

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

**Citation:** Stevenson v. Kuhn, 2010 NSSC 398

**Date:** 20101109

**Docket:** SFHMCA-060415

**Registry:** Halifax

**Between:**

Randy Perry Stevenson

Petitioner

v.

Tina Louise Kuhn

Respondent

**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** November 9 and 10, 2009, March 9 and 10, 2010 and July 19, 2010

**Written Decision:** This is the written version of an oral decision delivered August 18, 2010

**Counsel:** Joyce Ruck De Peza, appearing on behalf of Randy Stevenson  
Thomas Singleton, appearing on behalf of Tina Kuhn

**By the Court:**

**Introduction:**

[1] This is Randy Stevenson's application under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, for custody of Allesha, who has just recently turned 8 years old.

[2] Mr. Stevenson is fifty-two years old and is a maintenance worker. Ms Kuhn is thirty-five years old and works as a journeyman pipefitter. Both parents seek primary care of Allesha. The application also requests child maintenance, an order for health and dental coverage for Allesha, and a requirement that Ms. Kuhn provide notification of any intention to relocate.

**Preliminary applications**

[3] As preliminary matters, I heard applications by both parties to strike portions of affidavits filed on behalf of the other. As well, Mr. Stevenson sought leave to admit a letter from Karen Wright as an expert's report.

[4] When the hearing began, Ms. Kuhn objected to various aspects of Mr. Stevenson's three affidavits. Without reviewing the paragraphs in detail here, I ordered the following paragraphs struck:

- (a) from Mr. Stevenson's affidavit of February 2009: paragraph 17;
- (b) from his first supplemental affidavit: paragraph 4, the preamble to paragraph 8, last three sentences of sub-paragraph 8I, sub-paragraph 8K, sub-paragraph 8M, second paragraph numbered 8, paragraph 9, paragraph 14, the last sentence of paragraph 18, paragraph 19, the second sentence of paragraph 25, all but the first four sentences of paragraph 37; and
- (c) from Tina Kuhn's first affidavit, I ordered paragraph 14 be struck.

[5] I declined to grant leave to Mr. Stevenson to admit Karen Wright's letter as an expert report. Ms. Kuhn requested an organizational pre-trial conference on November 28, 2008. The conference was held on April 15, 2009 and trial dates were scheduled at that time. Mr. Stevenson filed the materials relating to his proposed expert well beyond the deadlines provided by *Civil Procedure Rule* 31.08. Ms. Wright's letter was filed with the court on September 25, 2009. Her *curriculum vitae* and a copy of her diploma in child studies were filed on November 6, 2009, three days before the trial began. Ms. Wright's letter did not contain the elements required of an expert's report. The filing occurred at such a time as to prohibit Ms. Kuhn from responding to it in her affidavit and that of her witness. To allow admission of this report would prejudice Ms. Kuhn.

[6] Of course, one reason for granting leave to admit the letter as an expert's report would be the best interests of Allesha. If the report offered the potential to assist me in determining Allesha's best interests, that could be a reason to grant leave to admit the letter. In this case, Mr. Stevenson agreed that Ms. Wright could testify as a fact witness to the matters in the letter which were not matters of opinion. This would mean that the only aspect of the letter which contained an opinion would be inadmissible. Ms. Wright was permitted to testify as a fact witness and her letter (except the opinion statement) was open to her to be adopted.

[7] Both parents repeated remarks that Allesha has made to them. They agreed that the admissibility of these remarks would be determined based on consideration of the test in *R. v. Khan* [1990] 2 S.C.R. 531.

[8] So both parents understand this test, I want to address this in some detail. Dr. Khan was charged with sexually assaulting a little girl who was three and one-half years old. The little girl, identified as T., had visited the doctor for a routine immunization. While her mother changed into a hospital gown for her appointment with Dr. Khan, T. was alone with Dr. Khan for five to seven minutes. She was then by herself, for the period of time while her mom had her medical appointment with Dr. Khan.

[9] When T.'s mom rejoined her, T. was picking at a wet spot on her sleeve. About fifteen minutes after leaving Dr. Khan's office, T.'s mom asked her about talking with Dr. Khan. The little girl spontaneously reported what happened - events that amounted to her having been sexually assaulted. In the police examination it was determined that the wet spot on T.'s sleeve was a mixture of semen and saliva. This was consistent with T.'s comments to her mom.

[10] At trial, T. did not know what the Bible was and she did not understand the nature of telling the truth in court, so she could not offer sworn evidence. Justice Locke would not allow T. - who was four years and eight months old at the time of the trial - to give unsworn evidence. He was not satisfied she understood the duty to tell the truth. Justice Locke also refused to admit the mother's evidence about her conversation with T., because the conversation was not contemporaneous with the event. The conversation happened fifteen to thirty minutes later. As a result, Dr. Khan was acquitted. The Ontario Court of Appeal allowed the Crown's appeal, set aside the acquittal and ordered a new trial. Dr. Khan appealed that to the Supreme Court of Canada.

[11] In summary, then-Justice McLachlin (who wrote the decision on behalf of the unanimous court) said that there were two requirements for admission of hearsay repetition of child's statement: necessity and reliability. Necessity refers to whether it is reasonably necessary to admit the hearsay statement. The inadmissibility of the child's evidence may be one basis for determining there is necessity. Reliability refers to relevant considerations including the timing of the statement; the child's demeanour, personality, intelligence and understanding; the absence of any reason to expect fabrication of the statement. There's no strict list and there is no area of evidence that should always be regarded as inherently reliable.

[12] Here, there's been no determination that Allesha's evidence wouldn't be admissible and there's no other reason (such as harm or trauma to her) that means she wouldn't testify. This issue simply hasn't been addressed.

[13] The second consideration is reliability. The Supreme Court of Canada tells me to consider matters such as: the timing of the statement; Allesha's demeanour, her personality, her intelligence and her understanding; and the absence of any reason to expect fabrication of the statement in determining whether her comments are reliable. As I said earlier, there's no strict list of circumstances to be considered in determining reliability, but those are some of the considerations.

[14] Here, I've been offered general evidence of Allesha's intelligence and personality, particularly from those at her school and day care. I have not been given sufficient information of the contextual considerations: the timing of the statements she's alleged to have made, her demeanour in making the alleged statements, and whether there was or wasn't any reason to expect her to make up the remarks attributed to her, to determine that they are reliable.

[15] Neither parent has satisfied me that Allesha's statements are either necessary or reliable (and I am to be satisfied of both if the remarks are to be admitted), so I do not admit them.

### **The parenting application**

[16] While testimony was not specifically structured to address the factors in *Foley*, 1993 CanLII 3400 (NS S.C.) at paragraph 16, it managed to do so. I have addressed those concerns identified by Justice Goodfellow which are relevant to Allesha and those where there was evidence.

### **Statutory direction**

[17] In *Foley*, 1993 CanLII 3400 (NS S.C.), Justice Goodfellow noted that the governing legislation may contain directions for my decision-making. The directions in the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, are found in sections 16(9) and 16(10) which require that past conduct be considered only where it is relevant to parenting ability, a child should have as much contact with each parent as is consistent with the child's best interests, and the willingness of each parent to facilitate contact should be considered. This isn't a divorce, but the considerations that are brought to bear are equally relevant. The parents' marital status is no reason to analyse the cases differently.

[18] Ms. Kuhn raises concerns about Mr. Stevenson's conduct relating to Allesha's hygiene, saying that during Allesha's first year of school she was constantly getting lice and she needed to give Allesha lice treatments every weekend when they were together from September 2007 until May 2008.

[19] Karen Wright, who works at the daycare centre, says Allesha had lice when that scourge was running through the daycare. Mr. Stevenson acknowledges that Allesha had lice, too, and says he provided Ms. Kuhn with lice treatment for Allesha. The chronic infestation that Ms. Kuhn describes is not consistent with the evidence of any of the others who were in more frequent contact with Allesha. Their evidence suggests that Allesha's lice were treated appropriately.

[20] If Allesha had lice for a period of nine months, as Ms. Kuhn swears, it would have been known at daycare and at school. I don't accept Ms. Kuhn's evidence in this regard. I do accept that Allesha had lice when other children around her did, but not that this was a chronic problem that plagued her for nine months while her father did little to treat it.

[21] In terms of Allesha's hygiene, she is bathed or showered daily. Her father does her laundry, attending to the cleanliness of her underwear. She has showered herself without supervision since she was six though her father continues to wash her hair. He also makes sure, he says, that "she washes her privates with lots of soap". He says washing her hair takes ten or fifteen minutes after they fight about keeping her head still because she doesn't like to get water on her face. I am satisfied by what Mr. Stevenson says and the manner in which he says it that Allesha's hygiene needs are met.

[22] Ms. Kuhn has expressed concerns about how Mr. Stevenson would deal with Allesha's menstrual cycle "as [Allesha] gets older". This issue was raised in Ms. Kuhn's affidavit of October 2008. At the time, Allesha was six years old. This concern was then and continues to be premature. In making a decision about Allesha's parenting, I am to consider her best interests. This means her best interests at the current time, not what they might be in three or four or five years' time, and how either parent may respond to those best interests now, - not in three or four or five years' time.

[23] Much has been made of the initial relationship between Ms. Kuhn and Mr. Stevenson. It is clear that they began to cohabit in 1991 and their son was born in 1992. When they began to live together, Mr. Stevenson would have been roughly 34 years old and Ms. Kuhn would have been approximately 16. Mr. Stevenson says that Ms. Kuhn lied about her age and that she pursued him when their relationship began. Ms. Kuhn denies this: she and her mother say that Mr. Stevenson was the pursuer.

[24] Despite a great deal of confused evidence about what happened when Ms. Kuhn and Mr. Stevenson met (and what it meant to "meet" someone), I am not persuaded that this conduct by either party is relevant to their ability to parent. A parent's conduct is relevant when it relates to their ability to parent.

[25] Each parent has one or more other children who are older than Allesha. There is no indication that, as parents, either has either condoned or encouraged their other, older children to enter into adult relationships when they were very young or to engage in intimate or adult relationships with individuals much older than themselves.

[26] The *Divorce Act* speaks of past conduct that is relevant to present parenting ability. I accept the relevance of this principle in applications under the *Maintenance and Custody Act*. I struggled to hear, in all the testimony, something about how the initial relationship between Ms. Kuhn and Mr. Stevenson was relevant to present parenting ability. Certainly, Ms. Kuhn was very precocious in her teen relationships. She left home and left school at a young age. She became a parent at a young age. There's no indication that - as a parent - she's promoted these choices to her older child, Allesha's brother, Alexander. As well, Mr. Stevenson was involved with someone much younger than himself. Again, there's no indication that - as a parent - he has advocated this to his children.

[27] Each parent pointed to the other as responsible for pursuing their initial relationship: "I was taken advantage of by an older man"; "She pursued me, I didn't pursue her". Each tried to minimize his or her own responsibility for participating in the relationship. In doing this, each made clear their relationship was not of the sort they'd want their children to replicate. There's no indication that, as parents, this example is one they'd condone being replicated.

[28] The statutory direction regarding contact between parents and a child is that there should be as much contact as is in the child's best interests. This and the issue of facilitating contact will be addressed later.

### **Physical environment**

[29] Mr. Stevenson lives in the Mulgrave Park community. He has a five room, three bedroom home where he and Allesha have lived for seven years. Allesha's room is her own. This is the neighbourhood in which Allesha has spent her entire life - as she knows it - and where her school, daycare and after school program are located. There are neighbouring parks and playgrounds.

[30] Ms. Kuhn lives in Mount Uniacke, approximately five minutes away from her parents' home. She shares her home with Allesha's brother, her new partner and, during her new partner's access time, his daughter. Allesha shares a room with this girl (a teen ager) when she's at her mom's. Allesha would change schools if she lived with her mother. Allesha's grandmother would provide care for her both before and after-school. The evidence suggests that Allesha would no longer attend daycare or be involved in an after school program.

### **Discipline**

[31] Given Allesha's age, discipline is largely a matter of setting boundaries and ensuring consequences. Allesha has demonstrated inappropriate behaviour at her school during the past few years.

[32] I heard testimony from Randy Tully, the principal at Ecole St Joseph's A. MacKay School, which Allesha has attended since primary. Her academic performance has been good

throughout: she earns As and Bs. From primary to grade one, Allesha's behaviour deteriorated. Problems began with her kicking and scratching other children and being disruptive. Intervention at the level of coaching started to correct problems. She had "in school" suspensions three or four times before her teacher, Ms. Pool, arranged a meeting with Mr. Stevenson. Ms. Kuhn also attended this meeting. Since that meeting, behavioural intervention has also been arranged. Mr. Stevenson was asked to agree to the involvement of a social worker, which he did.

[33] Mr. Tully noted that there have been various parent teacher meetings and that Ms. Kuhn has attended one. Twice he has attempted to contact her about events at the school - on no occasion has he actually made contact with her. Each time he left a message at her workplace. He admits that it is possible meetings have been held of which she is unaware. Where there are two parents (i.e., two households) if a parents requests, two notices will be sent home. Mr. Tully says that no request of this sort has been made by Ms. Kuhn or Mr. Stevenson. Ms. Kuhn has never taken the initiative to integrate herself more closely in school concerns.

[34] In *Dempsey*, 1997 CanLII 1058 (NS S.C.), Justice Stewart commented about a father who sought primary residence of his two children:

I am left questioning Scott Dempsey's dedication to or understanding of the task of a full time decision maker and organizer. I am struck by how little he has involved himself with professionals who interact, instruct, direct or provide health care for his children on a regular basis. Over the last five years, he has not seized the opportunity and taken the initiative to be a joint-parent outside of his dealings and true frustration with Paula Dempsey other than his regular involvement in their sports activity. He has chosen to have nominal involvement with the school authorities and school activities, as evidenced by their teachers' comments. He has never put himself in the position of being able to inform Paula Dempsey of anything, by volunteering or joining committees and becoming part of a network which focuses on children's education and all the potential programs, skills, projects available.

[35] Mr. Tully testifies about a comfortable relationship with Mr. Stevenson. Mr. Stevenson's initial defensiveness at negative comments about Allesha has been overcome and he is open in his conversations with Mr. Tully. The involvement of a social worker was recommended when Allesha's behaviour started to affect her academically in grade one. When he talked with Mr. Stevenson about these problems, Mr. Tully says that Mr. Stevenson reported problems (defiance and lack of compliance) when Allesha returned from her mom's home. This is consistent with what Mr. Tully has learned by asking at the school.

[36] Mr. Tully rates Allesha's behaviour in grade primary as 7 or 8 out of 10 in terms of her aggression. In grade one, her behaviour escalated to a severity of 8 or 9 out of 10. Mr. Tully said that Allesha couldn't walk through a classroom without doing something to someone. Mr.

Tully rated her current behaviour as 5 out of 10. When Mr. Tully testified in November, 2009, there had only been one incident in the current school year.

[37] Between the parents, Mr. Stevenson has demonstrated a greater involvement in Allesha's discipline outside the home. Ms. Kuhn may complain about the school's failure to involve her in these matters - she knows where the school is, she can obtain its telephone number, she can call and make inquiries. She hadn't done so.

[38] Mr. Stevenson was asked about disciplining Allesha. He says he does this by sending her to her room. He was asked about "yelling" at Allesha because this appears in the assessment. He explained that when Allesha is playing outside or has friends outside, he will call out to her out the window when he can't see her and wants to know where she is or what she is doing, and when he wants her to behave if, for example, she is trying to provoke another child by making faces. He says that other parents in the neighbourhood also call out to their children or "yell" at them in this way. Sometimes he has to raise his voice to her when there is music playing or when Allesha is pretending not to hear him when he calls.

[39] With regard to discipline, Ms. Kuhn points to the relationship between Mr. Stevenson and Allesha's brother, Alex. Ms. Kuhn says that there has been physical violence in the relationship between Alex and his father. In being interviewed by Marika Lathem, Alex has commented on a poor relationship with his father. Mr. Stevenson challenges this. Alex has a key to his father's home and he is free to visit when he wants. Alex spent three or four weeks at his father's home during the summer of 2009. Mr. Stevenson says he sometimes comes home to find Alex at the house. Mr. Stevenson tries to maintain contact with Alex on the computer, through Facebook, but Alex is not very talkative in person or on the computer. Mr. Stevenson thinks Alex does have interest in being with him because he has asked for a bigger bed at Mr. Stevenson's home.

[40] Mr. Stevenson says that he has "beaten" Alex: he describes this as hitting Alex on the backside with his hand. He says that Ms. Kuhn has done the same. Once, Mr. Stevenson put his hands on Alex's shoulders and lay Alex down on the bed behind him. At the time, Alex was having a dispute with Ms. Kuhn and, Mr. Stevenson says, Ms. Kuhn asked him to deal with Alex "or else I'll [expletive deleted] him". Mr. Stevenson says he told Alex not to disrespect his mother and after he did this, matters improved.

[41] When frustrated by Alex, a teenager who likes to show off for his friends, Mr. Stevenson says he'll bang on something, not a person. He demonstrated by slamming his hand against the edge of the witness box and saying he would do this on the table or outside the house on the step.



### **Role model**

[42] In assessing the parents as role models, I have the advantage of having heard testimony and read affidavits from both the parents and one family member. Mr. Stevenson has a criminal conviction (as a result of pleading guilty to assaulting Ms. Kuhn) that is more than fifteen years old. There was an incident involving the police in 1995 or 1996 when, according to Mr. Stevenson, during an argument, he was cornered. As they both moved, Ms. Kuhn backed onto a shoe and fell. The police were called and, while Ms. Kuhn told the police it was an accident, Mr. Stevenson was charged. Because he was told there was no choice about the charge being laid, Mr. Stevenson (who was not represented by counsel in the criminal court) believed that he had no choice about his plea. He pled guilty and was placed on one year's probation. He understood that he was given a conditional discharge and, following his probation and three years with a clean record, his conviction would be erased. This was the only involvement he has had with the police. He says that because the conviction would disappear, he didn't think it mattered when Marika Lathem asked whether he'd ever been involved with the police.

[43] There are indications that both parents were physically aggressive during their relationship. This aside, both parents are regularly employed and function responsibly in the community.

[44] Whether because of her parents or the larger environment, Karen Wright from Allesha's daycare, says Allesha is a child who serves as a model to others within the daycare because she has good verbal skills, good problem solving skills and thought processes, and she demonstrates other behaviours that they, at the daycare, want other children to copy.

### **Wishes of the child**

[45] There has been a formal investigation of Allesha's wishes by Marika Lathem. It is clear that, while she is young, Allesha has expressed a preference for her mother. In her testimony, Ms. Lathem said that a maternal preference was normal for a girl of Allesha's age. This is perhaps even less surprising, given that Ms. Kuhn moved to Alberta in 2005 to train for employment and this absence was very hard on both children. Until Ms. Kuhn returned to Nova Scotia permanently in 2008, when Allesha was 6, Allesha had very little relationship with her mom.

[46] Allesha's views are relevant to my decision, but I don't accept the views of a seven year old child are dispositive. With whom a child has her primary residence is perhaps the single most important aspect of the child's upbringing. It is not a decision to be left to a seven year old.

### **Assistance of experts**

[47] I don't interpret Justice Goodfellow's reference to "experts" as meaning someone who is qualified in the course of litigation to provide expert testimony. I interpret this to mean those individuals outside of the family who might have assisted family, such as social workers.

[48] I heard evidence from Karen Wright, who has worked at the Northend Community Day Care Centre. Since April 2009, Allesha has been in the room (Program 3) where Ms. Wright works. Children at the centre are evaluated on their initial enrolment and every six months thereafter to determine if they demonstrate typical or atypical behaviour. The latter children are directed toward appropriate services within the Centre or outside it. At no point has Allesha needed any additional support or services. As I've said, Ms. Wright describes Allesha as a child who serves as a model to others within the daycare because she has good verbal skills, good problem solving skills and thought processes, and she demonstrates other behaviours they want other children to copy. Like other children her age, Allesha likes rules and likes to follow them and to have others follow them. Ms. Wright testified she was aware of problems Allesha had at the school but none were sufficient for the daycare to become involved with the school - this involvement could come about at the instance of a parent, the school or the daycare.

[49] Margie Vigneault is the Executive Director of the Northend Community Day Care Centre. She's held the position for twenty-nine years. She describes Allesha as a capable child who is able to move from the daycare to school in the morning, getting herself ready. She says Allesha is popular, helpful, cooperative, she has a lot of friends, is a leader and above average in her interactions with others.

[50] Marika Lathem has made particular recommendations. When asked to explain the basis for them, she referred to four guidelines for the federal court: best interests, shared parenting, variation of court orders given child's development and needs, and history. With respect to Ms. Lathem, it is not for her to apply what she believes to be the law in making recommendations.

### **Each parent's time availability**

[51] Allesha is up at 8 a.m., her dad takes her to school at 8:45 a.m. and he picks her up from daycare. Her bedtime is at 9p.m. After school she plays with her dolls, her friends or she's on the computer, except for Monday and Wednesday when she goes to the Caring and Learning Centre in her neighbourhood.

[52] Mr. Stevenson's employed and works from 10 a.m. to 6 p.m. each day from Monday to Friday. He has demonstrated an ability to manage Allesha's schedule at school, daycare and the nearby Caring and Learning Centre, as a single parent. He's worked for the same employer for thirteen years. Ms. Kuhn works at the Halifax Shipyard. She says that an exemption has been made so she is not required to work the backshift. She will only be required to work the backshift if she expressly asks to do so.

[53] While records from the daycare were incomplete, they showed that Mr. Stevenson picked up his daughter most days. This is as I would expect, given that Allesha didn't have access with her mom most days.

### **Cultural development**

[54] Allesha's heritage is bi-racial. Mr. Stevenson has discussed this specifically with both Allesha and Alex. He says he believes that this has not presented any major issues to them.

### **Physical and character development**

[55] I heard no evidence that Allesha has been involved in any formal extracurricular activities such as sports, artistic or religious activities, beyond the daycare and her after school program.

[56] Ms. Kuhn attempted to involve Allesha in dance lessons, but this didn't work out. Ms. Kuhn said she would pay for these, if Mr. Stevenson would help get Allesha to the classes. One of the classes would occur on Ms. Kuhn's evening and one would occur on Mr. Stevenon's. This obligation was one Mr. Stevenson couldn't meet, so the lessons didn't happen.

[57] I do think that Allesha's attendance at daycare and the Caring and Learning Centre have contributed positively to her character development. She is relied upon as a leader among her peers for her skills in interacting with others.

### **Development of self esteem and confidence**

[58] Allesha attends the Northend Community Day Care Centre and the Caring and Learning Centre in Mulgrave Park. At daycare, she receives favourable feedback for the positive behaviour she models for other children.

[59] Neither parent denigrated the love the other has for Allesha in their testimony. Obviously, the unconditional love each has for Allesha is an integral element of her self-esteem and her self-confidence.

### **Financial contribution**

[60] When Ms. Kuhn went to Alberta in 2005, she established a joint bank account. Mr. Stevenson continued to have access to that account until 2006, after the relationship ended. During this time, Ms. Kuhn bought items for Allesha. Mr. Stevenson says she made no financial contribution for Allesha after December 2005 beyond sending clothes and money and these were sent to Ms. Kuhn's parents.

[61] Ms. Kuhn's earnings from 2005 to 2009 are summarized in the table below. Her annual income in many of these years was more than I've indicated because she received Employment Insurance benefits or cashed RRSP contributions which added additional amounts to her earnings. These amounts, too, are shown in the table.

<b>Year</b>	<b>Earnings</b>	<b>Income</b>
2005	45,000.00	50,551.00
2006	60,000.00	65,578.00
2007	79,000.00	79,459.00
2008	55,000.00	55,647.00
2009	37,000.00	46,917.00

[62] Mr. Stevenson says that Ms. Kuhn has made occasional financial gifts to the children and that she assisted him financially in 2008. She has inconsistently contributed to Allesha's daycare costs and has assisted in the purchasing of clothes. Ms. Kuhn says that she directly pays for Allesha's needs and, in fact, says she has contributed more financially in this way than she would if she was paying child support. While she offers this conclusion, she has given me no evidence at all to support that.

[63] It is not clear that Ms. Kuhn has shouldered her share of the financial burden of raising the children. It appears that, in addition to being the children's only present parent (while Ms. Kuhn was in Alberta), Mr. Stevenson was also the sole regular source of their financial support.

#### **Extended family support**

[64] There is no evidence of any particular support offered by Mr. Stevenson's extended family, though he says they are supportive of him.

[65] Marika Lathem describes Ms. Kuhn's parents as unwilling to get caught in the middle of the conflict between Mr. Stevenson and Ms. Kuhn - saying they seek to get along with both parents to preserve their relationship with their granddaughter. Of late, they have offered greater support to their daughter in her parenting. When Ms. Kuhn was working in Alberta, they supported Mr. Stevenson in his parenting. I cannot describe how very positive it is for Allesha that her grandparents' love for her has transcended their relationships with either parent.

#### **Facilitating contact**

[66] While Ms. Kuhn was in Alberta, her parents had contact with Allesha and her brother. This maintained the children's contact with their extended maternal family and provided respite for Mr. Stevenson as a "single parent". What began as extensive contact settled into less contact

and has continued as alternate weekend contact, despite Allesha's interest in spending greater time with her mother.

### **Long range plan**

[67] There was little comment about long term plans for Allesha.

### **Financial consequences**

[68] Here, there is an accompanying application for child maintenance for Allesha and her brother. I am concerned that Ms. Kuhn appears not to be making financial provision for Allesha that is commensurate with her means. While Ms. Kuhn may not be content with the current parenting arrangement, that is absolutely no reason for her to deprive Allesha of the benefits of her mother's income. In the context of *Willick* [1994] 3 S.C.R. 670 and *Richardson* [1987] 1 S.C.R. 857, the Supreme Court of Canada noted four core principles of child support. These principles are equally applicable to cases under provincial child maintenance legislation. The four principles are that:

1. child maintenance is the right of the child;
2. the right to be maintained survives breakdown of relationship between the adults;
3. as much as possible, child maintenance should provide the child with the same standard of living the child experienced when the parents were together; and
4. child maintenance will vary, depending on the income of the paying parent.

### **Parenting arrangement**

[69] The parents have agreed that Allesha should be in their joint custody.

[70] Allesha shall remain in the primary care of her father. Her surroundings (neighbourhood, school, daycare and after school program) have served her well and she should not be disturbed from them. The adults who are part of her life - at school, her daycare centre and her after school program - are important to her healthy development and will continue by her remaining with her father.

[71] Being with the rest of her family has not been sufficiently recognized. Allesha's older brother, at age seventeen, and with friends, sports, school and a part-time job, may have little time for his younger sister, but increased time with her mother in Mount Uniacke will allow Allesha the prospect of more time with Alex.

[72] Of course, Allesha's relationship with her mother is one that is important to Allesha; she wants time with her mother. This desire doesn't overshadow Allesha's best interests, but should be accommodated with more time.

[73] Mr. Stevenson proposes that Allesha have contact with her mom three weekends each month, as well as at Christmas, March Break, Easter and for four weeks during her school summer vacation.

[74] It is appropriate for Allesha to spend time with their mother on three weekends each month and I order this be the first three weekends of each month. This time should start at the end of her school day or at 5 p.m. on Friday and continue until 4 p.m. on Sunday afternoon. If the Friday when access starts is a day when Allesha isn't required to attend school, access may begin on Thursday after school or at 5 p.m. Similarly, if the Monday following the end of access is a day when Allesha isn't to attend school, access may continue until Monday at 4 p.m.

[75] Because Ms. Kuhn lives in Mount Uniacke, it is difficult to provide meaningful mid-week access: after Allesha's daycare and after her mother's work there is little time to take Allesha to Mount Uniacke and spend time with her before she must be returned home. If Ms. Kuhn wishes, she may enrol Allesha in an activity which occurs one school night each week or she may participate in an activity with Allesha one evening each week - for example, Allesha swims in her Uncle Dave's pool. Ms. Kuhn may want to take Allesha swimming one evening each week. Ms. Kuhn would be responsible for arranging this and bearing its cost. The Needham Community Centre in Allesha's neighbourhood has a pool with family swim times. This activity must not conflict with Allesha's attendance at the Caring and Learning Centre.

[76] Starting in 2011 Allesha is to have six uninterrupted weeks of contact with her mother each year. Four weeks must be used during the months of July and August. Up to three weeks of this time may be taken consecutively. Annually, Ms. Kuhn will have the first option to select the time she wishes to have. She must notify Mr. Stevenson of her choice by May 1 of each year. If she doesn't notify him, he may make his selection. Mr. Stevenson, too, will have three uninterrupted weeks with Allesha during July and August. He may take up to two weeks of this time consecutively, if that is allowed by Ms. Kuhn's selection. If Ms. Kuhn has met her deadline of notifying Mr. Stevenson by May 1, Mr. Stevenson shall provide notice of his selection by May 15.

[77] Ms. Kuhn's other two weeks will occur during the school year. Annually, she'll have the first option to spend the first or last seven days of the March Break with Allesha. (Mr. Stevenson will have one weekend of the Break with Allesha.) She must notify Mr. Stevenson of her intention by January 1 each year.

[78] Regardless of the weekend rotation, Allesha will be with her mother from 9 a.m. until 5 p.m. on Mother's Day and with her father from 9 a.m. until 5 p.m. on Father's Day. I will make no special provision for religious or statutory holidays other than Easter and Christmas. Allesha will annually alternate spending December 24 and December 25 with her parents. In 2010 and in even-numbered years, she will be with her father from 9 a.m. on December 24 until 2 p.m. on December 25. In odd-numbered years, she will spend this time with her mother. All other holiday time will be governed by the regular schedule, unless Ms. Kuhn has specified that she wants to use that time as part of her annual six week allotment. She may use a maximum of one

of her weeks (seven days) during Allesha's Christmas school holidays. If she wishes to do this, she must give notice to Mr. Stevenson by December 1. In terms of Easter, from after school or 5 p.m. on the Thursday of the Easter weekend, Allesha will be with the parent who would normally be with her that weekend. From 5 p.m. on Saturday until 5 p.m. on Monday of the Easter weekend, Allesha will be with the other parent. The normal routine of weekends will continue.

[79] I have stated the amount of notice that Ms. Kuhn must provide to Mr. Stevenson if she wants to take one of her weeks (seven days) of block access during the March Break or the school Christmas break. I have specified weeks because this time isn't to be broken into days. At any other time during the school year, she'll provide him with four weeks' notice.

### **Current child maintenance**

[80] This is a situation of split custody since Alex lives with his mother and Allesha lives with her father. Child maintenance is calculated in accordance with section 8 of the *Child Maintenance Guidelines*, N.S. Reg. 53/98. Mr. Stevenson's income is \$18,100.00 and he shall pay child support of \$149.00 to Ms. Kuhn for Alex. Ms. Kuhn's income is \$46,350.00, after deducting her union dues. Ms. Kuhn shall pay Mr. Stevenson \$403.00 each month for Allesha. There is a net payment of \$254.00 to Mr. Stevenson.

[81] Additionally, there are child care expenses for Allesha. These are \$2,112.00 each year. At Mr. Stevenon's income level and with primary care of Allesha, he pays no income tax. So, after tax cost of child care is same as pre-tax cost of \$2,112.00. At current income levels, Ms. Kuhn has seventy percent of parental income. Her share of child care is \$1,521.00 or additional \$126.75 per month, bringing total current child support to \$380.75.

### **Past child maintenance**

[82] There is a claim for child maintenance dating from twenty-two months ago, when Mr. Stevenson's application was filed. During the entire period of the claim, the children were in a shared parenting arrangement. In 2008, Ms. Kuhn's income was \$54,847.00. Her child maintenance for four months would be \$477.00 each month. Mr. Stevenson's monthly child maintenance obligation, based on his current level of income, would be \$145.00. The net amount owed by Ms. Kuhn to Mr. Stevenson for 2008 is \$1,328.00. Using current day care cost, income level and tax rate for Mr. Stevenson, Ms. Kuhn's contribution to Allesha's daycare cost in 2008 is \$406.00. So, his total claim for child maintenance for 2008 is \$1,734.60.

[83] Ms. Kuhn's 2009 income is the same as her current income, so her monthly child maintenance payment would also be the same as her current payment of \$380.75 per month which calculates to \$4,569.00 for 2009. The same monthly amount applies for the first eight months of this year, totalling \$3,046.00. The total of all these amounts is \$8,943.00.

[84] Looking at Ms. Kuhn's tax returns over the period from 2005 to 2009, there was a tax refund of \$3,525.00 in 2005, a refund of \$3,762.00 in 2006, a refund of \$4,856.00 in 2007, a refund of \$1,805.00 in 2008 and a refund of \$5,862.00 in 2009. In 2009, she contributed \$7,107.00 to her RRSP.

[85] Between her tax refund and RRSP contributions, I am persuaded that Ms. Kuhn has sufficient funds to pay the entire amount I have calculated. I don't know whether she's withdrawn from her RRSPs or used her refund. However, her refund history indicates she regularly receives a refund, so I order that the entire retroactive amount of \$8,943.00 be paid before May 31, 2011, which will give Ms. Kuhn until a tax refund is received in 2011 to finance this payment.

[86] I order that Ms. Kuhn continue to maintain health and dental coverage for Allesha. The parties have agreed that Ms. Kuhn shall provide notification of any intention to relocate.

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Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia