

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

**Citation:** Simpkin v. Chalmers, 2011 NSSC 164

**Date:** 20110429

**Docket:** SFHMCA71808

**Registry:** Halifax

**Between:**

Pamela Simpkin

Applicant

v.

Travis Chalmers

Respondent

**Judge:**

The Honourable Justice Moira C. Legere Sers

**Heard:**

April 13, 2011

**Counsel:**

Tanya Nicholson for the applicant

Jonathan Langlois-Sadubin for the respondent

**By the Court:**

[1] This application under the *Maintenance and Custody Act* was filed on August 31, 2010.

[2] Pamela Simpkin, the applicant mother (hereinafter "mother") seeks an order of joint custody with herself as the primary parent and with specific access/parenting time to the respondent father, Travis Chalmers, (hereinafter "father").

[3] She seeks the table amount of child support, a contribution toward preschool expenses and a restriction on and a prohibition against either party relocating the child's primary residence outside of Nova Scotia.

[4] She seeks a division of proceeds from the sale of the home in Newfoundland pursuant to equitable principles.

[5] An urgent application dated August 31<sup>st</sup> arose out of the difficulties between the parties. On November 1, 2010, the parties appeared for the hearing. They entered into an interim consent order pending a hearing scheduled for March 15, 2011.

[6] This is the first hearing on the merits.

[7] The mother filed and provided to the father in August 2010 all necessary documentation. Her 2010 annual income was \$49,919.16. Her subsequently filed T4 shows an income of \$50,086.15.

[8] The father failed to file all necessary documentation.

**History**

[9] The mother originally alleged that the father was withholding the child from her. Given there was no agreement, all arrangements were at his discretion. The police would not intervene without court order.

[10] This precipitated the August 31<sup>st</sup> application.

[11] The mother's parenting statement proposes that the father have access on alternate weekends between Friday and Sunday with a return at 7:30 and such additional visitation arranged for evenings and weekends.

[12] The mother claimed a portion of child caring expenses. Her August 31, 2010 statement of expenses showed a child care expense of \$680 per month.

[13] A Notice to Appear was served on the father for September 15, 2010. This included a direction to disclose his parenting statement; a sworn statement of income together with all of the normal attachments as noted in the Child Support Guidelines. The notice directed the father to deliver a copy of this information to counsel for the mother. Counsel's name and address were provided in the notice.

[14] The notice advised the father there were consequences for failure to disclose including: (1) costs; (2) an interim order for child support or child maintenance; or (3) a dismissal of his claim or motion or any part thereof.

[15] The deadline for filing was September 13, 2010.

[16] On September 15, 2010, the parties appeared before the court.

[17] The father advised he was unable to retain a lawyer. The September Interim Order was arranged by consent to alleviate the troublesome circumstances that arose predating the Interim Order.

[18] The parents agreed on interim joint custody of the child who would be with the father on Sunday, Monday and Tuesday, returning Wednesday morning and with the mother Wednesday, Thursday and Friday. Weekends were to be split. There was an evening access visit with a return to take place in the morning.

[19] The parties were to consult on all major medical and educational decisions and advise each other immediately while the child was in their care should any difficulties arise.

[20] The parties were to give the other parent first option in the event they were unable to take their parenting time.

[21] The parties were to exchange information in order to select a day care and they were directed to exchange financial information. They were also to register for the parent information session and exchange their work schedules.

[22] The father was to follow up on representation. He was directed to file an affidavit in response to the material that was before the court.

[23] On September 24, 2010, the mother's counsel informed the court that a form of order was provided to the father by email and regular mail on September 20, 2010. He did not reply.

[24] The matter had been set down for November 1, 2010 to give the father sufficient time to obtain counsel and to provide financial disclosure.

### **Late and incomplete disclosure**

[25] On November 1<sup>st</sup> the parties appeared before the court with counsel. The parties confirmed the proposed form of order for access and parenting time. Both parties endorsed the order.

[26] The discussion in court concluded with an understanding that an order for child support would come forward once the father filed his last three years' Income Tax Returns. Failure to file would result in costs of \$200. The outside deadline for his disclosure was to be November 15, 2010.

[27] The mother was to confirm the child care expenses that she paid directly and the father was to reimburse her at 37.5% of the net, with an estimate as of that date, to be \$738 per month.

[28] The discussions were put in the form of a conference memorandum dated November 1, 2010. A copy was sent to the father.

[29] This memorandum directed the father was to file any further affidavits by noon on March 11, 2011 and a pre-trial brief by noon on April 1, 2011.

[30] The father failed to file the documentation ordered.

[31] As of the date of this hearing on April 13, 2010 the sole information the court had regarding the father's financial information was by way of a letter dated March 8, 2011 filed by his now current counsel, (not the same counsel as appeared with him originally) which included limited financial information for the purposes of a settlement conference that was to take place on March 15, 2011. That information included:

- one T4 for 2007 showing an income of \$28,894.68 with his then current employer in Yellowknife;
- a record of employment dated May 22, 2007 indicating his total insurable earnings according to Newfoundland Mobile Solutions in the amount of \$14,456.28 from February 1, 2006 with a final work day of April 19, 2007. The first day of work appears to be either January or February of 2006 to April of 2007; no T4 was provided;
- a T4E from 2008 showing income from West Reid Inc. of \$12,760 with EI for 2008 of \$13,851;
- a T4 for 2009 from Glentel Inc. of \$8,153 and \$15,223 from West Reid Inc.;
- a record of employment for 2008 and 2009 combined for West Reid Inc. and Glentel Inc.; and
- a record of employment for 2009 - 2010 for Glentel Inc.

[32] The father left his employment with Glentel Inc. on February 6, 2010. The record of employment indicates he was not returning to West Reid Inc.

[33] At his current employment, the father works one Sunday a month from 9:00 a.m. to 5:00 p.m.; Mondays and Tuesdays from 9:00 a.m. to 5:30 p.m., every second Wednesday from 11:00 a.m. to 9:00 p.m. and every second Thursday from 11:00 a.m. to 9:00 p.m..

[34] The income information noted above was provided to the mother's counsel some time in November and filed with the court in March 2011.

[35] The father's affidavit was sworn on November 1, 2010 and filed April 13, 2011. It was filed with the mother's counsel earlier.

[36] The father's affidavit together with his T4 for 2010 and his parenting statement were not filed with the court until the date of this proceeding April 12, 2011.

[37] The father has not complied with the notice to disclose and has not filed any Income Tax Returns. He advised in his *viva voce* testimony that he has recently filed them with Revenue Canada. They are not present for the court or the purposes of the mother's counsel. He provided one pay stub and nothing else.

[38] The father's failure to provide information caused late filing of trial briefs such that the mother was forced to file her brief without proper financial disclosure including disclosure relating to the sale of the property in Newfoundland and the disbursement of proceeds from the sale of this property.

[39] This caused a delay in the filing of the father's brief to the day before the proceeding.

[40] Two days were scheduled for this proceeding. It was completed in one day.

### **Child care costs**

[41] Despite court direction to contribute to child care costs, the mother has received from the father only \$75 toward the payment of the child care expenses since the commencement of the day care.

[42] Both parents knew that the mother was to pay the child care costs and the father was to reimburse her.

### **School registration**

[43] In September of 2011 their child will be going to school. The father lives in Eastern Passage. He advised in the hearing that he is prepared to move.

[44] The mother lives in Lower Sackville and has registered their child in a school in Lower Sackville. The mother is prepared to arrange after school care for their child.

[45] Both parties have an irregular work schedule.

[46] The mother wishes the child to be in her primary care with parenting time for the father to include one evening per week from after school until 7:30; every second weekend and each Sunday of the month, save for the Sunday when the father is working. (The father is required to work one Sunday a month.)

[47] The mother proposes shared, block time for vacation in the summer and around significant holidays, with each parent having one full week per month with the child for July and August.

[48] The father wishes the current interim arrangement to continue.

## **History**

[49] The mother is 30 years old and employed full time in a supervisory capacity. The father is 31 years, is employed with a base income together with commission.

[50] Both parties work shift work and have some flexibility with respect to their shifts or hours of work.

[51] The parties met in 1999 when they were attending university. They began to live together in September of 2004. The child was born on June 18, 2006. They separated finally in January of 2010.

[52] The mother completed one year of an Art's program, one year of a Bachelor of Administration and three years of a Nursing degree. When she became pregnant with the child, she left university.

[53] The father attended university for five years and left without a degree.

[54] Both parties had student loans, income from summer jobs and began to live together in 2004/2005 during their school year. Neither have obtained a degree in their chosen field of study.

[55] In 2005 the parties moved in with the mother's parents in New Glasgow. The mother worked in a nursing home in the summer and traveled to university in the fall of 2005.

[56] In January of 2006 the father accepted a position in Newfoundland where his father lived. He traveled back to Nova Scotia for the child's birth in June of 2006.

[57] The mother moved to Newfoundland with the child in June of 2006, shortly after the baby's birth.

[58] In June of 2006 when the father received the offer of employment in Newfoundland in 2006, he and his father jointly applied for a mortgage to purchase the home in Conception Bay where he and the mother would live with their child.

[59] The mother's name was not included on the mortgage or title. The father believes his father paid the down payment and cosigned the mortgage, to assist the couple and as an investment.

[60] The maternal grandmother and maternal great-grandmother also contributed to the couple as they set up their home.

[61] The parties lived together from June of 2006 until March of 2009, sharing all the expenses for the home. They were assisted by both families when their income did not cover the expenses.

[62] During their life in Newfoundland the mother was the primary parent. Although both parents ultimately worked, both were on EI benefits for periods of time and independently both sets of grandparents contributed financially and emotionally and continue to do.

[63] In the spring of 2007, the father changed his job. The mother returned to the work force in May, cutting short her maternity leave in order to earn more income and contribute more than what she was receiving from employment insurance. The paternal grandparents assisted with child care when the couple had to work.

[64] In August of 2007, the father left Newfoundland for the Northwest Territories. His schedule included four weeks away and two weeks at home. The father acknowledged he was away for considerable periods of time.

[65] The mother continued to live in the home and care for the child with the help of the paternal grandparents. She continued to work with her current employer until she obtained a full time job. The child was enrolled in gymnastics and music.

[66] The father was laid off in December of 2007 and was unemployed from December 2007 to May of 2008. He returned to live with the mother and they continued to live as a couple and raise their child.

[67] The parties began to have increasing difficulties in the relationship. Their financial circumstances were deteriorating. Both maternal and paternal grandparents helped to pay the couple's share of the mortgage.

[68] By March 2009, the mother moved to a job transfer in Dartmouth, Nova Scotia. She left for Nova Scotia on March 15, 2009 and returned to collect the child two weeks later. The father prohibited her from leaving the province with the child.

[69] Thereafter, the mother traveled between Newfoundland and Nova Scotia for April, May and June of 2009 in order to maintain her employment and visit her child.

[70] The mother testified that her telephone calls to her child were being interrupted as she tried to speak to her child every day between Nova Scotia and Newfoundland.

[71] By June of 2009 the father agreed to come to Nova Scotia and brought the child over.

[72] The Newfoundland home was sold. The proceeds were divided between the father and the paternal grandfather. The mother received no proceeds.

### **Contributions and Proceeds of sale**

[73] The maternal grandmother provided the funds to move the couple's belongings from Nova Scotia to Newfoundland.

[74] As of October 2008, the maternal grandmother provided \$1,000 to the family and for two occasions in 2009 provided \$1,000 each. The father was leaning on his own father to assist in supporting the couple and in covering their share of the mortgage payments.

[75] The father advised that his father loaned the parties close to \$21,000 to assist with their living expenses and maintenance on the home.

[76] The home was sold in Newfoundland after the move and he and his father split the proceeds. As of August 19, 2009, when the home in Newfoundland was sold, the net profit from the home was \$49,323.25 (Tab 3 respondent's pre-trial brief). The paternal grandfather was paid his half (\$24,661.).

[77] The father testified he paid his father \$21,000 from his share of the proceeds to pay back the "loan" of \$21,000. There was no information proving the loan.

[78] The father suggests that his father felt sorry for him and transferred some undefined amount of money back to him.

[79] With this money the father was able to pay off debts. There is no evidence on this point either.

[80] The mother has not received any reimbursement for any of her contribution relating to the personal property or to her parents for their contribution.

### **Return to Nova Scotia**

[81] From June of 2009 to September of 2009 the parties lived in New Glasgow with the mother's parents. The mother's brother looked after the baby while the father and mother commuted between New Glasgow and Dartmouth.

[82] In September 2009 the parties moved to Eastern Passage. It was clear at that point, however, that reconciliation was not possible although they remained together. The child was enrolled in daycare.

[83] By January 20, 2010, the parties were separated, living under the same roof. The father left his job, indicating he wanted to work on his degree, although he has not returned to university since.

[84] There were many disagreements with respect to the child. The difficulties escalated between the parties. Ultimately, the child was involved.

[85] By March the parties agreed they could not be together. When one party was with the child, the other stayed elsewhere.

[86] Then, while still living together, the father called the police to settle a dispute between the two.

[87] The father called the police again when the mother attempted to enter the apartment. At this point in time her personal possessions are still in the apartment. There is no indication that this did not continue to be their apartment, although they were separated. They had difficulty in dividing their personal possessions and difficulty in deciding who was going to have the child.

[88] In or about May 2010 the mother learned that the father was leaving the child during his parenting time with his new girlfriend. This precipitated the actual physical separation.

[89] The mother moved out on May 24, 2010 into her sister's home.

[90] From that point forward there were many instances where each parent took the child and refused access to the other parent. The police were called on a number of occasions to resolve the disputes.

[91] Finally the matter was brought before the court by the mother due to the restriction in her contact with the child and her lack of knowledge as to the whereabouts of the child. The mother advised in her affidavit that there were days at a time when the child was not in her care because the father refused to allow her to be with the child.

[92] On August 1<sup>st</sup> for example, the child was with the mother at the beach with other family members. When the father arrived, he distracted the child with toys

and took her back to his apartment. The mother went to the apartment to get the child on August 2<sup>nd</sup>. She commented that the apartment was a mess and very little food in the fridge. The father found the mother at the apartment, called the police and the mother agreed to leave.

[93] The father had a job at a local club in Dartmouth, working between 4:00 p.m. and 2:00 a.m.. He advised the mother that he would leave the child with his sister on August 3<sup>rd</sup>. The mother went to the apartment, which had been their joint apartment, at 10:30 p.m. and learned that the father had dropped the child off at the gym where his girlfriend works at around 3:00 p.m.. She believed the child did not leave the gym until 6:00 p.m.. The mother put the child to bed at 11:00 p.m. and stayed there with the child until the father returned from work at 2:00 a.m..

[94] Again on August 4<sup>th</sup> the mother attended the apartment in order to say good night to her child and to get some of her personal possessions in order to go to work. While the father initially refused, he subsequently allowed her in.

[95] In order to get the child back, the mother took the child on August 6<sup>th</sup> and went to her sister's place as her off time had been used up by the father.

[96] Each parent, acting immaturely and without regard for the needs of the child, would ultimately try to get and keep the child with them.

[97] In the process they would keep the child away from the other parent. What follows is a continuation of the tug of war as the parents struggled to find some resolution. Their behavior to say the least was immature, self-centred and certainly not child-focused. They could not resolve any disputes by discussion and involved the police.

[98] The evidence supports the fact that the father has called the police to intervene to insist on his rights. He has not entered into an open, frank and mature discussion to achieve resolution.

[99] The third incident was August 18<sup>th</sup> where the father had the child in the car and was returning home. The mother was also in a car. Afraid she was going to cause a confrontation, the father began to drive toward the local police station.

[100] The mother testified that the father was driving erratically; he indicates he was simply trying to get away to avoid a fight. Clearly the parties had to address the matter through court order and could not resolve the issue themselves.

[101] The father's description of events lacked detail and was blown out of proportion.

[102] For example, on one weekend the father was working at a time when he could not find someone to look after the child. He told the mother to find a babysitter or his girlfriend would babysit.

[103] The mother took the child to New Glasgow to be with her parents. The father did not object to this as the maternal grandparents frequently helped the parents out.

[104] The father insisted after his work that the child be returned at 5o'clock or he would call the police. This necessitated the maternal grandparents having to bring the child from New Glasgow to Halifax to avoid police involvement.

[105] These grandparents have been significantly involved in bailing these two people out over the course of their relationship. The father's conduct was, to say the least arbitrary.

### **School Registration**

[106] The parties have been unable to enter into discussions about which school the child should be enrolled in. The mother provided the father the website for a number of schools.

[107] I have no evidence to confirm whether he investigated the information. While he was living in Eastern Passage, he recommended a school in Bedford. There did not appear to be any information from the father about what this would entail and whether he was willing to move.

[108] It was clear at the hearing of the matter that the father has agreed to move to Bedford to be closer to the child. He has made no inquiries as to registration although he initially opposed the registration in Lower Sackville.

[109] The mother did an investigation and did finally register the child in the Lower Sackville school.

[110] The mother testified she was pressured by the time constraints for registration of her child in school and was concerned about missing the deadline. She made inquiries with respect to out of jurisdiction registration (for example, Bedford). She was told they would not know if they had permission for an out of jurisdiction registration until well into June or July. Therefore, she registered her child in Lower Sackville for school.

### **Child Care Costs**

[111] The parties have not been able to agree on financial matters. This has resulted in the mother bearing total responsibility for the child care except for \$75 advanced by the father.

[112] The father suggests the mother is unable to manage her finances. He cites as an example the fact that the mother was ultimately unable to continue the child in the daycare in Eastern Passage due to outstanding arrears.

[113] The father faults the mother because the child cannot any longer attend daycare. He alleges that if she cannot manage her finances then how can she manage primary care.

[114] The mother argues that there are two reasons the child can no longer attend this daycare:

Absent a court order the father would not voluntarily contribute any percentage of his income toward child care expenses and has not done so despite court direction in November 2010;

In addition, the daycare had specific hours beyond which they would not accept a child (10:00 a.m.). During his parenting time he had difficulty meeting those hours in spite of the proximity of the child care facility to his home in Eastern Passage.

[115] When the father was unable to get the child to daycare on time, the mother was required to find alternate accommodations for her child or stay home from work herself, at a time when she was living in Lower Sackville.

[116] The father denies this ever happened. Given his failure in other areas of this case his testimony is less believable on this point.

[117] In order to address the daycare expenses, the mother has the overpayment of expenses with a payment of \$780 she made to clear the arrears with this daycare. The child can no longer attend that daycare and was in another daycare where the mother has paid \$2,060.10 thus far.

[118] Fortunately, the mother has an extended family and support system which allows her to make alternate arrangements at the last minute. Unfortunately, the father's family remains in Newfoundland and essentially he has to rely on his girlfriend in his now current relationship. He informed the court this was not a long term relationship.

### **Income Positions**

[119] Despite court direction, the father has not filed his Income Tax Returns. In September he advised the court that he had not actually completed and filed the Returns. He was directed to provide these to the court and to counsel for the mother. In his testimony in court it appears that he has subsequently filed the preceding years' Income Tax Returns with Revenue Canada and simply did not provide them to the court or to counsel for the mother.

[120] Based on his disclosure with its inherent limitations, counsel for the mother makes the following comparisons.

[121] In 2007 the mother earned \$20,855 while the father earned \$28,894.68 plus what he received from Newfoundland Mobility Services.

[122] In 2008 the mother earned \$8,910 while the father earned \$13,851 plus what he earned from West Reid Inc. in St. John's, Newfoundland.

[123] In 2009 the mother earned \$40,971 while the father earned \$23,376.40.

[124] In 2010 the mother earned \$50,086.15.

[125] In his brief filed the day before trial, the father filed a 2010 T4 from Good Life showing income of \$8,909.68 plus whatever he received in 2010 from Glentel Inc. for January 2010.

[126] The father`s anticipated income had to be calculated based on his pay stub and his *via voce* testimony.

[127] It appears from 2011 we can reasonably assume that he will make at least \$35,000 per year.

[128] The mother's current child care system requires \$100 per week for a four-day week and the mother has assumed the responsibility for that payment.

[129] In listening to the father give testimony, he clearly has no insight into his responsibility to assist in the provision of daycare.

### **Support System**

[130] The father's support system for child care is the mother, her family and friend or his current girlfriend. While he testified that his current relationship is not a long-term relationship, he is prepared to rely on his girlfriend to care for the child when he is not able to be present.

[131] On other occasions the father takes the child to the daycare at his work and/or keeps the child in an adjoining office and entertains the child by way of television, crayons, coloring, etc. His work day care is limited to (3 hrs per day).

[132] When with the father, the child is either at his work daycare or if the father cannot place her there and is unable to find proper child care, he calls the mother and leaves it up to her to make the arrangements.

[133] The maternal grandparents, although living far from the city, have and continue to be extremely vigilant in supporting their grandchild.

## **Conclusion**

[134] It is clear that both parents love their child a great deal. This child profits from significant contact with both parents.

[135] The mother's complaint, supported by the evidence, is that the father does not always put the child's interests first.

[136] The father has been rigid with scheduling when their schedules require otherwise.

[137] The father is not sufficiently structured to make plans in advance with a fall back plan that addresses the child's needs. That relates to financial matters, babysitting matters, and negotiating with the mother on a reasonable adult level.

[138] The mother has given sufficient examples that cause me to conclude that the father is more concerned about maintaining his contact and preserving his time with the child and equal access to the child than addressing the child's best interests.

[139] The father's lateness at the babysitter, his inability to have a support network that provides certainty and continuity of care on a regular basis; his reliance on the mother to obtain babysitters and his failure to pay for the babysitter all point to his inability at this stage in his life to identify and assess short-term and long-term needs for this child.

[140] The father has not shown evidence that he is able to commit to a strategy that will address those needs in conjunction with the mother's plan.

## **Communication**

[141] Most of the communication between the parties is hostile. They have not resolved issues; they had not been able to sit down and discuss issues and it is, in

fact, the mother that has had to make many of the arrangements, including for extracurricular activities, etc.

[142] The mother was providing much of the transportation up until recently, driving the child from Lower Sackville to Eastern Passage.

[143] It is difficult to determine why the respondent has not prepared properly for this proceeding, not provided the information required of him in a timely fashion, not presented evidence on financial points including timely disclosure as to the details of the paternal grandfather's loan, etc.

[144] There is a suggestion that it could be an intention to mislead the court and to retain information that would put him in a bad light.

[145] The respondent has five years' university. The court has to estimate his income not by direct evidence from his employer but by pieces of information the respondent has provided.

[146] It is my conclusion it is more likely the respondent is disorganized, operates on a day to day basis, does not do a lot of paperwork and is not comfortable without assistance gathering together the information that needs to be used to resolve the financial issues required of him. He advised getting what he had before the court was an onerous task.

[147] It does not reflect badly on his regard and his love for his child, but it is a clear indication that this behavior is not conducive to an equal time sharing agreement at this point.

[148] The father needs to become more flexible in his negotiations with the mother and less impulsive about day to day living. He needs to make short-term and long-term plans and learn to communicate and cooperate in an interactive way with the mother.

[149] Both parents exhibited a great deal of immaturity. However, when called upon to do so, the mother has had to be the one to be financially responsible, to adjust her schedule, to adjust her hourly work to accommodate the day to day

tribulations that arise as a result of both parents not being able to make a stable and secure schedule.

[150] It is the mother who has the extended family there to support her and to ensure that no matter what difficulties arise with the parents and their unpredictable schedules, the child has a consistent predictable schedule. This will become particularly important in September when the child starts school.

[151] The goal will be to maximize the child's time with the parents during the times when they are available to be with the child.

[152] For the father, having the child with him while he is working has not produced reliable stable results. He has consistently been scrambling for someone to look after his child during his work time or takes her to work. This obviously cannot be the way the matter proceeds in September of 2011 when the child is enrolled in school.

[153] It is not clear to me whether it is a lack of maturity or simply an inability to plan specifically for the needs of a child, separate and apart from the parents, that impedes the parties' ability to communicate effectively in creating a shared parenting arrangement.

[154] Joint custody will preserve for the father all of the rights to be consulted and to be involved in the final decision-making with respect to all major matters concerning the child in education, spiritual development, health and physical well-being.

[155] When school starts in September, this child will need to have much more stability than has happened in the past.

### **Custody and parenting schedule**

[156] I place the child in the primary care of the mother at the mother's residence with a schedule of parenting time that will keep this child significantly connected to her father as time develops.

[157] The mother's schedule has carefully thought out a continuation of the father's involvement when he is not working and in accordance with his now current schedule which of course may change in the future.

[158] The father shall have one evening of access through the week, commencing in September from after school until the child is returned to the mother by 7:00 p.m.. He shall provide the transportation there and back.

[159] The father shall have every second weekend from Friday after school to returning the child to the mother on Sundays at 6:00 p.m..

[160] The father shall also have the remaining Sundays daytime from 10:00 a.m. until 6:00 p.m., except for the Sunday when he is working. On that Sunday the child shall remain with the mother.

[161] The parties shall share block time for vacation in the summer around significant holidays, each parent to have one full week per month with their child for July and August. This block summer time may be expanded as appropriate to the age and stage of development for this child.

[162] For all odd-numbered years, the father shall have first choice of summer vacation. He shall advise the mother by May 1<sup>st</sup> in writing; thereafter, the mother shall have her choice. Should the father fail to provide written notification by May 1<sup>st</sup> in any or all odd-numbered years, by default the mother may choose.

[163] This does not take away from the fact that in all even-numbered years the mother has first choice and likewise shall advise the father in writing by May 1<sup>st</sup> and in default of her providing written notice, the father may have the first choice for that year, rerouting to his first choice in odd-numbered years.

[164] While the child is with the other parent, the parent shall keep each other updated on their current addresses and phone numbers to ensure ongoing telephone contact between the parties.

[165] Commencing Christmas 2011, during the school year, the vacation will be divided equally. For the period December 24, 25 and 26, 2011, the father shall have the child between Christmas Eve and 1:00 p.m. on Christmas Day and thereafter the mother shall have the child on Christmas Day until December 26<sup>th</sup>, at

which time the parties will revert to their normal schedule, save and except for dividing the balance of the school vacation between the two.

[166] During even-numbered years, the mother's parenting time will be between December 25<sup>th</sup> at 1:00 p.m. to December 26<sup>th</sup> at 6:00 p.m..

[167] March Break may be divided equally or the parties may choose in advance to alternate March break should either wish to take a trip. Failing agreement, they shall simply divide March break in two.

[168] During the years when the father has the child at Christmas overnight, as in 2011, the mother shall have Easter overnight and likewise when the mother has Christmas overnight, the father shall have Easter overnight.

[169] Both parties shall have the right to speak with third-party service providers regarding their child's progress in school and the mother shall keep the father informed of any special events at the school.

[170] Both parties will be listed on the school registration. They will jointly apply for a passport and will provide consent to permit travel outside of Canada while the child is with either party for a vacation.

### **Division of the proceeds of the home in Newfoundland**

[171] This home was purchased just before the mother moved to Newfoundland to live with the father, after they had been together and after their first child was born. When it was purchased, it was put in the name of the father and the paternal grandfather. The paternal grandfather paid the down payment. I have no accurate figures on the actual down payment but the father indicates it was about 5% of the purchase price.

[172] According to the father, the paternal grandfather wished to use this as an investment and to assist the couple. The paternal grandfather paid one-half of the mortgage and the couple was responsible for the other half.

[173] The couple paid their monthly expenses out of the father's account but it is clear that the mother transferred money into the father's account and paid bills

online out of her own account and out of the father's account. The father denies this. I find his testimony less believable than the mother's on this point.

[174] The father's evidence on cross-examination regarding the proceeds of the home confirms that he believed, but was not certain, that they purchased the property in 2006 for \$142,000 and that his father contributed \$7,100, which is 5%, for the purchase price.

[175] On the dissolution of the relationship, the home was sold for \$202,000, a significant increase in equity in the home.

[176] The mortgage payout at the time of August 2009 was \$140,206. The couple had been responsible for paying their half of the mortgage, although they called upon support from both sides in order to assist in doing this. The home was a new home and thus required little maintenance.

[177] There is no evidence before me that would allow me to verify that the paternal grandfather contributed an additional \$13,900 toward maintenance and mortgage to justify the payment of \$21,000 out of the father's one-half share of the equity in the home.

[178] It is possible that there has been some double counting in that the paternal grandfather received one-half as a return on his investment (\$30,703) which would include the return of his mortgage payments and an additional \$21,000 when he is credited with the down payment of \$7,100 and some assistance along the way.

[179] The mother advises in her testimony that she was responsible for bringing in all of the appliances, included washer, dryer, refrigerator and stove, although the father contends that the stove was donated by his parents. The mother also confirms that her mother contributed \$1,000 in 2008 and \$2,000 in 2009 toward the mortgage and maintenance of the home when the couple could not sustain their payments.

[180] The furniture the parties brought from their home in Nova Scotia to their home in Newfoundland was retained and the appliances were sold with the home. I have no value to put on what furniture they might have retained leaving university.

[181] Thus, the cash contribution from the mother toward the mortgage as well as the appliances would be somewhere in the vicinity of \$5,500. That is an estimate based on the \$2,500 for washer/dryer and fridge and \$3,000 toward the mortgage payments between 2008 and 2009. The father sold the appliances with the home.

[182] In addition, the mother advises that she cut short her maternity leave to go back to work in order to sustain the household at a time when the father was unemployed. She advises she was responsible for the payment of the transport of their belongings from Nova Scotia to Newfoundland for which they benefitted, that payment having been advanced by the maternal grandmother and the mother.

[183] The mother testified that she always contributed toward the bills including cable and the power, as well as the phone. She was also responsible for the groceries. The father denies that she contributed toward the mortgage. I do not believe his testimony in this regard.

[184] Thus, when the home was sold and the \$61,406 realized, the paternal grandfather received one-half of that and in accordance with the father's testimony, he transferred another \$21,000 to satisfy the father for any contribution he made over and above his investment. He did not specify how much he received back from his father in order to pay all of the bills in his name.

[185] The father retained the furniture and received the benefit of the contribution from the mother throughout the three years they lived together in this home.

[186] The parties were not married. The mother walked away with her clothing and her parents received no return on any contribution they made toward the couple.

[187] There would be insufficient evidence here to determine that there was a common intention that the mother was entitled to an equal division, given the circumstances.

[188] In this case, as instructed in **Pettkus v. Becker**, [1980] 2 S.C.R. 834, 1980 CanLII 22, one asks the question: What would be the legitimate expectation of the parties in this circumstance?

[189] It would be a legitimate inference to conclude that these parties lived together, that they were expected to contribute to the best of their ability toward maintaining the home and paying the mortgage and the monthly expenses.

[190] The mother bore the child, looked after the child, contributed toward the expenses and went back to work early in order to increase their financial capacity.

[191] It would be a reasonable expectation that her contribution by way of her work as well as the contribution of her parents to the appliances that the parties used, the furniture such as it was, were all there to sustain this young family as they continued their life together.

[192] Apparently, the father believes that the mother has no right to compensation and that he is entitled to reap the benefit of her labour or her ongoing commitment to continue employment while raising their young child, particularly when the father was in the Northwest Territories for a period of time.

[193] By his conduct, the father believes he should receive the benefit of her contributions without responsibility to address any kind of division of personal property. While he believes his parents should be compensated, he does not believe the mother's parents or her grandparents should be compensated for appliances or cash assistance toward the mortgage.

[194] The father has received a significant benefit as a result of the marked increase in the market value of the home. The mother testified that when the house was built, that she had the entire home painted. Her father came from Nova Scotia and built window boxes for the home.

[195] The mother looked after the home in the father's absence. Clearly, these must have contributed and assisted in the ultimate sale of the home.

[196] The father has been enriched; the mother has been deprived. There is a lack of juristic reason for this enrichment.

[197] The mother's contribution in fact may have been one of the many factors that contributed to the escalation of the purchase price to the sale price, allowing for a \$61,000 net profit over a fairly short period of time.

[198] In assessing what, if any, value should be placed on the mother and her parents contributions, I have to look at what proceeds relate to the home itself and distinguish those from monies given throughout the course of the couple's relationship.

[199] I am left with the evidence of the mother and the father and I have no verifying documents by way of signed contracts or bank drafts.

[200] The evidence would support an actual cash contribution from the mother of \$5,500 together with a contribution in labour of at least \$3,500 for a total contribution of \$10,000 which must be paid by the father to be the mother in satisfaction of any equitable interest she had in the sale of this home.

[201] The father may take issue with this evaluation given the paternal grandfather starts out as an equal contributor and in addition, the father alleges, contributed to the family.

[202] However, the father knew this was an issue, had access to all the information and validation, chose not to disclose the details of the loan he insists amounted to \$21,000. In the absence of proof, I cannot rely on this figure.

### **Child Support**

[203] Again, the father has provided insufficient information to determine his exact income for 2011.

[204] Counsel for the mother has put forward a reasonable calculation of an income that one could expect based on the information provided by the father.

[205] The father is paid \$12 per hour and can work a maximum of 44 hours per week, for an annual gross income of \$27,454.

[206] The one pay stub filed by the father shows year to date of \$9,513.87 for a maximum weekly possible of \$792.82. The maximum he can earn with 44 hours would yield a weekly sum of \$528 leaving \$264 to account for commissions a week. His sworn statement document April 8, 2011 show commissions of \$200 a month.

[207] The father's one pay stub provided does not assist in determining his commissions. His commissions result from his performance bringing in members. They are paid once a month. He could not provide an accurate estimate.

[208] On the T4 for 2010 lists \$1,973 for commissions for approximately 3.5 months (September 8<sup>th</sup> to December 2010). The father likely started earning commissions mid September.

[209] In fact, the father's average commissions, based on his current performance from year to date, over the year with his total income would yield \$41,000.

[210] If one averages the commissions stated in the T4 for 2010, they would yield \$6,764 for a total income of \$34,238. This is assuming a 44-hour week.

[211] It is reasonable to conclude that the father has or could have income in the vicinity of \$35,000 at this time. This results in a payment of \$308 per month, payable commencing September 1, 2011 continuing thereafter each and every month until further order of the court.

[212] If the father wishes to pay this twice monthly to accord with his pay, he shall advise counsel for the mother immediately in order to ensure that the order taken out reflects a twice monthly contribution; otherwise, it will be payable on the first of each and every month.

[213] The father shall be responsible for a net after tax contribution to child care, commencing **immediately and retroactively** to January 1, 2011, of 41%, to be added to his monthly payment.

[214] Within two weeks of the date of this decision, the mother shall provide the net after tax costs of child care and the father shall add 41% to his monthly payment to address the current and prospective child care responsibilities.

[215] On August 15, 2011, the mother shall provide the father with confirmation of the after tax costs of the after school program and daycare arrangements and he shall by September 1<sup>st</sup>, commence with his September 1<sup>st</sup> payment a payment of 41% of the after tax cost of child care.

### **Arrears of child care**

[216] In addition, the mother shall provide immediately the after tax cost for the 2010 daycare. The amount received by the "Depend on Me" child care centre was \$2,060.10. Forthwith upon receipt of the after tax costs, the respondent shall pay 41% of that figure to the mother.

[217] There is also a receipt for child care of \$780. It is not clear to me whether that amount is included in the \$2,060. If it is included, that ends the matter for 2010; if it is not included, than an additional 41% of the \$780 payment to satisfy the arrears shall be paid by the father to the mother.

[218] Receipts for the provision of day care services **must be provided forthwith** for January 2011 retroactively and on a quarterly basis in the future.

[219] The mother's counsel shall prepare the order.

Legere Sers, J.

April 29, 2011  
Halifax, Nova Scotia