to make it stop, like at dad's wear (sic – where) he rarely calls names and never hurts or tries to hurt us. And you don't know how much he scares me."

[284] Yet, even by the time of the hearing, Dr. Veinot had not discussed, with Rachael or Rebecca, these wishes or concerns. Therefore, she was either dismissing them or ignoring them. In my view, that shows a lack of consideration for and connection with them. One would expect a parent, who has a close and meaningful relationship with his or her child, to discuss such issues with that child as soon as practicable after receiving such a letter or being advised of such expressed wishes. Dr. Veinot's failure to do so signals a more distant and cold relationship, or an inability to engage in meaningful communication, or both.

[285] In the evidence of Dr. Veinot presented in this hearing, she continued to express the view that it was not true that the girls feared Alexander. This indicates that she continues to dismiss their expressed concerns, instead of discussing and addressing those concerns with them.

[286] In addition, Dr. Veinot has prioritized Alexander's needs over those of the girls. It is understandable that she would do so. His special needs create a significant and ever-present parenting challenge. The Court recognizes the difficult parenting situation Dr. Veinot finds herself in. However, it results in her being unable to give the girls the attention that she otherwise would. Her relationship with them has suffered as a consequence.

[287] In contrast, Mr. McIntyre, though he recognizes Alexander has special needs, takes the view that Alexander does, at least at times, understand when he misbehaves and bears some responsibility for that misbehavior. Mr. McIntyre also recognizes that the girls are still young and cannot be held responsible for Alexander's behaviors. As a result, instead of blaming them for Alexander's negative behaviors towards them, he takes steps to protect them from Alexander. That makes them feel more valued and protected. However, it results in him attaching less priority to addressing Alexander's special needs than Dr. Veinot does.

[288] Dr. Veinot, supported by Lisa Whitehead, takes the view and approach that Alexander requires constant preparation for change and accommodation of his reactions to change. As a result, her energies and attention, particularly in arranging and during transportation, are focused upon managing Alexander's behaviors. As a result, she brushes aside the girls' concerns regarding timely arrival at school so they can properly be prepared for presentations or other activities.

[289] Mr. McIntyre does not experience significant issues with transporting Alexander. Therefore, he would generally not encounter the same problems.

[290] Mr. McIntyre communicates and plays freely with his children. They still snuggle with him on the couch.

[291] The screenshots of his communications with them reveal that he is able to engage in playful, fun-loving communications, or empathetic, supportive and insightful communications, as called for by the circumstances. His communications reveal that he is engaged, and responsive to their needs. They have an honest and open relationship with him.

Willingness to Facilitate Contact and Support the Development and Maintenance of the Child's Relationship With the Other Parent

[292] I find that Dr. Veinot does not allow the children to communicate freely with Mr. McIntyre through text or Internet-based communications, as she regularly monitors those communications. Also, at times, she places limits upon their communication time with Mr. McIntyre, and, has further prohibited communication through Skype with their stepmother and stepsiblings. This has the effect of discouraging communication with Mr. McIntyre and their new stepfamily.

[293] It is reasonable for Dr. Veinot, as a responsible parent, to monitor Internet communications to protect the children from predators or improper influence. However, in my view, that does not justify invading the privacy of their communications with Mr. McIntyre or their stepfamily. Her saying that she treats those communications with the same confidentiality she treats her professional communications, in my view, is not a reasonable justification for such invasion of privacy. The children engage in communications with Mr. McIntyre which they want to keep private from Dr. Veinot. Due to Dr. Veinot monitoring those communications, they have to time or engineer those communications to keep them out of Dr. Veinot's eyesight or earshot. In my view, that unnecessarily limits their ability to access Mr. McIntyre via telecommunication.

[294] She makes insufficient effort to ensure the children communicate with him when they are apart from him. For instance, when he left for Alberta on July 27,

2015 with a U-Haul truck. On the way there, he was only able to exchange a few text messages with them. On August 1, he called. Dr. Veinot abruptly told him that family was visiting. He asked her when the children would be able to speak to him. After a long pause, Dr. Veinot called Rebecca to the phone, who indicated that she wanted to wait until company left to talk. However, Dr. Veinot did not ensure that communication took place. It was the next day before they called.

[295] Dr. Veinot has refused to allow Mr. McIntyre to take the children on vacations even though he offered alternate parenting arrangements to keep the parenting times equal.

[296] While in Nova Scotia for a short visit Mr. McIntyre engaged in email communications with Dr. Veinot in which he informed her that he would pick up the children at noon at the school where she was bringing Alexander for a meeting with his upcoming teacher. Dr. Veinot was not there with the children at noon and made no attempt to notify Mr. McIntyre that she would not be there. Her explanation for not doing so was that, due to Alexander's unpredictability, she would not have known that she would not be there. She gave the example that, even if she arrived there at 11, she might have to stay until 1 o'clock due to difficulties in transitioning Alexander or getting him to move. In my view, that is a feeble excuse for not even attempting to advise Mr. McIntyre that she would not be

there with children. The email communications exchanged, in my view, reveal that she had her mind made up that Mr. McIntyre should pick up the children either at the home of her parents or at her home. Therefore, she avoided accommodating a pickup at the school, as requested by Mr. McIntyre, and did not even let him know she would not be there. That reveals a tendency to only arrange access on her own terms, rather than to facilitate access in a manner conducive to Mr. McIntyre's situation.

[297] Similarly, there was an exchange of emails between the parties regarding arranging for Lisa McIntyre to have access with the children for one or two hours while she was in the Windsor/Kentville area. In my view, the communications clearly reveal that Lisa was expecting to visit with the children in that area, and had limited time and transportation to travel to Queensland, where Dr. Veinot was. Dr. Veinot kept insisting on an exchange closer to Queensland, suggesting, as one option, New Ross Farm. Dr. Veinot testified that her failure to arrange that access was due to confusion. However, in my view, it was caused by her own insistence on where the access exchange should occur, and her refusal to inconvenience herself so as to facilitate such access, even though it was the only opportunity for the children to see Lisa.

[298] In the course of this proceeding, Dr. Veinot submitted that Mr. McIntyre should only be able to transport the children to Alberta once per year, being during the Spring Break, to parent them there. Otherwise, parenting should take place in Nova Scotia. That, in my view, would unreasonably limit Mr. McIntyre's ability to be physically present to parent his children.

[299] In contrast, I find that Mr. McIntyre allows the children to communicate freely with Dr. Veinot, and encourages them to call her on Mother's Day, her birthday and other special occasions. He also encouraged and helped them get a Father's Day card for Dr. Veinot's fiancé.

[300] Mr. McIntyre agreed to the children going on an extended vacation with Dr. Veinot, even though it cut into his parenting time, after Dr. Veinot gave him assurances that she would ensure his parenting time was made up at some other point. However, she failed to honor that promise.

[301] In the event that the children were permitted to move to Alberta with Mr. McIntyre, he proposed the following parenting time with Dr. Veinot: one full month in the summer, alternating between July and August; during the Christmas break and other special occasions throughout the year as currently provided for in the existing order; unobstructed access to video chats through Skype or other forms

of secure videoconferencing media on a weekly basis; and, unobstructed access through text and email.

[302] He will ensure a continued relationship between the children and their mother through frequent contact via Skype, email, telephone and, as finances allow, visits.

Time Availability of Each Parent and Maximization of Parenting Time with Each Parent

[303] In the current court-ordered parenting arrangement, the parties parented their children on a week on week off basis. Mr. McIntyre did so around his regular work hours. Dr. Veinot, to some extent, adjusted her work around her children. This arrangement permitted optimization of parent availability and parenting time.

[304] Mr. McIntyre's living in Alberta, irrespective of where the children are living primarily, will significantly diminish the parenting time that the children have with the other parent. However, the parties are essentially in the same position regarding their own time availability for the children, other than the travel time that would be used up if they were to travel to the children's province of primary residence to parent them.

Financial Consequences of Parenting Arrangement and Financial Contribution to Welfare of Children

[305] I will deal with these two factors together.

[306] Mr. McIntyre's full-time employment with Sepracor Canada was terminated in April 2013 due to the company closing its operations in Nova Scotia. He obtained part-time employment with Slanmhor Pharmaceuticals within three months. Meanwhile, he continued searching for full-time employment and additional part-time employment. He was unsuccessful. Slanmhor closed its operations in Nova Scotia in June 2015. Therefore, Mr. McIntyre lost even his part-time employment.

[307] Starting in April 2013 and continuing until May 2015, Mr. McIntyre submitted 47 job applications in Nova Scotia. Starting in June 2014, he had expanded his search to New Brunswick and Prince Edward Island. He did not receive any job offers from those applications. He then expanded his job search further west in Canada and into the United States. June 16 or 17, 2015, he received a job offer from Olds SoftGels Inc., in Olds, Alberta. That was the first and only job offer he received. He accepted it.

[308] This job necessitated his moving to Alberta.

[309] His job at SoftGels pays approximately $80,000 per year. Prior to that, Mr. McIntyre was earning approximately $33,741 from his part-time employment with

Slanmhor. He was supplementing that income with withdrawals of generally $4100 per month, before taxes, from the RRIF in which he had placed the severance payment he received from Sepracor. By June 2015, he had lost his part-time employment with Slanmhor, and had only $800 after taxes remaining, from his severance RRIF. Therefore, the point where he could no longer pay his bills, other than by incurring debt through using his line of credit, was fast approaching.

[310] Mr. McIntyre had not been successful in obtaining employment in Nova Scotia after attempting to do so for over two years. Had he remained in Nova Scotia, more likely than not, he would not have any employment, nor other source of income, to pay child support.

[311] Even more problematic is the fact that, even with his wife's then income of $31,578, they could not have continued making their payments. They would have risked bankruptcy and losing their home. He was afraid that, without a home, he would not be able to continue parenting the children as he had been.

[312] In those circumstances, he did not think to ask delay his start date.

[313] His move to Alberta for employment purposes, has had a significant positive impact upon his ability to contribute financially to the welfare of the children.

[314] He agreed that he had not applied anywhere else since he took the job in Alberta. He stated that was because he had learned that looking for other employment immediately after obtaining employment gives a potential employer the impression that the applicant is engaging in "job jumping". Giving such an impression is detrimental to the ability to secure employment.

[315] Therefore, in my view, it is reasonable for Mr. McIntyre, at least for the time being, to discontinue his job search within Nova Scotia.

[316] Dr. Veinot proposes a reduction in child support to account for increased access costs. Mr. McIntyre proposes an elimination. Either way, the move to Alberta, has resulted in less money being available directly for the children. However, that will not change depending upon the parenting arrangement.

Support of Extended Family and the Nature, Strength and Stability of the Relationship Between the Child and Each Sibling, Grandparent and Other Significant Person in the Child's Life

[317] The children's maternal grandparents, particularly their grandfather, have been a constant part of the children's lives. Rebecca and Rachael have a close relationship with them. They are not moving to Alberta.

[318] They live only an eight minute drive from Dr. Veinot's home in Windsor. The children's grandfather sees them almost every day that Dr. Veinot is parenting

them. He spends a significant amount of time with them, devoting a lot of his time to caring for Alexander. He also, is usually watching over the girls at same time.

[319] He participates in activities with the girls and transports them to lessons, practices and their friends' homes.

[320] The girls also enjoy playing games, shopping and other fun activities with their maternal grandmother.

[321] The maternal grandmother's contact is now less regular than it was in earlier years. However. the girls are often invited to stay at their home, and sometimes do so, including when Dr. Veinot has gone to Queensland.

[322] Dr. Veinot has a brother who lives in the Halifax area. His children associate with those of Mr. McIntyre and Dr. Veinot.

[323] Further, she has other extended family in Windsor. The girls have a good relationship with their aunts, uncles, cousins, and great-grandparents. Dr. Veinot's extended family is large. They are close and have family barbecues and suppers when they can. The children are involved in those.

[324] Mr. McIntyre only has one sibling, who lives in Quispamsis, New Brunswick. His nieces and his children get together physically for five times per year. They also communicate using Skype.

[325] Mr. McIntyre's parents are also in the St. John New Brunswick area. They visit a couple of times per year.

[326] Dr. Veinot has a cousin in Alberta by the name of April. Prior to her moving to Western Canada, she saw the children at family barbecues and other gatherings.

[327] Mr. McIntyre also has cousins in Alberta. They have not yet met the children. However, he has contacted them, and there are plans for them to visit.

[328] The children's stepmother and step-sister live in Alberta with Mr. McIntyre. The children, were with them about half of the time before Mr. McIntyre's move to Alberta, and, at least Rebecca and Rachael, appear to have a close relationship with them.

[329] I have discussed, and will later further discuss, the relationship between the girls and Alexander.

[330] If the children are with Mr. McIntyre in Alberta, he will continue to ensure that they maintain a relationship with their family members through frequent

contact via Skype, email, telephone and visits. However, it will negatively impact their ability to have physical contact with extended family. The biggest void will likely be the lack of regular contact with their maternal grandfather, who has been a very loving and present grandfather. They will, however, re-establish regular contact with their stepmother and stepsister.

Sharing Information and the Ability of Each Parent to Communicate and Cooperate on Issues Affecting the Child

[331] Mr. McIntyre obtained a second interview for his job in Olds, Alberta in late May. However, he did not inform Dr. Veinot of that. He explained that the reason for not informing her was because it was still uncertain whether or not he would get the job. Therefore, he did not want to unnecessarily "bring up drama". He pointed to the depth and breadth of her questions in the communication book, in which she made big issues out of the small things. He did not want to give her something to unnecessarily make a big issue about.

[332] He added that Dr. Veinot tends not to speak with him except through the communication book.

[333] Further, since Dr. Veinot would not even discuss the issue of a suspending child-support until he paid arrears, he did not see any chance of successfully discussing the issue of the children moving to Alberta with him. That is why he

commenced the application before informing Dr. Veinot that he was moving, albeit only two days before he informed her.

[334] Mr. McIntyre has attempted to discuss, with Dr. Veinot his concerns and other issues related to the children. However, she has brushed them off as being nonissues, unfounded, not of her making, not her problem, and/or Mr. McIntyre's fault. The communication book entries, including those sent by email, reveal Dr. Veinot's general response to the communications from Mr. McIntyre. Instead of directly addressing a clear issue raised by him, she engages in questioning whether the issue actually exists, and proceeds to snowball him by re-raising complaints directed at him that she had previously raised and he had previously addressed, and/or raising new concerns.

[335] For example, she engaged in a long drawn out expression of issues and concerns in response to Mr. McIntyre simply raising the question of suspending child-support.

[336] Of particular concern is the resistance she displayed in accepting as genuine and well-founded Mr. McIntyre's information regarding Rebecca's recent thoughts of self-harm and his pleading for Dr. Veinot to arrange for Rebecca to see a psychologist. An example of that is her response to his email to her of October 6,

2015, in which he pointed out the bullying and depression Rebecca was experiencing, and pleaded for her to make an appointment, as soon as possible, with someone other than Dr. Banks. Dr. Veinot responded by stating that she was "not bogged down by the dramatic flare Becca often exudes", and by implying that Mr. McIntyre was "jumping to conclusions" and making "accusations". Her response indicates that she was not taking Mr. McIntyre's concerns seriously.

[337] In my view, the issue of self-harm is a very serious one which Dr. Veinot ought reasonably have acted upon quickly, even if she was not completely certain of the foundation. In my view, her reluctance to act arose from the fact that Rebecca had not expressed her thoughts of self-harm to her. In addition, she considers Rebecca to be dramatic and emotional, so she does not take her concerns seriously.

[338] Reviewing those communications, it is easy to understand that Mr. McIntyre would limit his communications with Dr. Veinot by raising only those concerns that he absolutely has to, in order to avoid the avalanche of unresponsive and repetitive concerns he receives in reply.

[339] I do agree with Dr. Veinot's view that Mr. McIntyre ought to have discussed, with her, the issue of having Rebecca's ears pierced, before taking her

to have it done. However, I also agree with Mr. McIntyre that Dr. Veinot overreacted and blew things out of proportion. In my view, it was not such a drastic action.

[340] Mr. McIntyre had advised Rebecca, in response to her disclosure of having thoughts of self-harm, that she should see a psychologist. Dr. Veinot took issue with Mr. McIntyre giving Rebecca that advice, prior to a mutual agreement having been reached between them as parents regarding the mental health intervention required for Rebecca. Ideally, if the parties had been able to communicate freely and meaningfully in the best interests of the children, and if Rebecca had a more trusting and open relationship with her mother, it would have been best for Mr. McIntyre to immediately discuss the issue with Dr. Veinot. However, Mr. McIntyre was dealing with a situation where: the communication between he and Dr. Veinot was strained; any significant communication triggered an avalanche of concerns from Dr. Veinot; and, he was respecting Rebecca's requests for confidentiality and nondisclosure to Dr. Veinot. In those circumstances, I see nothing wrong with Mr. McIntyre having suggested that Rebecca speak to a psychologist, particularly given that he was in Alberta, thus limiting his ability to support her emotionally. In my view, it demonstrates his responsiveness to her emotional state and his concern for her well-being.

[341] Instead of being glad that Mr. McIntyre was there to listen to Rebecca's concerns and encourage her to seek professional help, Dr. Veinot took a self-centered view of the situation. She saw it as Mr. McIntyre trying to make her out "to look like the mean parent who does not understand her and does not want her to see a psychologist". I find that Mr. McIntyre's approach was based solely upon his genuine concern for Rebecca, and had nothing to do with any impact upon Dr. Veinot's image.

[342] When Dr. Veinot had Rebecca and Alexander in the hospital emergency department, following an accident at the ski hill, she did not contact Mr. McIntyre to let him know. She testified that she did not feel that she had to call because she had the necessary medical expertise to assess that it was not a significant injury, so she knew Rebecca could decide to call later. Dr. Veinot agreed that she did not call. She told Rebecca to call when she wanted. In addition, she did not put it in the communication book. The explanation she gave for that was that there was no "outcome".

[343] Dr. Veinot did not indicate any reluctance to communicate due to Mr. McIntyre's reactions to her communication. Although Rebecca initially, while at the ski hill, indicated that she did not want her mother to call, there was no indication that she asked Dr. Veinot not to tell Mr. McIntyre. Dr. Veinot simply

did not see any need to let him know that Rebecca and Alexander had been brought to the emergency room as a result of an accident at the ski. In my view, that is something one would expect to be communicated to the other parent. Her failure to do so is an indication that she sees informing Mr. McIntyre of such events as being of limited importance.

The Child's Physical, Emotional, Social, Intellectual and Educational Needs and Well-Being, Including the Child's Need for Stability and Safety, Taking into Account the Child's Age and Stage of Development, and Including the Physical and Character Development of the Child by Things such as Participation in Sports, as Well as Emotional Support to Assist in Developing self Esteem and Confidence

[344] In the case at hand, one of the children, Alexander, is a special needs child who, due to his autism spectrum disorder, requires significant attention and care.

[345] Ms. Whitehead described his needs as follows.

[346] From the time that he wakes up in the morning to the time that he goes to sleep at night, you have to fill his day. He requires constant chatter. He needs to be told what is coming next to prepare him for change and the unknown because they bring on anxiety and trigger negative behaviors.

[347] For the most part, he is unable to have bowel movements in any washroom other than the one at his home. She can count on one hand how many times he has

had a bowel movement at school; and, on two hands how many time he has done so at her house. The most effective technique for getting him to use the washroom, other than at home, even to urinate, is to convince him that it is a worker man's washroom.

[348] He considers himself a worker man and identifies with them.

[349] He requires consistency and a regimented routine. Everyone needs to treat him the same way.

[350] He needs pressure applied to him regularly. She engages in games with him to apply such pressure. For example, at school she plays a game called hot dog, in which she rolls him in a gym mat and pretends she is applying ketchup, mustard etc. She also applies pressure in other ways.

[351] He has a number of preferred activities. Some of them result in him being able to self-apply pressure. For example he likes cutting grass and brush with gardening and pruning shears which he refers to as "chompers". While he is doing that, she can simply watch. He also likes: making birdhouses; gardening; moving things with the wheelbarrow; digging; feeding the cows; pitching hay with pitchfork; bottle-feeding the calves; picking apples; and, breaking down old pallets with a rubber mallet.

[352] Although she is constantly reminding him of the safety rules associated with such activities, he does not understand them.

[353] Other preferred activities which are not so useful for applying pressure include: watching videos on his iPad of "worker man" things such as construction shows, lumbering activities and Duck Dynasty; cooking; going to the slaughterhouse; and, going to Home Hardware.

[354] His chances of having a "behavior" or a meltdown is reduced during preferred activities. However they can still happen.

[355] Things as simple as the meat saws at the slaughterhouse being too loud will set him off. You need to know what sets him off.

[356] Once he does have a meltdown, you have to be calm and quiet to deal with him.

[357] As I indicated during my assessment of credibility and reliability, I find that Ms. Whitehead, likely unintentionally, tended to somewhat exaggerate Alexander's needs.

[358] Further, although she and Dr. Veinot confer to determine the best strategies for dealing with Alexander, it is Dr. Veinot who lays down the rules regarding the

techniques to be used for dealing with him. Therefore, naturally, Ms. Whitehead's views regarding his needs and the best strategies to deal with them are based, at least to a large extent, upon Dr. Veinot's views.

[359] However, it is clear, and there is no dispute, that Alexander does require a lot of special attention.

[360] Mr. Veinot described Alexander as follows. He suffers from severe autism and has many cognitive, physical and emotional limitations. He requires constant care. He struggles with behavior at times, change and transition. Changes cause stress for him and he needs to be constantly informed in relation to what is happening and why. The triggering change can be as simple as a missing object, or something less simple, like a change in his routine.

[361] Dr. Veinot was less forthcoming than Lisa Whitehead in relation to the safety risks Alexander posed for other people, which I described under the Children's Wishes section of this decision. However, otherwise, she echoed essentially the same description of Alexander's condition and needs presented by Ms. Whitehead.

[362] She testified that he required care 24 hours per day, seven days per week. When she is looking after him by herself, she cannot use the washroom, have a

shower or make a call. She cannot even sit quietly with him. He requires constant verbal narrative. Her father comes to her residence almost every day. That allows her to do those things. Otherwise, according to her, she cannot walk away from Alexander long enough to do so.

[363] She stated that, even with four adults on the Disney trip they still needed to have Lisa Whitehead as a respite worker, to make it fun.

[364] She confirmed that her day starts whenever Alexander gets up. The morning of the hearing, it was at 4 AM.

[365] Her safety concerns in connection with Alexander are more related to his own safety. Because of his need for pressure, he will push against things, including hard items like cinder blocks. He does not feel pain. He has kicked cinder blocks and broken his foot, without feeling the pain. He is uncoordinated. He often falls quite hard, particularly if he is running. Because of his inability to feel pain he does not realize how forcefully he does things, including dropping his own weight on the ground. He cannot distinguish a gentle as opposed to rough action. He has injured himself more than anyone else.

[366] Dr. Veinot, in her email of October 20, 2015, advised Mr. McIntyre that Alexander resisted going with him the last time and that it took a lot of time to get

him in the car. She indicated that problem would be lessened if Alexander knew what to expect. Therefore, it appears that Alexander even needs to be prepared for a visit with his father.

[367] Mr. McIntyre agrees that Alexander does experience difficulty with change. However, that appears to create fewer issues when Alexander is with him than when he is with Dr. Veinot. They rarely have issues with him when driving or stopped in a motor vehicle. Though he watches Alexander almost constantly, Alexander still enjoys spending time in his room, playing Lego, Smurfs and watching his iPad, by himself. He has not experienced the same difficulties that Dr. Veinot has expressed in relation to Alexander's consumption of food and drink. He has been taking Alexander to activities, such as movies or plays, for years. Dr. Veinot has been celebrating such activities with Alexander as being "firsts" for her.

[368] Mr. McIntyre does not understand why a respite worker was required to accompany them on their Disney Trip, when Dr. Veinot, her fiancé and her father were all present to help. Alexander has been in his household for half of the time. It has been common for either he, or his wife Lisa, to be home alone, while the other was working, and take care of all of his three children, including Alexander, and her two children.

[369] Dr. Veinot has hindered Rachael's ability to participate in certain activities in Nova Scotia, such as cheerleading and swimming lessons.

[370] However, Rebecca and Rachael have been involved in sufficient activities to support their physical and character development, although, Rebecca's interests are more in the area of arts and music.

[371] As noted in a section dealing with the children's relationship with each parent, unfortunately, Dr. Veinot appears to have been unable to provide the girls, Rebecca in particular, with the emotional support required to assist in developing their self-esteem and confidence. Mr. McIntyre is much more supportive in that area. However, also as noted, Mr. McIntyre attaches less priority to addressing Alexander's special needs.

The Plans Proposed for the Child's Care and Upbringing, Having Regard to the Child's Physical, Emotional, Social, Intellectual and Educational Needs, Including the Physical Environment

[372] Olds, Alberta has greater options for recreational activities for the children including: a public indoor pool; a skate park; and outdoor splash pad; multiple sporting rinks in the Sportsplex; an arts program; and multiple sporting programs such as soccer, basketball, hockey, and lacrosse. There are also many opportunities

to become involved with activities involving wildlife, ranching, farming, walking trails, parks, and 4-H, including horseback riding.

[373] The middle school encompasses grades 5 to 8. Therefore, Rachael and Rebecca would be in the same school, along with their stepsister, Emily. The school has a greater selection of elective courses, which caters to the students' interests.

[374] In Olds, there is a school known as the Horizon School. It is for children with disabilities and offers programming designed to meet their individual needs. It would offer Alexander a higher level of education and support than that which he now receives in the regular school system in Nova Scotia. Even if he is not accepted into that specialized school, he would be accepted into the public school system and continue in such a system as he is doing now.

[375] Although Mr. McIntyre generally does not have issues relating to Alexander dealing with change, he has taken steps to minimize the potential the difficulties arising from Alexander moving to Alberta. He has set up, in his new home, the same items that were in Alexander's room in Windsor, and with which he is already familiar. Alexander is also familiar with the other items that were in Mr. McIntyre's Windsor home, and have been transferred to his Alberta home.

[376] However, he has nothing in place in relation to the change of school that Alexander will face if he moves to Alberta.

[377] Dr. Veinot did not put forward any plan. I, therefore, infer that she simply intends to continue as she has been doing. Given the disclosures from the children, one would have expected her to have formula plan to address at least: Rebecca's expressed inability to communicate with her mother; Rachael's complaints of feeling blamed for Alexander's behaviors; and, both their concerns over feeling neglected and unprotected from Alexander.

Discipline

[378] Dr. Veinot states that the traditional approach to discipline, i.e. removing an object as a consequence of misbehavior, does not work with Alexander. She sees it as an inappropriate response because she is of the view that he cannot make "the rational connection between behavior and punishment", so he "cannot understand the relationship between his behavior and losing the object of his affection". She indicates that her fiancé, Shaun, has a tendency to impose that traditional type of discipline, which results in a disagreement between them.

[379] McIntyre has taken things from Alexander as a disciplinary measure. He states that Alexander sometimes understands when he misbehaves, and sometimes

does not. He sees taking things from him as a disciplinary measure as part of the process of teaching him that his behavior has consequences. He sometimes understands that his behavior has consequences, and sometimes does not.

[380] Dr. Veinot does not agree with that approach.

[381] It is unclear to me what the best approach is. However, given the acknowledgment by Mr. McIntyre that Alexander sometimes does not understand that his behavior has consequences, I tend to agree more with the approach advocated by Dr. Veinot, with some flexibility built-in to attempt to get him to understand that his behavior does have consequences.

[382] The question of discipline of the girls was not an issue addressed in this proceeding.

Role Model

[383] Both parties are employed and manage to juggle parenting time and work. They engage in positive activities and relations with their children. As such, they are both good role models for positive work/life balance.

[384] However, they have not managed to work together in eliminating the conflict and tension between them so that they can communicate freely and cooperatively in the best interests of the children.

[385] They would both serve as better role models if they were able to show the children that they could overcome their differences in order to work together and communicate properly for the best interests of their children.

Conclusion Regarding Parenting Arrangement in Light of Mr. McIntyre's Move

[386] I have considered all of these best interest factors, and my analysis of them, as I have outlined.

[387] The communication difficulties between the parties raises a question regarding whether a joint custody arrangement should continue. However, the parties have made communication via the communication logbook exchanged between them work well enough to justify continuing the joint custody arrangement.

[388] Now that Mr. McIntyre has moved to Alberta, unfortunately, the children will be separated for extended periods of time from one parent, regardless of their

primary residence. However, I must determine which primary residence is in their best interests.

[389] Leaving behind the life and environment they have known up to now would be disruptive and require significant adjustment. They would no longer have the benefit of the family, friends, schools, colleagues, community and activities they are familiar with. They would no doubt miss their mother and grandparents greatly. The adjustment would be particularly difficult for Alexander, who does not respond well to even some minor changes.

[390] However, they would be rejoining their father and most of their stepfamily, with which they had been living half of the time before Mr. McIntyre's move to Alberta.

[391] The girls have been doing well in their schooling and extracurricular activities. In that way, the existing arrangement has been working. However, since Mr. McIntyre moved to Alberta Rebecca has been encountering difficulties at school which have been causing her to have thoughts of self-harm which she has been unable to discuss with her mother. Therefore, the current arrangement is not working for her. In her mother's care, she is feeling neglected, un-trusted, and unprotected from Alexander. She feels that her mother dismisses her concerns as

merely dramatic expressions. Similarly, Rachael feels neglected and feels that she is blamed for Alexander's actions. She feels safer with her father. It is their father who gives them the attention, emotional support and protection they need. It is difficult for him to do that from Alberta.

[392] The girls have a much closer and more nurturing relationship with their father, than with their mother. In addition, at least Rebecca, is of the view that her stepmother is more of a mother to her than her own mother. Based on the text communications, that is, more likely than not, because her stepmother is more supportive and nurturing than her own mother. The girls, particularly Rebecca, have a great need for such relationships at this time.

[393] Both Rebecca and Rachael have clearly stated that they want to live with their father. For the reasons already discussed at length, I find that they have formed those wishes for valid reasons and I attach a significant amount of weight to those wishes.

[394] In my view, if the girls remain in Nova Scotia with their mother, she, more likely than not, will fail to facilitate parenting time with their father. Conversely, I am confident that their father will facilitate and encourage parenting time with their mother. Given that the parties had each been parenting the children equally

prior to Mr. McIntyre's move to Alberta, in my view, it is especially important that the children have as much contact as reasonably practicable with the parent with which they are not primarily living.

[395] Due to Alexander's special needs, arranging travel for such contact will require him to be properly prepared for travel and supported during travel. He does not handle change well. He had to be extensively prepared to fly to Florida for the Disney Vacation. That included familiarizing him in advance, as much as possible, with the airplane he would be flying on, where he would be staying and what he would be eating. In addition, he was accompanied by his regular respite care worker, who was there solely to attend to and watch over him. Even after extensive preparation, incidents occurred, such as when an alarm went off at airport security, and when Alexander was having difficulty with using the airplane washroom, which could easily have resulted in significant distress for Alexander if his respite care worker had not been there to help him through it. No such plan was presented in evidence regarding Alexander's travel to Alberta. Mr. McIntyre submitted that it should be sufficient for Alexander to be accompanied by his stepbrother, Kyle. However, there was no evidence that Alexander has had any significant amount of contact with Kyle recently. Alexander recently expressed reluctance even going in the car to see his father without advance preparation. There is no indication he has

been prepared for any particular airplane, airport or other facility he would have to go through. Therefore, the plan argued as being sufficient is of concern.

[396] The girls and Alexander have not been separated for more than five days at a time in the past. Separating their primary residences would be a further significant change for them. However, in my view, there is a compelling reason to separate them.

[397] There is a difference in the views of the parties as to the level of care and attention Alexander requires. In my view, more likely than not, Dr. Veinot and Ms. Whitehead over-exaggerated it, while Mr. McIntyre minimized it, to some extent. It is unclear to what extent. However, it is clear that Alexander requires significant care and attention because of his autism disorder. The fact that he requires significant interaction, including in the form of "chatter", makes it difficult for the parent providing him primary care to give the girls the attention that they should have.

[398] Mr. McIntyre is of the view that Dr. Veinot has overstated the extent to which Alexander wants to be with his sisters at all times. Mr. McIntyre and Alexander spend a significant amount of time together. Rebecca and Rachael often play without him. They also go out with their stepmother, leaving Alexander with

Mr. McIntyre. They have visited with Mr. McIntyre's parents, and had sleepovers with his nieces, without Alexander. Though Alexander may ask where they are or when they're coming back, it does not appear to cause him any distress.

[399] Further, although the girls do things and participate in family activities with Alexander, they don't sit down and play with him.

[400] There was no evidence that the absence of persons Alexander was used to having around caused distress, as long as he knew ahead of time which persons he was going to be with. It is only when new persons, or even new vehicles, that he was unfamiliar with were substituted, especially without warning, that he had a problem.

[401] Further, the undisputed evidence was that he had no concept of time. Therefore, even though Rebecca and Rachael have been a big part of his life, and he would miss them if they were not around, there is no evidence it would cause the negative type of reactions he experiences when being cared for, or assisted by, someone new.

[402] Mr. McIntyre did not think Alexander would feel he had done something wrong if the girls moved to Alberta and he stayed in Nova Scotia.

[403] In my view, that is not an unreasonable conclusion for the following reasons. First of all, the girls have been separated from him for up to five days without a problem, and, though present, do not directly play with him. Secondly, he has a limited ability to associate his own actions with consequences. Thirdly, although he had, at one point, expressed a wish to move to Alberta with his father, both parties agree that he does not understand what it means to move there.

[404] I accept Mr. McIntyre's view that separating the girls and Alexander would not have any significant detrimental effect upon Alexander.

[405] Rebecca and Rachael have a much greater ability to adapt to change than Alexander. Therefore, such separation would not be any more detrimental to them.

[406] Further, a parenting arrangement can be engineered to provide for all three children being parented together as much as reasonably practicable.

[407] Therefore, in my view, in the circumstances of the case at hand, it would be the best interests of the children that they be separated so that one parent can provide the attention required by Alexander, and the other parent can provide the attention required by the girls.

[408] Dr. Veinot is clearly the parent who prioritizes and pays the most attention to Alexander's needs, albeit to the detriment of fulfilling the girls' needs.

[409] As conceded by Mr. McIntyre, the court has consistently determined that it is in Alexander's best interests that Dr. Veinot have decision-making authority in relation to him, with the exception of one program which Mr. McIntyre had the option of enrolling him in. There has been no material change which has impacted the decision-making ability of either parent. Mr. McIntyre's move to Alberta has impacted his ability to be physically present to parent Alexander. However, it has not made it such that Dr. Veinot should no longer be the one to have decision-making authority in relation to Alexander.

[410] Therefore, it is in Alexander's best interests to reside primarily with his mother.

[411] I see no compelling reason to separate the girls. Neither of them are special needs children. They both only require an average level of care and attention. That can readily be provided by one parent looking after both of them.

[412] Further, both girls have found it difficult to express their wishes to their mother. Rebecca finds she cannot communicate with her mother about any serious matter. Rachael had to write her wishes in a letter and leave it for her mother. Her mother has not discussed the issue with them, even though they have clearly made their wishes to live with their father known in the Children's Wishes Assessment.

From August to Christmas they lived with her full-time. More likely than not, that has left them living under a cloud of tension. It is not in their best interests to continue living with such tension any longer than reasonably required.

[413] Therefore, even though Rachael expressed a wish to finish grade 5 in Nova Scotia before moving to Alberta, in my view, it would be in her best interests to move at the same time as Rebecca. In my view, Rebecca's thoughts of self-harm signal some urgency in her moving to Alberta to be with her father. Therefore, in my view it would be in her best interests to move there to be with her father as soon as practicable.

[414] As noted in ***Kennedy v. McNiven***, 2014 NSSC 162, at paragraph 79, although the wishes of the children is but one factor to take into account in determining their best interests, in this case, the children's wishes and the children's best interests "lead me to the same result".

[415] Consequently, in my view, in the circumstances, the parenting arrangement that is in the best interests of the children is that outlined in my letter dated December 18, 2015 to the parties to the extent required for the parties to put moving plans and the 2015 Christmas parenting in effect, with the complete parenting arrangement going forward being as follows.

1. The parties shall continue to share joint custody of all three children of the marriage.

2. Rachael and Rebecca shall have as their primary residence the home of Mr. McIntyre.

3. Alexander shall have as his primary residence the home of Dr. Veinot.

4. Rebecca and Rachael shall be parented by Dr. Veinot:

   (a) every spring break, commencing at noon the day after the last day of school and ending at noon two days before school recommences;

   (b) every summer break, on an alternating basis, starting with the summer of 2016, commencing two days after last day of school and ending the last day of July, then, for the summer of 2017, commencing the first day of August and ending two days before the first day of school, and continuing to alternate each year in the same way;

   (c) every Christmas break, on an alternating basis, starting with Christmas 2016, from Boxing Day at noon until two days before school recommences at noon, then, for Christmas 2017, commencing at noon the day following the last day of school and ending on Boxing Day at noon, and continuing to alternate each year in the same way; and,

   (d) at such other times as may mutually be agreed upon by the parties, which agreement shall not be unreasonably withheld.

5. Subject to items 6 and 7 below, Alexander shall be parented by Mr. McIntyre:

(a) every spring break, provided Alexander's spring break is not at the same time as that of Rebecca and Rachael, commencing at noon the day after the last day of school and ending at noon two days before school recommences;

(b) every summer break, on an alternating basis, starting with summer of 2016, commencing the first day of August and ending two days before the first day of school, then, for the summer of 2017, commencing two days after last day of school and ending the last day of July, and continuing to alternate each year in the same way;

(c) every Christmas break, on an alternating basis, starting with Christmas 2016, commencing at noon the day following the last day of school and ending on Boxing Day at noon, then, for Christmas 2017, from Boxing Day at noon until two days before school recommences at noon, and continuing to alternate each year in the same way; and,

(d) at such other times as may mutually be agreed upon by the parties, which agreement shall not be unreasonably withheld.

6. Mr. McIntyre's parenting of Alexander shall be limited to parenting in Nova Scotia, or at the home of relatives of Mr. McIntyre in New Brunswick, unless and until a plan has been put in place to properly prepare Alexander for, and support him during, air travel, which plan is to be approved by both parties or a court of competent jurisdiction, even if this requirement makes it such that Mr. McIntyre is unable to parent Alexander because he is parenting Rebecca and Rachael in Alberta or elsewhere.

7. The parenting provided for in items 4 and 5 shall be adjusted as necessary to accommodate: the children's school schedules; the children travelling together as much as reasonably practicable; the children being parented together as much as reasonably practicable;

and, whether a proper plan for Alexander's air travel as described in item 6 can be put in place.

8. All children shall be permitted to communicate with both parents as much as reasonably practicable, including private and unmonitored communication via telephone, text, Facebook and other social media, Skype and/or other Internet-based video conferencing type communication.

9. Each party shall continue to have direct access to medical, psychological and educational information in relation to all of the children at source.

10. Given that the children will no longer be changing households on a weekly basis, and that Rebecca and Rachael do not have the same adjustment issues as Alexander, the requirement that the parties make their best efforts to maintain the same schedule for the children in their respective residences, including diet, discipline, extracurricular and social activities and bedtime schedules, shall no longer apply to Rebecca and Rachael. It shall only continue to apply to Alexander. In order to facilitate that, Dr. Veinot shall continue to provide Mr. McIntyre any and all information with respect to Alexander's diet, including the dietary supplement amounts and frequency; and, Mr. McIntyre will obtain and continue the supplements such that there is continuity in both parties' homes.

11 . Each party shall continue to make day-to-day decisions concerning the care of the children when the children are being parented by him or her. The parties shall consult in relation to the health, education, religious training and extracurricular activities of all three children. However, should there be disagreement, the party with which the particular child in question primarily resides shall make the final decision, subject to the exception that Mr. McIntyre continues to be free to enroll Alexander in the SMILE Program on Saturdays when he is parenting Alexander in Nova Scotia or to enroll him in a

comparable program on whichever date it is available when he is parenting Alexander in Alberta.

12. Given that the parties are living in separate provinces, there shall no longer be a requirement to share the same respite care worker for Alexander.

13. Both parties shall be permitted to register the children in the extracurricular activity or activities of their choice while they are parenting the children, provided, however, that, neither shall be required to contribute towards the expenses of such activities unless he or she has preapproved the applicable child's participation in the activity or activities in question. Both parties shall continue to have the right to obtain written reports with respect to the activities chosen by the other party directly from the service providers.

14. Mr. McIntyre shall continue to have the right to meet with Alexander's respite care worker, Lisa Whitehead, or her successor or successors, and to obtain information regarding Alexander from them. Dr. Veinot shall also have the right to meet with, and obtain information regarding Alexander from, any respite care worker engaged by Mr. McIntyre for Alexander.

15, Given that the children will no longer be going back and forth on a weekly basis, the requirement to maintain a logbook that goes back and forth between the parties each week is to be replaced with a requirement that, at least once each week, both parties shall send each other an email updating each other as to any matters affecting the children, including any injuries and their causes or anything special regarding the children.

[416] The parenting provisions of the Corollary Relief Order are varied accordingly.

ISSUE 3: WHAT, IF ANY, RETROACTIVE CHANGE SHOULD BE MADE TO CHILD SUPPORT OBLIGATIONS?

[417] Dr. Veinot is seeking a retroactive increase in Mr. McIntyre's child support obligations back to, and including, 2009.

[418] However, in an order dated November 13, 2009, and issued December 17, 2009, Justice Peter Bryson, as he then was, confirmed that Mr. McIntyre's child support obligations were to remain the same. I must take that determination as being correct. Therefore, I cannot consider any retroactive increase in child support obligations prior to 2010.

[419] There is no dispute that Mr. McIntyre's income, for child support purposes, was as follows: $108,907 in 2010; $138,983 in 2011; and, $137,853 in 2012.

[420] He did not provide any evidence of Schedule III deductions for any year.

[421] In 2013, his line 150 income was $220,172. $114,238 of that was employment income. $93,711 of the remaining $105,934 was the portion of his severance pay from Sepracor that was deposited in a RRIF on October 2, 2013. The remainder was promised future bonuses that were paid to him prior to his severance. October 2, he withdrew, from the severance RRIF, $4050 to supplement his part-time income from Slanmhor, and was charged a $50 fee. Thereafter, he

withdrew $4100 most months, sometimes drawing more, and, on June 29, 2015, withdrew the $1213.77 remaining in the fund. It is unclear whether the $12,300 shown in the "Other Income – Line 130" schedule for 2013 represents the $12,300 in withdrawals and fees in 2013, or the bonus portion, or the $12,300 withdrawals and fees as the bonus portion, with charges already having been deducted from the severance/advance bonus prior to deposit. In addition, the Notice of Assessment confirms $99,475 in deductions from total income. No evidence was provided as to what that amount comprised. Therefore, there is some lack of clarity in his 2013 income. However, the parties appear to agree that his child support income for 2013 was around $126,460 or $126, 470.

[422] In 2014, Mr. McIntyre's Line 150 Income was $89,491, comprised of $33,741 in employment income and $55,750 in total withdrawals from the severance RRIF.

[423] Mr. McIntyre also withdrew $25,814 from the RRIF in 2015 to supplement his income.

[424] Dr. Veinot submits that the amounts withdrawn from the severance RRIF should be added to his 2014 and 2015 incomes for the purposes of child support.

[425] As noted in ***Morash v. Morash***, 2004 NSCA 20, severance pay has been treated differently in various decisions, depending upon the circumstances.

[426] In ***Dewolfe v. McMillan***, 2011 NSSC 301, it was found to be exempt from consideration for child support purposes as it did not create a recurring income.

[427] In ***M.(J.E.) v. M.(L.G.)***, 2007 NSSC 52, and in ***Andrews v. Andrews***, 2006 NSSC 120, it was divided as an asset instead of being considered as income for support purposes.

[428] In ***Leclerc v. Leclerc***, 2012 NSSC 321, and in ***Darlington v. Moore***, 2015 NSSC 124, it was considered income as opposed to being treated as an asset for division.

[429] In ***St. Hilaire v. St. Hilaire***, 2003 NSSF 48, and in ***Colter v. Colter***, 2015 NSSC 2, it was considered as income for child support purposes specifically.

[430] In ***Campbell v. Campbell***, 2012 NSCA 86, severance pay representing 18 months in lieu of notice was averaged out over two years for child support purposes.

[431] In the case at hand, Mr. McIntyre withdrew amounts from the severance RRIF in 2014 and 2015, exhausting it completely, as already noted. Therefore, I

agree with Dr. Veinot that, in the circumstances of the case at hand, the most appropriate approach is to consider the amounts withdrawn in those years as part of Mr. McIntyre's income for child support purposes.

[432] Consequently, his total child-support income for 2014 was his Line 150 Income of $89,491.

[433] In 2015 he received income from the following sources: $13,624 from Slanmhor; $25,814 from the RRIF; and, approximately $33,335 from Olds (ie. 5 months at $6,667 per month). That is a total of $72,773 for 2015. However, up to the end of July, he had only earned $39,438. I used that as a cutoff point because that is the point at which Mr. McIntyre left the children in the de facto full-time primary care of Dr. Veinot.

[434] At the time of the Corollary Relief Order, in 2008, Dr. Veinot was noted as having an annual income of $46,000. That was purportedly based on an 18 hour work week.

[435] In 2009, the year Justice Bryson, as he then was, ordered that child support remain the same, her income was $47,179.

[436] In the subsequent years it was: $39,259 in 2010; $52,262 in 2011; $50,306 in 2012; $45,494 in 2013; and, $49,703 in 2014.

[437] Mr. McIntyre takes the position that the Court should impute additional income to Dr. Veinot on the basis that: she has been and continues to be underemployed, as she is only working part-time in her own business as a chiropractor, and turning away patients; and, her billing rate has more than doubled since the current child support amount was put in place.

[438] Section 19 of the Federal Child Support Guidelines provides:

> "(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
>
> (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse … ."

[439] Justice Forgeron, in ***MacDonald v. Pink***, 2011 NSSC 421, at paras 24 and 25, and again in ***Parsons v. Parsons***, 2012 NSSC 239, at paras 32 and 33, stated:

> "Section 19 of the *Guidelines* provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:
>
> a. The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: **Coadic v. Coadic** 2005 NSSC 291.
>
> b. The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: **Staples v. Callender**, 2010 NSCA 49.
>
> c. The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts

that his/her income has been reduced or his/her income earning capacity is compromised by ill health: **MacDonald v. MacDonald**, 2010 NSCA 34; **MacGillivary v. Ross**, 2008 NSSC 339.

d. The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances: **Smith v. Helppi** 2011 NSCA 65; **Van Gool v. Van Gool**, (1998), 113 B.C.A.C. 200; **Hanson v. Hanson**, [1999] B.C.J. No. 2532 (S.C.); **Saunders-Roberts v. Roberts**, 2002 NWTSC 11; and **Duffy v. Duffy**, 2009 NLCA 48.

e. A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations by a self-induced reduction in income: **Duffy v. Duffy**, ***supra***; and **Marshall v. Marshall**, 2008 NSSC 11.

[440] In **Smith v. Helppi** 2011 NSCA 65, Oland J.A. confirmed the factors to be balanced when assessing income earning capacity at para. 16, wherein she quotes from the decision of Wilson J. in **Gould v. Julian** 2010 NSSC 123. Oland J.A. states as follows:

> 16 Mr. Smith argues that the judge erred in imputing income as he did. What a judge is to consider in doing so was summarized in **Gould v. Julian**, 2010 NSSC 123 (N.S.S.C.), where Justice Darryl W. Wilson stated:
> Factors which should be considered when assessing a parent's capacity to earn an income were succinctly stated by Madam Justice Martinson of the British Columbia Supreme Court, in **Hanson v. Hanson**, [1999] B.C.J. No. 2532, as follows:
>
> 1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek

work or that his potential to earn income is an irrelevant factor". ...

2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.

3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.

4. Persistence in unremunerative employment may entitle the court to impute income.

5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.

6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

...

[33] In Nova Scotia, the test to be applied in determining whether a person is intentionally under-employed or unemployed is reasonableness, which does not require proof of a specific intention to undermine or avoid child maintenance obligations.

[441] Justice Forgeron, starting at para 26 of ***MacDonald v Pink***, and at para 35 of ***Parsons***, referred to and applied a three-pronged or three-step analysis of the under-employment issue. The steps are:

Step 1: The party seeking imputation of income must prove, on a balance of probabilities, that the payor is intentionally underemployed or unemployed.

Step 2: If the burden in step one is discharged, the burden then shifts to the payor to prove that his or her unemployment or underemployment is required because of his or her reasonable educational or health needs, or the needs of a child of the marriage.

Step 3: If the payor fails to discharge the burden in step two, the burden then shifts back to the party seeking imputation of income, to prove the earning capacity of the payor, upon which the quantum of imputed income should be based.

Step 1

[442] Dr. Veinot acknowledged that she turns away patients so that she can work part time. However, she argues that there is no legal requirement for her to work more and she can continue to work on a part-time basis as she has been without it being considered underemployment.

[443] In ***White v. White***, 2015 NSCA 52, the Court stated that a payor is not required to continue to work extra jobs outside of his regular employment, even if he had historically been doing so. That was in response to the concern raised by his lawyer that it would put him on a "work treadmill" that he could not get off. It is noteworthy that, in that case, the additional work was supplementary to his full-time employment as a firefighter. Therefore, in my view, the court was essentially saying that a payor is not expected to work more than full-time. I do not take the Court's decision as stating that a payor can continue working part-time, if he or she has the capacity to work full-time, simply because he or she has historically been working part-time. In my view, it is appropriate to impute income to parents who do not realize their full earning capacity, without valid justification.

[444] Since Dr. Veinot turns away patients so that she can work only part-time, in my view, she could work full time if she wanted to and is intentionally underemployed.

<u>Step 2</u>

[445] There is no evidence that Dr. Veinot's educational or health needs have made it such, or now make it such, that she can only work part-time.

[446] When the Corollary Relief Order was granted, and when Justice Bryson, as he then was, granted a Variation of that Order, Rachael was not in school. At that time, Rachael's needs for child care provided some reason for Dr. Veinot to work less than full-time. However, the children were with Mr. McIntyre every second week. Therefore, there was no reason why Dr. Veinot could not work full-time at least every second week. She has also had Lisa Whitehead coming into the home, primarily to be a respite worker to care for Alexander, but also being present to watch over the girls. In addition, her father came to the house every day of the week the children were with her. That ought to have allowed her to work at least ½ time the week that she had the children. Consequently, she ought to have been able to work at least 75% or 30 hours even before Rachael started school.

[447] Rachael started school in 2010. Dr. Veinot continued to have Lisa Whitehead provide respite care. Grant Veinot continued to come every day that the children were present. The children continued to be with Mr. McIntyre every second week. Therefore, in my view, averaged out over two weeks, she ought to been able to work full-time hours, i.e. 40 hours instead of 18.

[448] In my view, the needs of the children of the marriage did not require her to work only 18 hours per week. After all, Mr. McIntyre had the children every second week, and he worked full-time.

Step 3

[449] Mr. McIntyre submits that, for 2010 to 2013, the total of her actual and imputed income should be $122,880 per year, based upon 32 hours per week, at $80 per hour, and 48 weeks per year.

[450] For 2014 to the present, he submits that the court should find that the total of her actual income plus her imputed income should be $153,600, based upon 32 hours per week, at $100 per hour, for 48 weeks per year.

[451] Dr. Veinot works by herself. She does not have any support staff. Therefore, not all of her working hours produce income at the hourly rate she charges her clients. Some of her working hours would be taken up by administrative duties for which she receives no income. However, allowing her 8 hours out of a 40 hour work week for those administrative duties, in my view, ought to be more than enough. Therefore, the 32 hour paying work week figure used by Mr. McIntyre is reasonable for a full work week.

[452] However, Dr. Veinot's evidence was that she was not able to take much time away from work for vacation, because she needed to be available for her patients. Therefore, in my view, a work year of at least 49 weeks is more appropriate in the circumstances.

[453] In his submissions, Mr. McIntyre has made reference to Dr. Veinot's hourly rate having increased from $40 at the time of the Corollary Relief Order, to $80 per hour from 2010 to 2013, and $100 per hour in 2014. However, the evidence before me is only that Dr. Veinot's hourly rate is $100 per hour. Dr. Veinot provided no evidence to dispute that. Therefore, I could use that amount to calculate her income earning capacity going back to 2010. However, in the interests of fairness to Dr. Veinot, despite the evidence not being before me, I will use $80 per hour for 2010 to 2013. That amount appears reasonable in comparison to her current hourly rate.

[454] I do not have evidence regarding the detailed inner workings of Dr. Veinot's business. However, she does not have any staff. Therefore, more likely than not, most of the expenses noted in the "Expenses" portion of her "Statement of Business or Professional Activities", which do not include her business-use-of-home expenses, are fixed expenses in that they do not vary with the patient load. Those "Expenses", from 2012 to 2014, range from $11,391 to $12,318. They have risen less than $1,000 in 3 years, which is a negligible increase compared to the increase in her fees.

[455] Therefore, in my view, the most appropriate approach is to deduct essentially the same expenses from gross business income as she had been deducting for part-time work, to arrive at her net business income earning capacity.

[456] In addition to the expenses already referred to, she has been deducting, from her business income, business-use-of-home expenses. Those include 25% of the total cost of the household's electricity, insurance, maintenance, mortgage interest and property taxes.

[457] In ***Murphy v. Hancock***, 2011 NSSC 247, and in ***M.J.H. v. B.E.N.***, 2008 NSSC 298, the Court permitted deduction of "home office expenses" for the purpose of determining income for child support purposes. However, there was insufficient detail in those decisions to determine the nature of the office expenses and the circumstances in which they were incurred.

[458] S. 19(1)(g) of the *Child Support Guidelines* gives the Court discretion to impute such amount of income as it considers appropriate in circumstances where a spouse "unreasonably deducts expenses from income". The fact that a particular expense may properly be deducted for income tax purposes is not determinative of whether it is reasonably deducted for the purposes of determining child support income.

[459] In the case at hand, I do find that the office expenses noted in the "Expenses" portion of Dr. Veinot's "Statement of Business or Professional Activities", are reasonably deducted from income for child support purposes.

[460] However, Dr. Veinot kept the matrimonial home that the parties had at time of separation. Mr. McIntyre was ordered to quit claim his interest in it to her. She still runs her business out of it. There is no evidence that she would have purchased a smaller home, instead, if she was not running her business out of it. Therefore, with the exception of some negligible additional use of electricity as part of her business, in my view, those business-use-of-home expenses are expenses that Dr. Veinot would be incurring in any event, even if she conducted her business out of another premises. Therefore, being able to claim those expenses against her business income results in her saving personal expenses in an amount almost equal to the expenses deducted. In my view, those personal expense savings should also be imputed to her as income for the purposes of determining child support. From 2012 to 2014, her business-use-of-home expenses ranged from approximately $3000 to $3500.

[461] In my view, considering the minimal increase in consumption of electricity created by the business, it is not appropriate, in calculating Dr. Veinot's income earning capacity, to also deduct an additional amount for what would otherwise be a personal expense in any event.

[462] Based on the foregoing, in my view, Dr. Veinot's income earning capacity, for 2010 through to the end of July 2015, can be calculated in the manner which follows.

[463] In 2010, for two thirds of her work year, or 33 weeks, she ought to been able to work 75% or 24 paying hours per week. At an hourly rate of $80 per hour, that amounts to gross income of $63,360 up to the end of August. Commencing in September, she ought to been able to work 100%, or 32 paying hours per week, for the remaining one third of the year, which amounts to about 16 weeks. At $80 per hour, that is an additional $40,960. So she had the capacity to earn, in 2010, a gross business income of $104,320. I deduct $12,000 from that to account for her business expenses. That leaves a net business income of $92,320. For reasons noted, I will not deduct the business-use-of-home expenses.

[464] For 2011 to 2013, inclusive, I have calculated her income earning capacity based upon 32 paying hours per week, at $80 per hour, for a 49 week work year. That is a total gross business income of $125,440. Deducting from that amount $12,000 in expenses, leaves a net income of $113,440.

[465] For 2014, I have calculated her income earning capacity based upon 32 paying hours per week, at $100 per hour, for a 49 week work year. That is a total

gross business income of $156,800. Deducting $12,000 in expenses leaves a net income of $144,800.

[466] In 2015, up to the end of July, her net income would be 7/12 of that amount, which is $86,216.

[467] Therefore, I find that Dr. Veinot could have earned, from the beginning of 2010 to the end of July 2015, a total of $663,656.

[468] In that same period, Mr. McIntyre earned a total of $641,137.

[469] That is less than the total amount which Dr. Veinot could have earned had she not been underemployed.

[470] There was insufficient evidence put before the Court for it to engage in a Contino analysis. However, simply comparing the respective incomes or income earning capacities of the parties, leads me to find that Mr. McIntyre ought not have been required to pay Dr. Veinot any child support since the beginning of 2010. Rather, their child support obligations were essentially equal. From January 2010 to the end of July 2015, in total, Dr. Veinot should have paid Mr. McIntyre only $1065 more child support than Mr. McIntyre should have paid her. That is based solely upon setting off the child support amounts they each would have paid according to their respective incomes in each year. As such, there is no need for me

to engage in an assessment of what retroactive increase would otherwise be appropriate in light of the delay in requesting it.

[471] Any retroactive decrease sought by Mr. McIntyre is merely to have any arrears vacated.

[472] Mr. McIntyre had been paying Dr. Veinot $1006 per month in child support up to and including April 2015, in which month he fell in arrears by $506. He subsequently failed to pay the full amount in May and June. In July, an interim order of Justice Warner required him to continue paying the $1006 per month.

[473] The communications between the parties reveals that Mr. McIntyre has paid at least a portion of the child support since that time.

[474] The children have been living almost exclusively with Dr. Veinot since the end of July 2015. In the normal course, that would justify requiring Mr. McIntyre to pay her the full table amount of child support from then until the end of December, 2015.

[475] However, Mr. McIntyre has already paid over $65,000 more child support than he ought to have been required to pay.

[476] Therefore, the fairest thing to do is to eliminate his child support obligations effective April 1, 2015, as requested, and to erase all arrears, if any remain, including any arrears and obligations in relation to section 7 expenses. It is unclear what the exact arrears are because I do not have complete information on section 7 expense arrears. If there are any after applying the termination date, they will be minimal.

[477] In the circumstances, in my view it would be grossly unfair and inequitable not to relieve Mr. McIntyre of the obligation to pay any such arrears, and, such relief is justified having regard to Dr. Veinot's interests and her intentional underemployment.

[478] Any basic child support or section 7 expense payments made by Mr. McIntyre following the filing of his application shall be paid back to him by Dr. Veinot. Any payments made before that, resulting in a surplus once the April 1 termination date is considered, shall remain as a credit in case a future obligation to pay arises.

[479] Therefore, the Corollary Relief Order shall be varied by providing that:

1. Mr. McIntyre's obligations to pay child support, including obligations to pay towards section 7 expenses, to Dr. Veinot shall cease, effective April 1, 2015;

2. Mr. McIntyre is relieved of the obligation to pay any arrears, including any arrears in relation to section 7 expenses, that may remain after applying the termination date;
3. any basic child support or section 7 expense payments made by Mr. McIntyre following the filing of his Application on June 17, 2015, shall be paid back to him by Dr. Veinot; and,
4. any payments made by Mr. McIntyre before that date, resulting in a surplus once the April 1 termination date is considered, shall remain as a credit in case a future obligation to pay arises.

[480] As a result, the parties will start with a clean slate in relation to child support obligations as of January 1, 2016.

ISSUE 4: WHAT, IF ANY, ARREARS OF CHILD SUPPORT ARE OWING?

[481] In light of my conclusion in relation to Issue 3, there are no arrears of child support owing.

ISSUE 5: WHAT, IF ANY, CHILD SUPPORT IS PAYABLE PROSPECTIVELY?

[482] The parenting arrangement, effective December 18, 2015, the date my partial decision, with reasons to follow, was communicated to the parties, is now a split parenting arrangement, with two children residing primarily with Mr. McIntyre, and one child residing primarily with Dr. Veinot.

[483] Mr. McIntyre now earns approximately $80,000 per year with Olds SoftGel in Alberta. Using the Alberta tables, for one child, he would be required to pay Dr. Veinot basic child-support in the amount of $689 per month.

[484] Dr. Veinot had an income earning capacity of approximately $145,000. However, that was based upon the parenting arrangement when Mr. McIntyre took the children half of the time. Now that Dr. Veinot will be responsible for Alexander, who requires a lot of attention and care, on a full-time basis. It will reasonably diminish her income earning capacity, to, once again, in my view 75% of the full capacity, or 24 paying hours per week. At $100 per hour, over a 49 week work year, that amounts to a gross business income of $117,600. Deducting $12,000 in expenses, leaves a net income of $105,600.

[485] Thus, the Court imputes the amount of income required to be added to her actual yearly income of approximately $50,000 to reach that income. Using the Nova Scotia tables, for two children, she would be required to pay Mr. McIntyre $1418 per month in basic child support.

[486] Therefore, the set off amount which Dr. Veinot would be required to pay to Mr. McIntyre is $729 per month, or $8,748 per year.

[487] Dr. Veinot took the position, based upon her having primary care of all three children, and Mr. McIntyre being required to pay child support, that it would be appropriate to reduce the child support obligations by the amount of reasonable access costs based on booking plane tickets at the lowest available rates. She had also suggested that there should be only one such trip per year for the children, with the remaining parenting time for Mr. McIntyre occurring in Nova Scotia.

[488] In contrast, Mr. McIntyre took the position that, irrespective of where the Court determined that the children should primarily reside, there should be as frequent and extensive parenting as reasonably practicable in the non-primary care parent's Province, with no child support being payable to account for the associated high access costs.

[489] Mr. McIntyre juxtaposed this submission with his submission that many of the section 7 expenses claimed by Dr. Veinot for Alexander are excessive and/or unnecessary. For instance, he has made only minimal use of a respite worker in the past five years, while Dr. McIntyre has engaged one multiple times per week, on a regular basis, plus for additional special occasions. As a further example, he submitted that a special chair for Alexander's mealtimes was an unnecessary expense, as he does not need one when Alexander is with him.

[490] Dr. Veinot suggests that the Court's determination on child support should include a pro rata sharing of section 7 expenses.

[491] She did not provide a respite care budget for Alexander going forward. However, attached to her 2012 tax return, there are receipts for respite care provided by Lisa Whitehead in that year totaling $4,440. That was at a time when Mr. McIntyre was taking Alexander half of the time. With Dr. Veinot having Alexander full-time, that amount would reasonably increase to at least $8,880, and perhaps more, if Dr. Veinot at times requires more respite care to allow her to work to her full income earning capacity. Therefore, it would not be unreasonable to budget $9000 for respite care.

[492] The parties have not presented, and I have not conducted, a detailed calculation of proportionate sharing of section 7 expenses. I would require additional information to do so, including the tax consequences. However, simply comparing the respective incomes or income earning capacities of the parties would result in Mr. McIntyre being responsible for about 40% of that amount. That would be approximately $3600, plus the cost of special equipment, foods and supplements Dr. Veinot sees as required for Alexander.

[493] That would likely leave less than $5000 for access costs. The costs of transportation plus accommodations and meals, likely required to bring Rebecca and Rachael to Nova Scotia, accompanied by an adult, at least three times per year, i.e. at Christmas, spring break and in the summer, would, more likely than not, use up at least that remaining amount.

[494] It is unlikely, given Alexander's issues with change and unfamiliar surroundings, that he will be able to travel to Mr. McIntyre's home as often as the girls travel to Dr. Veinot's home. Even if he does travel as often as the girls, Mr. McIntyre will be paying for one less child. Thus, his access costs will be less in any event.

[495] I do not have any proposed section 7 expense budget for Rebecca and Rachael in Alberta.

[496] In these circumstances, in my view, it is appropriate to order that Dr. Veinot not be required to pay child support to Mr. McIntyre, provided that she is solely responsible for Alexander's section 7 expenses and the costs associated with her bringing Rebecca and Rachael to Nova Scotia for their parenting time with her.

[497] In my view, if it turns out that she does not incur the amount of travel costs required to make up the difference between her paying what would otherwise be

Mr. McIntyre's share of Alexander's section 7 expenses and the basic child support amount she would otherwise be required to pay that will, depending on the circumstances, likely constitute a material change in circumstances warranting an application to vary the child-support arrangement.

[498] Therefore, the Corollary Relief Order is to be further varied by providing that which follows.

1. Based upon Mr. McIntyre having an annual income of approximately $80,000, and applying the Alberta tables to that annual income for one child, and Dr. Veinot having a total annual income, including imputed income, of $105,600, and applying the Nova Scotia tables to that annual income for two children, considering the split parenting arrangement, Dr. Veinot would be required to pay a set off amount of child support to Mr. McIntyre totaling $8740 per year. However, she will not be required to pay that amount. Instead, she will be required to cover all of the section 7 expenses relating to Alexander, plus all travel costs associated with bringing Rebecca and Rachael to Nova Scotia for her parenting time with them, and with returning them to Alberta following that parenting time.

2. Dr. Veinot is relieved of the obligation to pay the set off amount of child support on the expectation that she will incur access costs meeting or exceeding the basic child support amount she would otherwise be required to pay less what would otherwise be McIntyre's share of Alexander's section 7 expenses.
3. Unless and until this deviation from the general approach set out in the *Child-Support Guidelines* is varied by a court of competent jurisdiction, each party shall be responsible for covering the section 7 expenses of the child or children primarily residing with him or her, that are not covered by Mr. McIntyre's medical/dental insurance.

4. However, in relation to section 7 expenses covered by Mr. McIntyre's medical/dental insurance, he shall continue to sign any and all medical/dental insurance reimbursement cheques for items paid for by Dr. Veinot within seven days of receipt of those cheques. Mr. McIntyre shall continue to be required to maintain such medical and dental insurance through his employer for the benefit of the children for so long as the benefits are available to him.

ISSUE 6: WHAT, IF ANY, ORDER SHOULD BE MADE REGARDING DISTRIBUTION OF THE CANADA CHILD TAX BENEFIT AND THE UNIVERSAL CHILD CARE BENEFIT?

[499] Dr. Veinot is of the view that whoever has the children in his or her primary care should receive the Canada Child Tax Benefits and the Universal Child Care Benefits. That approach was not opposed by Mr. McIntyre. It is a reasonable approach, and the Corollary Relief Order will be varied to provide that those benefits be treated in that fashion.

CONCLUSION

[500] For the reasons I have discussed, with the exception of the option of also changing Alexander's primary residence, I grant the relief sought by Mr. McIntyre, and a variation order will issue with the terms I have set out.

[501] In addition, the order shall provide that the parties shall continue to exchange financial information each year as provided for in the existing order,

such that they must exchange a copy of their income tax returns, together with all attachments, on or before June 1 of each year, and exchange Notices of Assessment or Reassessment forthwith upon receipt of same.

[502] The existing provisions regarding the children's bank accounts and RESP's, life insurance, and enforcement shall also continue.

[503] Since the successful party is self-represented, the Court will prepare the order.

COSTS

[504] The parties have already made some submissions on costs. However, there has been a request by Dr. Veinot to make further submissions after the outcome of the hearing is known.

[505] Therefore, unless the parties can agree upon the issue of costs, I ask that Dr. Veinot provide her supplementary written submissions on costs within 20 days of receiving this decision, and that Mr. McIntyre provide his supplementary written submissions, if any, within 30 days of receiving this decision.

Pierre L. Muise, J.