

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Marchand v. Marchand, 2011 NSSC 138

Date: 20110407

Docket: 1201-062319, SFHD-056429

Registry: Halifax

Between:

Michel Marchand

Petitioner

v.

Rachel Marchand

Respondent

Judge: The Honourable Justice Beryl MacDonald

Heard: February 16, 17, 18, 2011, and March 11, 2011, in Halifax,
Nova Scotia

Counsel: Michael Owen, counsel for Michel Marchand
LouAnn Chiasson, counsel for Rachel Marchand

By the Court:

[1] In November 2007, the Mother attempted suicide. Shortly thereafter it became clear she could not stay in the matrimonial home with the Father and the children. She went to Ontario to be with her parents with the intention of returning to Nova Scotia and to her employment. She did so on December 31, 2007. However, by December 22, 2007 the Father had filed a Petition for Divorce and by January 9, 2008 he had filed for Interim Custody of the children. These documents were served on the Mother on January 26, 2008. Her marriage was over and her relationship with her children became uncertain. This hearing was required to provide these parents with a future plan for their children and themselves. They were unable to agree upon the custodial and parenting arrangements for their children although they did agree upon the division of property and debt and that agreement will be reflected in the Corollary Relief Judgment.

[2] I am satisfied all jurisdictional requirements of the *Divorce Act* have been met and there is no possibility of reconciliation. I am further satisfied there has been a permanent breakdown of this marriage. The parties have lived and they continue to live separate and apart from one another for a period in excess of one

year from the commencement date of this proceeding. A divorce judgment will be issued.

[3] The parties have two young children, a son who is 7 and a daughter who is 5. The Mother requests joint custody of the children in a shared parenting arrangement, table guideline child support based upon a set off and proportional sharing of Section 7 expenses. The Father wants to remain as the children's primary care parent, as was ordered during the interim hearing. He too suggests joint custody is appropriate. In his most recent Parenting Statement, dated January 14, 2011, he requested the Mother parent the children when he is working overnight but not otherwise except for "split holidays, i.e. Christmas, Easter and March School Break". In submissions before me he has suggested an arrangement that would include sharing weekends equally throughout the year but not necessarily alternating those weekends. The arrangement would ensure the children were with him when he was not required to work on a weekend. The Father works 12 hour shifts on a schedule of 4 working days and 4 days off. The first two of his 4 working days are a day shift from 7:00 a.m. until 7:00 p.m.; the last two are a night shift from 7:00 p.m. until 7:00 a.m. the following morning. He also has significant other days off for holidays and vacation.

[4] The Father's reasons for requesting that the children remain in his primary care are:

- 1) The Mother does not exercise good judgement exhibited by her:
 - inability to make decisions
 - failure to follow through with agreed upon arrangements,
 - failure to engage third party service providers when these were required by the children
 - use of marijuana
 - choice of partner and living arrangements
- 2) The Mother suffers from unresolved mental illness and mental instability.
- 3) The Mother is not fluent in the French language.
- 4) The Mother was not the children's primary caregiver during the marriage and they have been in his primary care since their separation and particularly since the Interim Order issued on January 4, 2009.
- 5) The Father is the parent who, because of his work schedule, has more time available to parent the children.

6) The Mother is a person who cannot be trusted and she will manipulate evidence if given the chance.

It would take hours of writing time to detail my examination of each of the Father's allegations against the Mother. I will, however, attempt to discuss each of these concerns within the broad framework of the total evidence before me.

[5] The Mother also has complaints about the Father but her requested parenting plan indicates her willingness to put the past behind her. She is not using past experience to suggest the children should have limited contact with their Father, in fact she is prepared to share parenting under a joint custodial arrangement.

[6] Both of these parents have filtered their experiences through the prism of their unique personalities. This is not uncommon but in their case the rigidity of their views of the world around them, and of one another, has resulted in their mutual distrust, poor communication and limited problem solving skills. They speak at cross purposes and frequently misunderstand and misinterpret one another.

[7] The Father has been somewhat unsympathetic towards the Mother as she struggled with her mental challenges. However, I do recognize the nature of her mental instability would test the patience of many. I accept his evidence that she yelled and screamed both at him and the children, that things “had to be done her way” and if they were not, this could lead to emotional outbursts. I accept he did tell her to get individual counselling and that marriage counsellors may have given her the same advice. The Mother was initially resistant to individual counselling and did not fully engage in counselling until the marriage ended. However, the Father did not obtain any individual counseling to learn how to assist his wife or how he might shield the children from her outbursts. His evidence leads to my finding that he blamed her exclusively for what was happening and interpreted her failure to follow through, not as a consequence of her illness and disorder, as I find it was, but as a deliberate conscious act to continue to do things, and force others to do things, her own way. This attitude toward the Mother has negatively impacted their relationship and has contributed toward their inability to easily reach joint decisions required in the best interest of their children.

[8] During the marriage the Mother suffered from post- partum depression that may have been diagnosed in 2006 (the evidence suggested the wife sought some

assistance at this time) but continued untreated. She also suffered from undiagnosed and untreated anxiety. Coupled with this she was also struggling with what has now been diagnosed as obsessive compulsive personality disorder.

[9] Persons who have an obsessive compulsive personality disorder may be preoccupied with orderliness and may demand perfectionism both from themselves and others. Their need for mental and interpersonal control may reduce their flexibility and openness with others. Such persons may have increased anxiety levels if others do not do as they request. The most effective present treatment for this disorder, which also has significant success in treating persons who suffer from depression and anxiety, is cognitive behavioral therapy. However, this is not an overnight “cure”. Those in this therapy must learn to recognize when and how their thinking has become non- productive or distorted. They need to re-learn how to appropriately respond to life’s daily stressors. This may be a life long process and as a result a continuing relationship with a therapist is often recommended.

[10] During the marriage the Mother repeatedly accused the Father of infidelity. He denied her allegations but eventually he did have a “one night stand”. Receiving this information and later being told by the Husband that the marriage was over led

to the fateful event on an evening in November 2007 when the wife, in what can only be described as a dramatic presentation, ingested a number of pills, came into the living room where the Father was present, made a number of unpleasant and possibly threatening statements and fell to the floor. She had stopped breathing. The Father called for assistance and the Mother was taken to hospital. She was discharged six hours later. The children were not in the home at the time. These events were labeled a suicide attempt. Her therapist considers this event to have been reactive and attention seeking. I accept that analysis.

[11] When the Mother was released it is unclear what she expected. Perhaps she expected the Father to vacate the matrimonial home allowing her to care for the children in the home? Under the circumstances that was unrealistic. She has admitted her mental instability had led her to act out. She yelled, she screamed, she hit walls with her fist. Often the children were present when this happened. Understandably the Father was concerned about the Mother's ability to care for the children.

[12] The evidence of the parties differs about how and why the Mother went to Ontario to spend time with her parents. I consider the differences to be irrelevant

because I am satisfied the Mother was not able to parent the children effectively at that time. The difficulty for the Mother is that when she did return to Nova Scotia she was informed the locks were changed and so she no longer had open access to the matrimonial home. Perhaps she should have expected she could not return to live in the home but it was a shock to her. Nevertheless she did find alternate housing and began, with legal assistance, work toward a new relationship with the Father and the children. She became actively engaged with a therapist and although, in her initial treatment, she was categorized as resistant, that has changed and her therapist is of the opinion she is learning to appropriately deal with life's stressors; she understands what situations create anxiety for her and she is willing, and does seek out assistance when required. Presently she is considered to be high functioning.

[13] I am satisfied the Mother does not want to devolve into previous patterns of behaviour, either with partners or her children and that she is gaining skills to avoid this result. I say this even though I accept there have been lapses into previous behaviour, particularly with her present partner in January 2009 when she struck the cabinet door in anger during an argument. I accept she and her present partner still

have arguments but both are in couples counseling to learn better communication skills to avoid this in the future.

[14] The Mother is aware the children need counseling. Although she and the Father have had disagreements about when this need was first identified, who should have found the counsellor, whether the Mother was given an opportunity to choose the counsellor and when the Mother was notified about the person chosen by the Father, the important point is that both now recognize the children need counseling and both are supporting its continuance.

[15] Within the background I have just described I will now examine the Father's complaints about the Mother that have not been specifically addressed in my previous comments.

Mother's Judgment

[16] I am satisfied many of the Father's complaints about the Mother's judgment relate primarily to communication difficulties between them and not to the day to day decisions she has made about the children when they are in her care. Other

complaints relate to manifestations of behaviour created as a result of her mental illness and personality disorder - for example- her yelling and screaming, her striking out at inanimate objects, her need to have her way. These I have already addressed.

[17] In reading the Father's affidavits and listening to his testimony I find that he too has a need to "have his way". He does not appear to be flexible or accommodating. He has insisted on a strict interpretation of the Interim Order even when to do so requires the children to be transported early in the morning or late in the evening. He is somewhat selfish. Initially he complained about not having sufficient weekends with his children at a time when he only appeared to want the children to be in the Mother's care "when he was working overnight". If that proposed plan had continued the Mother would have had very little parenting time with the children. At the time this did not appear to concern him leading to the conclusion she was a fit enough Mother when he needed someone to look after the children but not otherwise. He did not appear to understand that the children do love their Mother; this relationship is to be nurtured; her care of them should be something more than a mere accommodation to his work schedule. Although he has changed his requested parenting plan it remains based upon his work schedule

without consideration of what type of arrangement is best for the children given their needs as young children and the availability of both parents to meet those needs. As an example he has not placed the children in their mother's care the evening before he would begin his 4 day work schedule even though he is required to be at his workplace by 7:00 a.m. This requires him to hire other child care providers to care for the children early in the morning and take them to the school and daycare or transport them, early in the morning, to their Mother's home.

[18] The Father has minimized the Mother's care of the children in the past suggesting he has, throughout the marriage, been the primary care parent.

[19] A review of many of the decisions in which judges have attempted to determine what is in the child's best interest reveal a preference to continue children in the care of the person who is determined to be their "primary care parent". This has led to discussion about how a court can determine the identity of this person. In *Burns v. Burns* 2000 NSCA 1, the Court of Appeal did provide some guidance and Justice Roscoe stated:

29... the actual period of time spent with the children is not the only determinant. More importantly, in my opinion, is which parent has taken primary responsibility

for all the important decisions concerning the health, safety, education, and overall welfare of the children, since the parties separated...

30 In addition to the major matters, the primary caregiver is the parent who deals with the countless less significant, but nonetheless obligatory, daily arrangements for the children's clothing, haircuts, hygiene, extracurricular activities and every day mundane affairs. Who would buy a present for them to take to his school friends birthday party? Who makes the appointments and takes them to the dentist? Which parent is keeping the record of their vaccinations, and fills their prescriptions? Who goes to the parent-teacher interviews? Who chose the preschool?...

[20] The decisions and activities described by Justice Roscoe are critical to a child's well-being and may be overlooked by a parent who never has been required to make these decisions and carry out these activities. However, because the primary care parent in a relationship was frequently the female partner, this analysis has come under attack, particularly from fathers. The division of labor within a family often evolves to place the female partner in the role of primary care parent. It is easier to have one person attending to many of the above described parenting functions. But these are functions the other parent can learn to perform. This understanding has led to a more detailed exploration of the plan each parent offers and serious consideration of plans for shared parenting.

[21] In this case I am satisfied each of these parents performed the functions of a primary care parent from time to time as the need arose. Both are equally

competent to carry out these functions. While the circumstances of the separation and the Interim Order resulted in the Father performing more of these functions than the Mother, my task is to evaluate each of the plans put forward by these parents and determine which one presently best meets the children's best interest. Merely because the husband has been performing primary care parenting tasks more frequently since the separation is not in and of itself a reason to continue that arrangement where the other parent is equally willing and able to carry out those tasks.

Living Arrangements

[22] The Mother has a partner. He is the primary care parent of his two children, a son and a daughter, who are within a few months of the same age of the Mother's children. They live together in a home purchased by the Mother in which there are three bedrooms. When all of these children are together the boys share one bedroom; the girls share one bedroom.

[23] In the Father's home he lives alone with the children. Each child has a separate bedroom. Many families cannot afford the luxury of providing each child with a separate bedroom. If these children are to have any contact with their Mother they will often be required to share a bedroom with her partner's children. There are many accommodations children are required to make when their parents separate and this is one of them. There may be circumstances where there is evidence to suggest it is not in a child's best interest to share a room with a step sibling or indeed even with a sibling. That type of evidence is not before me other than the Father's statements that the children have expressed dissatisfaction with this arrangement. Contrary to his evidence the Mother's evidence is that the children enjoy sharing space with their step siblings and they get along very well together. As always when evaluating a parent's report about "what children have said", I am concerned they may be expressing what it is they believe their parent wants to hear in order to please that parent. This is a well known phenomena. As a result children's statements to their parents are often of little use to a decision maker.

Marijuana Use

[24] During the interim hearing the Mother was asked whether she and her present partner smoked marijuana. Her answer, according to the typed transcript, was “yes occasionally”. Since that hearing she has, in all subsequent affidavits, denied her partner uses marijuana and that she admitted he did so at the interim hearing. Her explanation for this is not entirely satisfactory.

[25] At the interim hearing the way in which the question was asked somewhat suggested the answer that was eventually received which was “yes, occasionally”. The question came after questions about where she was then residing. Her answer was in an apartment with a named friend. Counsel agreed that I could listen to the tape of this portion of the interim proceeding so I could evaluate whether, because of poor acoustics or for some other reason, the Mother did not properly hear the question asked of her. Her testimony before me suggested she understood the question to refer to her friend and herself. It is possible the Mother interpreted the question to be a reference to her friend and herself rather than to her present partner. It is possible she did not hear her present partner’s name when it was inserted into the question. However, the name is clear on the tape. Her failure to admit what she said could be a deliberate lie but it would be a rather stupid lie given her answer at the interim hearing. Why would she place herself in the position of being caught in

the manufacture of a complete lie when doing so could undermine her credibility before the court? I have no answer to that question but I am not prepared to draw a negative conclusion about her parenting from this series of facts.

[26] Part of the reason I have decided not to draw a negative conclusion about the Mother's parenting from her answer to the question about her partner's use of marijuana is because she has been very open about her own use of that drug. Unfortunately, like many in our society she considers its use to be benign in respect to her care of the children. I accept her evidence that she does not use marijuana and then drive and that its use is limited to the evening in the same manner as a parent who may have a drink of wine or two with dinner or an evening drink of some other alcoholic beverage. The ingestion of alcohol for this purpose is not generally considered to be inappropriate when one is parenting one's children. It is the abuse of alcohol that is the concern. However, alcohol is a legal substance, marijuana is not.

[27] The Father professes to be concerned about the danger to the children from a home invasion committed by those who would seek out the Mother's hidden cache of marijuana. At best this is a suspicion of the Father arising out of his work as a

police officer. The Mother's testimony is that her use is limited, her purchases small. I'm satisfied she is not a person who keeps large quantities of marijuana in her home and I am not satisfied that her home would be broken into for the small quantities I am satisfied she has had in her home from time to time. However, because marijuana is an illegal substance she is not to use or be under the influence of marijuana at any time while the children are in her care. I understand she has used marijuana for pain relief. She will need to find other treatments to manage and control her pain.

[28] A somewhat similar analysis to that given above may also apply to the events surrounding a letter that was provided to the Mother by her psychologist and then given by the Mother to her counsel. The date when the Mother began treatment with that psychologist may have been in blank on the letter the Mother received. The Mother may then have filled in a date which was different from the date later used by that same psychologist in another letter. At its worst interpretation the suggestion is the Mother removed the appropriate date, which appears to be September or October 2006, and inserted November 2007. If she did so, was it to hide the fact that she had received some treatment for her postpartum depression in 2006 which she failed to continue? This court already is aware that she had been for some time

resistant to treatment but that now has changed. How then should this evidence be evaluated in respect to the children's best interest? I do note that the therapist herself provided two different start dates for therapy although the differences are not significant. In her report dated December 11, 2007 the date she suggested she began treating the Mother was September 2006 but there may be some question about whose handwriting placed that date in the letter. In her report dated January 15, 2010 stated she began her treatment in October 2006. Is it possible the Mother did not use the 2006 dates because she really did not enter into a continuous therapeutic relationship at that time? That much is known. I do not intend to draw a negative conclusion about her parenting from this series of facts.

French Language and Choice of School

[29] The Father wants to ensure his children will be fully competent in the French language. I recognize this will be of considerable benefit to them; so does their Mother. It is true she did not take any active steps to become bilingual herself while she was living with the Father but she now has taken steps to remedy that deficit. The children are in a school and daycare in Dartmouth in which French only is spoken. Both are supportive of parents who speak only English. The Mother has

described the strategies she has put in place in order to ensure the children will be able to perform adequately in these facilities. Both are approximately one kilometer from the Father's present home and approximately a 15 min. drive from the Mother's home. The Father wants to place the children in a school in Bedford that is closer to his residence. I understand from the evidence the children would be bused to that school although, it is possible that when they were older they might walk. This portion of the evidence was somewhat unclear but given the order I will make in respect to the care of the children and given that the school and day care in which the children are presently enrolled are well acquainted with the children and their challenges, I have decided it is in their best interest to remain in their present school and daycare.

Communication

[30] At the present time these parents communicate almost exclusively by e-mail. While e-mail can be an effective communication tool, because it does leave a written record, it has several deficiencies. It is stilted and repetitive because there is not the normal back-and-forth that would occur instantaneously with telephone or face-to-face communication. Delayed responses result in mis-communication or lost

communication as a parent struggles to keep up with several threads of e-mail, covering different topics arriving at different times, often on the same day. These parents must talk about the children's progress at school, they must discuss recommendations of counsellors, they must schedule the children's activities around work schedules, not an easy task given the Father's schedule; he is not available at the same times each week.

[31] The Father accuses the Mother of not retaining or paying attention to information he has previously sent her in various e-mails. If one looks at the volume of e-mails these parents have exchanged and the different issues that are discussed in many of these e-mails I am not surprised that details go missing. Also I note the Father is very quick to inform the Mother she has or should have information that I am satisfied was not delivered to her such as the requirement for parental accompaniment at the "Beavers" camp. Rather than merely commit at once to take their son to this camp the Father engaged the Mother in a series of e-mails about her deficiencies relating to information about the camp. When she suggested her present partner could accompany the child the Father then suggested they put the responsibility of this decision on the child's shoulders rather than work it out between themselves. The child had obviously been exposed to the Mother's partner

for some time and was familiar with him. It appeared that attending the camp was something the child wanted to do and there was no indication the Mother's partner would not have been accepted as an appropriate attendant to the child at that camp. The Father's focus appeared to be his concern that he may be replaced as a father figure by the Mother's partner, a concern he expressed in other testimony during the hearing. A child focused parent would have taken the child himself if he was available, and if not, allowed another adult with whom the child was familiar to do so. There is no evidence before me to suggest the use of the words "accompanied by a parent" necessarily excluded a step-parent or other responsible adult approved by the parents.

[32] Generally when parents have communication difficulties, as these parents do, this suggests a shared parenting arrangement may not be in the best interest of the children. I have commented in previous decisions that parents in a shared parenting arrangement must exhibit an ability to cooperate and jointly plan for their children on a continuous basis, far more frequently than is expected from parents who have other parenting arrangements. Conflict and the potential for conflict must be at a minimum. Each parent must respect the other. Their value systems and methods of discipline should not be substantially dissimilar. They must be able to communicate

face to face. They must respond quickly to inquiries from the other parent about issues involving the child, focusing on the child's need not on the parent's issues. Routines in each household should be similar to ensure the child is not confused by or encouraged to become oppositional because of different standards and expectations in each home. However, the circumstances of this case have convinced me that the best interest of these children is for them to be parented in a shared parenting arrangement. The primary reason for this decision is the work schedules of the parents and the difficulty one would have in arranging a traditional primary parental care pattern around the schedules. There are also additional reasons.

[33] Although the parties' communication by e-mail has not been particularly productive I am not convinced they cannot begin to reinstate communication by phone at a set scheduled time during which they would plan the daily and monthly lives of their children. Initially the Father may have more difficulty with this than the Mother. He appears to have more resentment toward her than she does toward him but I do believe he can overcome this because I accept he truly does want to do what is in the best interest of his children. I do not believe this is wishful thinking because the level of conflict between these parents has not resulted in the type of negative behavior toward one another often seen in these cases. Nor had there been

an ever increasing escalation of their conflict. They have resolved difficulties between them although one or both may from time to time be dissatisfied with the outcome. That may be because it does take a long time to make these important decisions by e-mail. E-mail should be used to provide information but not for decision making discussions. Communication for decision making must be interactive and immediate. Aside from face to face discussions the only other way this can occur is in telephone conversations.

[34] Both of these parents are actively involved with counsellors. Their counsellors may be able to assist them to improve their communication skills.

[35] Having decided that both of these parents are able to provide appropriate care and nurturing for their children and that they should be parenting under a joint custodial shared parenting arrangement, I do recognize they need some specific direction if this arrangement is to be successful. As a result the following provisions are to be contained in the Order to be prepared following this decision:

- Neither parent is to enroll a child in a recreational activity that will require the other parent to transport the child unless that parent has agreed in writing to the enrollment.
- When a parent has the children in his or her care according to the parenting plan it is that parent's responsibility to take the children to scheduled extracurricular activities or to arrange for another responsible adult to do so.
- When a parent has the children in his or her care according to the parenting plan, he or she is not required to contact the other to provide child care while that parent engages in personal recreation time, social activities, and other events that may take a parent out of the home for a period of time during a portion of a day.
- Both parents must agree upon the children's third party service providers.
- Because the Father frequently has weekday's when he is not working and as a result has the children in his care, he has time available to attend appointments for the children with doctors, dentists and other service providers. He is to be responsible for arranging and taking the

children to these services at times when he is not working. He is to inform the Mother about the arrangements made and the purpose of the appointment sufficiently in advance to permit her to request time away from her work to attend the appointment if she decides it is appropriate that she do so. If she has not attended the appointment the Father is to inform her about the recommendations made as a result of the appointment.

- Both parents must continue medical, dental and drug plan coverage for the children available through their present and future employers and each must ensure that the other is reimbursed without delay in the case of co-ordination of benefits when applicable and for reimbursement for uninsured expenditures.

[36] The children are already enrolled in recreational activities put in place by the Father with little consultation with the Mother. If these are to continue their continuation must be a joint decision. The need to co-ordinate both parents schedules to accommodate these activities requires joint decision making. Both parents work and therefore one cannot assume the other can provide the transportation necessary for the child to participate in an activity.

[37] I now must decide the details of the parenting schedule. This is a difficult task. It is often considered best for children to be cared for by a parent when that parent is not working. The Father has significant non working time available. However his schedule does present challenges. If he has the children in his care the evening before his day shift, he will have to find child care for the children early enough to allow him to go to work by 7: 00 a.m. and to then later take the children to school. In the alternative the children will need to be taken to the Mother's home early in the morning. Apparently the Father has found people to provide early morning care but I find it to be in the children's best interest to be taken to their Mother's home the evening before at 6:00 p.m. so she can attend to them that evening and in the morning. When the Father's day shift ends, and before his evening shift begins, he could have the children after school until he must go to work at 7:00 p.m. but then he would have to get the children to their Mother's home by at least 6:00 p.m. to allow her to settle them for bed unless he hired a caregiver to look after them in his home overnight. The day following the Father's night shift he will arrive home at 7:00 a.m. I do not know when he sleeps and whether he is able to take care of the children shortly after 7:00 a.m. or if he is only able to do so later in the afternoon. Given that both of these children will soon be in school for

most of the day a transition after their school day appears to be most appropriate rather than placing them in his care in the early morning hours. An additional difficulty I have is the driving distance between homes and between each home and the children's school and day care. As I understand the evidence travel time between homes can range from 20 to 40 minutes although the distance from each home to the school or day care facility is shorter in driving time.

[38] The parenting plan I have decided upon has been crafted with several principles in mind and as a result the following principles shall govern the parenting plan and shall be considered when the parties make additions, deletions, or changes to the parenting plan. These principles are to be repeated in the order to be issued following this decision:

- Because of the Father's work schedule and the multiple caregivers that may be required to care for the children when he is working, the parenting plan is to be developed to, in so far as is reasonably practical, place the children in his care when he is not working.
- Unless absolutely necessary the children are not to be picked up or returned very early in the morning or late in the evening.

- The children are to be subject to as few daily transitions between homes as is possible.
- When a vacation or holiday schedule does not apply the regular schedule is applicable but some changes to pick up and return times may be needed, particularly in the summer, because of child care arrangements.

[39] The parenting plan I have devised has been based on the parties schedules as I have described them. However the provisions I have made, for example in paragraph 2, may need revision in the summer. The plan contemplates changes may be required and provides a mechanism for the parents to do so. The parenting plan is as follows:

Regular Schedule

1. The days of the Father's work schedule consist of two day shifts and two night shifts that are called days 1 to 4; his four days off are called days 5 to 8.
2. The children are to be in the care and custody of their Father when he has his four days off according to his work schedule; his responsibility to care for the children is to begin at 2:30 p.m. on day 5 and is to continue until

6:00 p.m. on day 8.

3. The children are to be in the care and custody of the Mother at all times when they are not in the care and custody of the Father.

Vacation from Work Schedule

4. Each parent is to have the children in his or her care and custody during their vacation time from work for a maximum of four weeks. The four weeks are not to be consecutive and may be exercised at any time and so are not restricted to the children's summer school break or the March school break. No more than two consecutive one week periods may be taken at one time.
5. Each parent is to notify the other, on or before May 31st in each year, with the requested dates for the vacation time from work with the children and if there is any overlap, the Father's choice shall prevail in even numbered years and the Mother's in odd numbered years.

Holiday/School Break Schedule

6. Because the Father may be required to work all or some of Christmas Eve, Christmas Day, New Year's Eve and New Year's Day the regular schedule is to be adjusted so the parties share Christmas Eve and Christmas Day in whatever division of time is practical given his work schedule and then similarly share New Year's Eve and New Year's Day. If he has all of these

days off from work the time must still be shared equally with the Mother and the sharing is to alternate year to year if the Father's work schedule can accommodate this alternation.

7. Because the Father may be required to work all or some of Good Friday, Easter Saturday, Sunday and Monday the regular schedule is to be adjusted so the parties share the Easter holiday in whatever division of time is practical given his work schedule. If he has all of these days off from work the time must still be shared equally with the Mother and the sharing is to alternate year to year if the Father's work schedule can accommodate this alternation.
8. The parent having care and custody of the children according to the regular schedule on a "long weekend" in which Monday is a holiday, if he or she has that Monday as a holiday, is to have the children in his or her care until Tuesday morning at 9:00 a.m.
9. The children are to be parented according to the regular schedule during their March school break unless the Vacation provisions apply.

Transportation

10. The Father shall be responsible for retrieving the children from their location when his care and custodial time is to begin and returning them to their appropriate location at the end of his care and custodial time; these locations will be, depending upon the circumstances, their mother's residence, their school or day care facility, or another caregiver's residence.

Changes to Parenting Plan

11. Changes may be made to this parenting plan upon agreement between the parents in writing and an exchange of e-mail confirming clear acceptance of the proposed change is an "agreement in writing" for this purpose.

This parenting plan does not attempt to add to or rearrange the regular schedule for a child's birthday, Mother's day or Father's day. A child's birthday can be celebrated at times other than on the actual date. Few young children understand the significance of Mother's day and Father's day. Because both parents are working no regular accommodation for these occasions could easily be crafted and therefore I have not attempted to do so. However, the parents are free to make changes to this parenting plan upon agreement in writing.

This plan has not equalized weekends. A review of the Father's 12 month work schedule (Exhibit 6) provides him, by my calculation, and without attempting to plot vacation and Holiday time, with 20 full weekends from Friday until Sunday. In addition he has several partial weekends. An exact equal sharing will complicate the regular schedule and I have not been convinced this additional complication is in the children's best interest.

Child Support

[40] The Mother's annual income is \$42, 399.00. This is based upon her 2010 T4. The Father's annual income is \$57, 892.00. This is based upon his 2010 T4 taking into account the deduction for union dues. The Table amount to be paid according to the child support guidelines is \$822.00, based upon the Father's income and \$611.00, based upon the Mother's income. I do not have sufficient analysis before me to determine the increased or decreased costs in each home as is required by *Contino v Leonelli-Contino* 2005 SCC 63. Under these circumstances I have determined that a set off is appropriate. The Father is to pay the Mother \$211.00 per month for the support of the children. Section 7 expenses for medical and dental plans and for child care are to be shared proportional to income. By my calculation

the Father's percentage share is 57.7 % and the Mother's is 43.3%. The party seeking contribution is to provide the other with the amount claimed and supporting receipts. Entitlement to receive contribution for payment of a child's recreational expenses must be agreed upon between the parents. I am not ordering contribution because I have no evidence before me to suggest the recreational expenses are "necessary" as that word has been interpreted, nor that the expense is "extraordinary". Without agreement the parent who wishes to enroll the child in an activity is to pay the cost associated with that activity.

[41] Neither party has made any submissions about costs. The Father did not succeed with his request for primary care although there may have been offers exchanged between the parties that may have suggest a different result than the position he put forward at trial. If costs are requested written submissions are to be provided to this court by the Mother, with a copy to the Father no later than April 29, 2011. The Father's submissions are to be filed with this court and copied to the Mother no later than May 13, 2011. If the Father has raised an issue in his submissions not considered in the Mother's submissions she may file and copy to the Father a further submission addressing those issues no later than May 20, 2011.

Beryl MacDonald, J.