SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Gibney v. Conohan, 2011 NSSC 268

Date: 20110706
Docket: SFSNMCA 067852
Registry: Sydney

Between:

Elaine N. Gibney

Applicant

and

Christopher T. Conohan

Respondent

Judge: The Honourable Associate Chief Justice Lawrence I. O'Neil

Heard: March 14, 15, 16, 21, and 22, 2011; May 9 and 10, 2011, and June 28, 2011

Written Decision: July 6, 2011

Counsel: Elaine N. Gibney, Self Represented
Christopher T. Conohan, Self Represented

By the Court:

Introduction

[1] The parties are lawyers practising in the same firm. They began cohabitation in 2002 and purchased a home together at that time.

[2] The parties were married August 16, 2002. They have two children born March 30, 2002, and July 29, 2004. They separated on June 10, 2009. The catalyst for the parties' separation in June 2009 was the discovery by the applicant that the respondent was involved with another woman. Although they had discussions over the summer of 2009 on the issue of reconciliation, I am satisfied that by late August or early September 2009 it was accepted that this was not going to occur.

[3] Throughout the fall of 2009 the respondent lived with an extended family member. The applicant and the children remained in the former matrimonial home. The applicant purchased a home in December 2009.

[4] The parenting arrangement has the children with the respondent every second weekend from Friday to Sunday, one Tuesday from 2:30 p.m. to 7:30 p.m. and overnight on Thursday in the two-week period. In a twenty-eight day period the children are with the father for six overnights. This arrangement was first put forward in the mother's parenting statement filed on December 10, 2009.

History of Litigation

[5] The applicant sought child maintenance and a custody and access order by application filed December 10, 2009. By letter dated December 11, 2009, a Justice Officer, Supreme Court of Nova Scotia (Family Division) at Sydney informed Mr. Conohan that an order would issue against him requiring him to pay child support. The respondent, by order of a Sydney conciliator dated December 15, 2009, was required to pay $2,014.00 per month as child maintenance, commencing January 1, 2010. It was based on an income of $159,036.00 and the application of the Provincial *Child Maintenance Guidelines*. Mr. Conohan says he was not aware of the conciliator's involvement. He says the order was *ex parte.* Ms. Gibney disputes the claim.

[6] The parties did not have an order structuring their parenting arrangement in late 2009. In January 2010, the respondent brought the parenting issue to a head when he advised the applicant that the children would be staying over night with him. The applicant protested and visited the respondent's home to demand the return of the children.

[7] The applicant filed an emergency application. The matter was considered by Justice Campbell in early February 2010. The parties appeared by telephone from Sydney. The application for an emergency order on parenting was not granted.

[8] The matter is now before me as an interim application.

[9] The parenting arrangement followed since the fall of 2009 is that which the applicant put in place. I am satisfied that the respondent has followed it because he has accepted that he had no alternative. There could be no doubt in the applicant's mind that the respondent desired more parenting time from the very beginning.

[10] At the commencement of the hearing on March 14, 2011, the parties agreed to have this matter considered under the *Maintenance and Custody Act*, R.S.N.S. 1989 c. 160. The pre-hearing submissions of both parties referenced the *Divorce Act*, S.C. 1985 c. 3 (2nd Suppl.) as the governing authority. However, the pleadings reference the *Maintenance and Custody Act*. In addition, there was an issue of whether the applicant was properly served the Petition for Divorce. The Petition was filed April 10, 2010, by the respondent and issued April 13, 2010. The respondent disputed service on the basis that the Petition was served on her by the respondent (see her letter to the court dated February 2011 and her comments at the commencement of this hearing on March 14, 2011).

[11] To further simplify these proceedings, the parties agreed that the evidence and argument in this phase of the proceeding would focus on the parenting issue. The issues of child support and contributions to special expenses for the children were deferred by agreement of the parties.

Issues

[12] The issues are:

1. Is this a proper case for a shared parenting arrangement? If so, is it a proper case for shared parenting on the basis of alternating weeks?

2. What will be the ongoing child support obligation of the parties? (Issue deferred)

3. What will be the ongoing obligation of the parties to share special expenses for the children? (Issue deferred)

Witnesses

[13] Ms. Conohan, Sr. has maintained a loving relationship with Ms. Gibney to this day and Ms. Doreen Gibney, Sr. with Mr. Conohan. Clearly, members of the extended families remain available to assist both of these parents as needed and to assist their grandchildren.

[14] Ms. Doreen Gibney, Sr. was truthful. I do not necessarily accept all that she testified to but that is only because she was mistaken on some points and many of her opinions were based on loyalty to her daughter. This affected the reliability of her evidence and the weight I assign to parts of it. Each of the grandmothers praised both parties.

[15] Ms. Margaret Bacich, a sister of Ms. Gibney, was not credible. She was not reliable. She is clearly full of anger even to this day about Mr. Conohan's affair. Her evidence was clouded by this emotion, which caused her to respond in the course of her evidence, with long hostile outbursts directed at Mr. Conohan.

[16] Her explanation for the inconsistency between paragraph 51 of her affidavit and her oral evidence is only one example of her lack of credibility. She was simply not as available to assess Mr. Conohan's parenting as she testified to.

[17] When asked whether, prior to the parties' separation, she had typically praised Chris Conohan as a father and a husband she denied doing so. I am satisfied that while the parties were together, her observations of Mr. Conohan caused her to praise him and I am satisfied that she freely volunteered her opinion to members of Chris Conohan's family, as they testified to.

[18] Clearly, Ms. Bacich is outraged by Mr. Conohan's affair and how her sister has been hurt by his misconduct. She is strongly of the view that Mr. Conohan has 'gall' to now insist upon equal parenting. To her, it is very unfair to her sister who she sees as more devoted to the children.

[19] In this later respect, her opinion is shared by her mother Doreen Gibney, Sr. Ms. Doreen Gibney was clearly of the view that, because of his affair, Mr. Conohan had disqualified himself from having a parenting role as significant as her daughter, Elaine. Ms. Doreen Gibney believes that any reduction in the parenting time of Ms. Elaine Gibney will be hurtful and upsetting to her daughter and the resulting increase in Mr. Conohan's parenting is undeserved by him.

[20] Ms. Doreen Gibney, Sr., however, did not knowingly tailor her evidence as a consequence. She testified honestly but, at times, mistakenly, correcting herself when she felt it necessary. She did not deny all events favourable to Mr. Conohan.

[21] Ms. Doreen Gibney confirmed that Mr. Conohan was involved in activities with his children. These activities included reading to them; swimming with them; riding a bike with them; and attending to them. (Her daughter, Margaret Bacich, went to great lengths to deny most of these activities happened.)

[22] In the family context, I am satisfied that the respondent, Mr. Conohan, deferred to the applicant, Ms. Gibney, on many issues related to the functioning of the family. The dynamic was not a function of his disinterest on many subjects. It reflected the more disciplined and structured approach of Ms. Gibney and his more relaxed approach to many issues.

[23] Ms. Gibney and her sister would frequently entertain the children together. That is what they wanted. Ms. Margaret Bacich testified that she at first thought Mr. Conohan was selfless in this respect but now views his having cooperated in that regard as a decision motivated by a desire to free himself up, presumably to have an affair. I do not agree.

[24] Mr. Conohan's affair occurred after Ms. Bacich had moved to Moncton. She moved to Moncton from Sydney in April 2006. The affair spanned the period from approximately May 2007 to June 2009. The affair ranged in intensity and was not continuous during this period. However, it was intense near the end of the cohabitation. Mr. Conohan made 5:00 a.m. trips to the gym. He would return

home to see the children off to school and to assist in that regard. He would often text his friend late into the evening and visit her before he went to the gym in the morning. He was burning the candle at both ends. During part of this period, he did not have the energy for his family that he would otherwise have. The descriptions of his sleeping on the couch in the afternoon of work days may very well coincide with this period. The evidence is unclear. In summary, the affair did, at times, during this period, negatively impact on his parenting. Nevertheless, he remained a loving parent who placed a high priority on his children and remained very involved in the children's lives. His affair did not cause him to be absent from their lives.

[25] The court heard from a range of witnesses who offered snapshots of the parties' relationship and home environment when they lived together.

[26] Ms. Alverado's evidence was not significant. After hearing cross-examination of her, concerns that arose from her direct examination were addressed. Clearly, the essence of her concerns about her child being in Mr. Conohan's post-separation home reflected poor communication and a lack of knowledge of Mr. Conohan and his home life. Her evidence did demonstrate Mr. Conohan's directness when alerted to her concerns. He responded to her in a mature, reasonable and responsible manner.

[27] Mr. Michael Gibney's evidence was neither reliable nor credible. Like his sister, Margaret, he remains intensely angry toward Mr. Conohan because of his affair. He misrepresented his involvement in Sunday dinners at the Gibney residence and this calls his credibility into question. He was also unsure of many details of events that he purported to have first hand knowledge of. His evidence did not add much.

[28] Ms. Alanna MacLean clearly supports Ms. Gibney's case. She is a friend of hers and more aware of Ms. Gibney's involvement as a parent. Given the parties have been separated for almost two years, this is not surprising. In my view, not much turns of her evidence. She could testify to seeing Ms. Gibney at activities their children both attended. I am satisfied that Mr. Conohan also attended many of these activities.

[29] Ms. Reeves, the next door neighbour when the parties were together, was inconsistent and unreliable. Although she purported to know the details of the

parties' lives when they lived next door she could not recall Mr. Conohan's activities with the children; activities I find were in her view. She was also unsure of whether her observations of the family and conclusions reflect the pre or post-separation period in this couple's life.

[30] Witnesses offered by Mr. Conohan, i.e. Ms. O'Leary, Ms. Dixon, Thomas Conohan and Pamela Conohan, supported the conclusion that Mr. Conohan was always an active and involved parent. They were supportive of Ms. Gibney as a parent as well. Clearly, the respondent chose to not advance his case by denigrating Ms. Gibney. The evidence of these witnesses was more balanced and, in my view, more descriptive of the reality of this couple. I can not point to matters where they demonstrated a lack of credibility. Of course, I must take into account that they support the position of the respondent and to some extent their evidence is coloured by this reality. However, in my view, they testified honestly and were in a position to witness the involvement of both of these parents in raising their children. The overall effect of their evidence is to present a balanced view of the parties' former life while they were together and their lives since separation.

History of Parenting

[31] Fortunately, each of these parents has supportive and involved family members to assist. The extended families have provided emotional support to the parties and were available when child care help was needed or other errands or chores were required to be done in the family.

[32] I am satisfied that both Ms. Gibney and Mr. Conohan participated in recreational, community and professional activities outside the home and after work hours. Each joined a local gym and attended. In the case of Ms. Gibney, she spent time with her sister shopping in Moncton and involved in community groups and activities of the Nova Scotia Barristers' Society. Mr. Conohan was busy with community groups and business development activities. He also became involved in politics. As between the two, Mr. Conohan was busier with activities outside the home than was Ms. Gibney. However, both were busy.

[33] I am satisfied that for a period of time, they agreed with the roles each had assumed. Mr. Conohan's success in the area of business development benefited him directly and Ms. Gibney directly, given their status as partners in the same law firm. In addition, Ms. Gibney's assumption of more of the household function

than Mr. Conohan, benefited Mr. Conohan. Their accommodations with each other's ambitions is not uncommon. Nor was it problematic until the relationship began to suffer.

[34] I agree with the conclusion of Rose Anne Conohan (Mr. Conohan's mother) that Ms. Gibney supported many of Mr. Conohan's activities, now complained about. Ms. Rose Anne Conohan was a credible witness. She was complimentary to Ms. Gibney and maintains a close and loving relationship with her. She also loves her son. She acknowledged her son's failing, as evidenced by his engaging in an adulterous affair. She also described his strengths as a parent. I am satisfied that she did not appear as a witness "for" her son. She was, as she stated, testifying for her grandchildren. Clearly, she remains close to Ms. Gibney. I have given significant weight to her evidence when I am asked to resolve disputes as to the facts.

[35] Ms. Gibney is arguing *inter alia* that when the parties were together, she was more active than Mr. Conohan as a parent, i.e. a better parent and although it is not stated plainly, more deserving of an opportunity to continue in that role. The argument is also couched as a need for the children to maintain their routine. In summation, she submitted the children would be devastated if a shared parenting regime was put in place.

[36] I have concluded that Ms. Gibney was a more involved parent than he. However, that is not the same as saying that he was not a good parent while they lived together. I am satisfied that after assessing all the evidence, that he was a good parent while the parties lived together and that <u>he too was a very involved parent</u>.

[37] His decision to become involved with another woman resulted in an increased parenting burden on Ms. Gibney. One can understand Ms. Gibney's frustration with his now professing to have the same parenting priorities as she has. Clearly, during the time in question, he did not. However, this argument is near the line that prohibits a consideration of past bad conduct, which in and of itself is not a factor when it comes to custody and access decisions.

[38] I am satisfied that in the absence of the freedom afforded to him as a parent by virtue of Ms. Gibney's parenting, Mr. Conohan will assume the parenting role I will assign to him. Such re-prioritizing is typical of many parents following a

family break up. One can not simply conclude that decisions a parent made when she/he had the support of a partner will be the same once the partners separate. The real question is whether a parent can and will adjust to the new reality and meet his/her parenting obligations.

[39] Mr. Conohan has purchased a home in the same neighbourhood as the parties' former matrimonial home. He has done this as part of a plan for the care of the children. Ms. Gibney wishes to remain in the parties' former matrimonial home and the court is told that this is anticipated. He proposes that the children continue in the same school; remain involved in the same church; maintain their current friends and remain in the former matrimonial home for half of their time. He also supports the continued active involvement of extended family members on both sides of the family.

[40] Ms. Gibney argues that the move to shared parenting with the children spending equal parenting time with each parent will result in change for the children and this change will be difficult for them. However, the change proposed by Mr. Conohan cannot be described as dramatic.

[41] Mr. Conohan currently hosts the children in his new home. This is not a strange environment for them. Ms. Gibney's proposed parenting plan would also have the children living in this home for periods of time. No evidence has been offered that the children exhibit anxiety or any emotional concerns as a consequence of doing so. It is acknowledged that the current over nights are on the weekends or holidays. However, Ms. Gibney's new proposal is that there be a Thursday overnight every other week.

[42] I am not persuaded that there is any basis to believe that having the children go to school, for example, from Mr. Conohan's home, is a cause for concern. To suggest so would be speculative.

[43] Even if one were to assume that a change of the nature sought by Mr. Conohan will give rise to some adjustment anxiety for the children, the analysis must not end there. It may be that there are important advantages for these children and benefits that can flow from some change. The existing arrangement does not provide the children with the time they require with their father. The existing arrangement is not in their best interests.

[44] The legislative objective of maximizing the opportunity for children to be with both parents presupposes all other matters are equal and that such a parenting arrangement is in the children's best interests. This is not the same as a presumption in favour of shared parenting. Much is written and appears in popular magazines, on radio and tv about the need for children to have the opportunity to bond with both parents. The litigants herein espouse this view. They do not agree on how much time Mr. Conohan requires to achieve and maintain a loving and deep relationship with the children and they with him. Ms. Gibney proposes that he parent six overnights every four weeks and five hours on four evenings over this period.

[45] Jurisprudence on how the allocation of parenting time is to be determined has changed. Several decades ago, shared parenting was an unusual outcome when custody and access issues were litigated. In keeping with the changing role of women in the work place and men in the household, as well as an increased acceptance of the parenting ability of men, the law has evolved. Age old stereotypes about the role of men and women as parents are slowly dissipating.

[46] One is forced to ask what impact the parenting arrangement proposed by Ms. Gibney would have on the children's relationship with Mr. Conohan.

[47] It is through the eyes of the children and with their best interests in mind that the court must conduct its analysis.

[48] Mr. Conohan is a hard working lawyer. He is successful. I am satisfied that he is devoted and committed to his children. The breakdown of his family and the loss of daily contact with them has been difficult for him. He can not, as a single parent, during his parenting time, engage in activities outside the home with the same freedom. Many of these conclusions also apply to Ms. Gibney.

[49] There is no evidence, that I accept, that he has ever abused his children; been harsh with them; failed to respond to their medical/health or educational needs when required to. In summary, he has demonstrated that he is more than capable and willing to parent appropriately. His style reflects love, warmth and concern. He has left work and remained at home to care for the children when the need arose. Mr. Conohan attributes the same to Ms. Gibney. Her attributes in this respect are unchallenged by Mr. Conohan.

[50] He is a different parent than Ms. Gibney. He will not be as efficient as her, nor as organized. He will not be as rigid. That does not make him a less qualified parent. Children can benefit from exposure to more than one positive parenting role model.

[51] Justice Sopinka in *Young v. Young* [1993] 4 S.C.R. 3 at page 84 stated:

> . . . The long-term value to a child of a meaningful relationship with both parents is a policy that is affirmed in the Divorce Act. This means allowing each to engage in those activities which contribute to identify the parent for what he or she really is. The access parent is not expected to act out a part or assume a phony lifestyle during access periods. The policy favouring activities that promote a meaningful relationship is not displaced unless there is a substantial risk of harm to the child.
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> In this regard, I agree with Wood J.A. in the Court of Appeal 1990 CanLII 3813 (BC C.A.), (1990), 50 B.C.L.R. (2d) 1. In his reasons he states, at p. 96:
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> > I believe the whole of s. 16 of the Divorce Act of 1985, when properly construed, reflects the modern view that the best interests of a child are more aptly served by a law which recognizes the right of that child to a meaningful post-divorce relationship with both parents. That construction in turn requires that the distribution of "rights", between the custodial and the access parent, be such as to encourage such a relationship. And such a construction is inconsistent with the full-blooded traditional notion of guardianship which would give the custodial parent the absolute right to exercise full control over the child even when the other parent is exercising his or her right of access.

[52] Ms. Gibney is a hard working professional; a skilled lawyer and a dedicated and hard working parent. I am satisfied, as she testified to, that meeting all her responsibilities while supporting a marriage was very demanding. As stated, Mr. Conohan repeatedly praised her and expressed confidence in her as a parent. He denied any suggestion that she was anything but an excellent parent.

[53] An increase in Mr. Conohan's parenting time will result in Ms. Gibney having more time for her professional pursuits. She is obviously ambitious and committed to performing at a high professional standard. I do not believe her relationship with the children will suffer if the parties have shared parenting. It may in fact be enhanced as a consequence of her getting respite from the parenting responsibilities.

[54] The most significant negative implication of an increase in Mr. Conohan's parenting time will be the emotional difficulty Ms. Gibney will have accepting it. In my view, that is an unavoidable consequence given my conclusion that Mr. Conohan's parenting time must increase significantly.

[55] I am equally confident that after a period of transition to the new parenting reality, Ms. Gibney will see the benefit for herself and for the children. She is currently deeply protective of the children, confident of her ability as a parent and displays an obvious willingness to meet the children's needs. She is far less accepting of the notion that Mr. Conohan can do the same.

[56] A significant increase in Mr. Conohan's parenting time and responsibility will more equitably distribute the burdens of parenting between these two parents.

[57] The court is satisfied that the discovery of Mr. Conohan's affair was a devastating blow to Ms. Gibney in June of 2009. This is not surprising. Ms. Gibney experienced emotional upset that made her focus on work more difficult. She required the support of family and friends. To assist in her coping, she reduced her hours of work over the summer of 2009. I am satisfied that her decision to spend more time with the children over the summer of 2009 was also motivated by her concern for them.

[58] I am further satisfied that until September 2009, the parties themselves had not reached a decision to end their relationship. Mr. Conohan experienced a significant emotional roller coaster over the summer of 2009. Given that his affair was the crisis he and Ms. Gibney were facing, he coped better. He did not have to adjust to a sense of betrayal.

[59] Suffice it to say, these parties continue to experience significant emotional angst because of the breakdown of the family. In the course of the hearing, both openly wept when certain evidence was elicited. This proceeding has laid bare; very raw emotions associated with this couple's past and current relationship and the future relationship with their children.

[60] Mr. Conohan took responsibility for his misconduct and was not critical of Ms. Gibney for how she responded to it. He did not seek to benefit from her state of upset following separation and suggest she was not a capable and stable parent. He was effusive in his praise of her as a parent. His criticisms of her were

balanced and were not advanced with a view of minimizing her as a wonderful parent. I am satisfied that she is.

[61] Ms. Gibney, the applicant, attributes a number of positives to Mr. Conohan. However, her case turns on his having been less involved as a parent than her. In fact, the theme of her evidence is that he just was not there as a parent. She also has great difficulty recalling what Mr. Conohan did contribute to the family when it was intact. However, her bitterness flowing from the affair Mr. Conohan engaged in remains a huge obstacle for her and colours her evidence.

[62] As stated, I am satisfied on a balance of probabilities that he was less involved than she was in organizing the children's activities and in caring for them. However, I am satisfied that he was nevertheless a very involved parent. He was not the absent parent a number of witnesses, including Ms. Gibney, described him to be. Ms. Gibney was not "always" home and doing everything herself as has been suggested by her and other witnesses.

[63] The parties were both active outside the home, whether in sporting activities or in community groups. At home, this family had the involvement of both extended families. Both of their mothers assumed significant child care and household responsibilities for the parties. Ms. Gibney, Sr. provided child care for a number of days per week as did Ms. Conohan, Sr. Ms. Conohan, Sr. also cleaned the home each week. These grandmothers dropped into the home on a regular and frequent basis. Ms. Conohan, Sr. lives one street over from the children.

[64] The subject children are fortunate to have two very committed parents. They are both intelligent, hard working and capable of communicating their warmth and love to the children. In addition, both sets of grandparents have demonstrated unconditional love for the children and an ability to work with the daughter/son in law as the case may be. These grandparents are special. I must believe that what they know about their daughter/son in law's positive features makes that possible.

[65] Notwithstanding complaints the parents have about each other's parenting choices from time to time, they agree that the other is a parent capable of parenting their children, which they agree is within the range of appropriate parenting.

Overview of the Parties' Positions

[66] Ms. Gibney argues that preserving the status quo is an overriding consideration for the court when considering the best interests of the children. She admits that this is particularly so herein because the subject proceeding is an interim hearing.

[67] Given all of the evidence, the length of this proceeding, the anticipated delay before a final hearing and the time since the parties' separation, the description of the hearing as "interim" is less a consideration for the court.

[68] Preservation of the status quo is a consideration in all cases when custody and access are concerned. It is, however, subject to an assessment of the children's best interests.

[69] As stated, the status quo post-separation was imposed upon Mr. Conohan. The status quo prior to separation had Ms. Gibney the more involved parent but Mr. Conohan also very involved. As stated, both were busy outside the home with work and other activities. The extended families of both parties helped out.

[70] Mr. Conohan argues that he was a good parent prior to the parties' separation and he still is. He wants both parents equally involved in the children's lives and, therefore, argues for a week-on, week-off parenting arrangement.

[71] Ms. Gibney argues that the conflictual nature of her relationship with Mr. Conohan weighs against shared parenting.

[72] Mr. Conohan argues that the bulk of the conflict in his current relationship with Ms. Gibney results from her imposition of parenting terms from time to time. He believes Ms. Gibney to be bitter because of his affair and motivated by ill will towards him when she allocates parenting time.

Legal Principles

[73] This proceeding is governed by the *Maintenance and Custody Act*, R.S.N.S. 1989 c.160 (hereinafter referred to as the "*Act*")

[74] The court's power, when dealing with custody and access issues, is governed by the directions contained in Section 18(4) and (5) of the *"Act"*:

> 18(4) Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to the care and custody of the child unless otherwise
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> (a) provided by the *Guardianship Act*; or
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> (b) ordered by a court of competent jurisdiction.
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> (5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration. R.S., c. 160, s. 18; 1990, c. 5, s. 107.

[75] These directions are consistent with those of the *Divorce Act* S.C. 1985 c. 3 (2nd Supp.) at sections 16(8) and (10). When making a custody order under that statute, the court shall only take into consideration the best interests of the child as determined by reference to the condition, means, needs and other circumstances of the child. A divorce order must also give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, "for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact."

[76] When courts talk of the "welfare of the child" and the "best interests of the child", the phrases are typically applied interchangeably. In this decision, they will be.

- Best Interests Criteria

[77] In the following I will repeat and expand upon many of my comments in J.A. V. J.R. [2010] N.S.J. 597 and again in *Murphy v. Hancock*, 2011 NSSC 197, when called upon to consider a plan for shared parenting. Many of the principles and observations discussed made have application herein.

[78] Justice Goodfellow, in his often quoted decision *Foley v. Foley* [1993] N.S.J. No. 347, outlined factors generally relevant to an assessment of what parenting arrangement is in a child's best interest. At paras. 16-20, he wrote:

> 16 Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:
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> 1. Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);
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> 2. Physical environment:
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> 3. Discipline;
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> 4. Role model;
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> 5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;
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> 6. Religious and spiritual guidance;
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> 7. Assistance of experts, such as social workers, psychologists-psychiatrists- etcetera;
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> 8. Time availability of a parent for a child;
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> 9. The cultural development of a child:
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> 10. The physical and character development of the child by such things as participation in sports:
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> 11. The emotional support to assist in a child developing self esteem and confidence;
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> 12. The financial contribution to the welfare of a child.
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> 13. The support of an extended family, uncles, aunts, grandparents, etcetera;
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> 14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and

> each parent's obligation to promote and encourage access to the other parent. The Divorce Act s. 16(10) and s. 17(9);
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> 15. The interim and long range plan for the welfare of the children.
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> 16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
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> 17. Any other relevant factors.
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> 17. The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question. With whom would the best interest and welfare of the child be most likely achieved?
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> 18 The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.
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> 19. Nevertheless, some of the factors generally do not carry too much, if any, weight. For example, number 12, the financial contribution to the child. In many cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the financial contribution is to the welfare of that child, there would not likely be any real appreciation of such until long after the maturity of the child makes the question of custody mute.
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> 20. On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

[79] Turning to an application of these criteria to the evidence, I am satisfied that the physical environment, approach to discipline and the availability of positive role models is comparable in the homes of both parties. Each parent is available to the children. Mr. Conohan purchased a home on George Street in Sydney, so he could be closer to the children.

[80] I am satisfied that both parents will support the involvement of the children in recreational activities. Both will make an effort to attend events; to attend at school meetings and health care appointments involving the children. Both will

support the children financially and involve both extended families as required and they will involve each other.

[81] After considering the factors enumerated by Justice Goodfellow, it is apparent that each parent has a strong plan to care for the children. Their community will essentially be the same regardless of the home where they will be overnighting.

[82] Justice Forgeron, in *MacKeigan v. Reddick* [2007] N.S.J. No. 425, also discussed a number of factors relevant to determining which parent should be designated the primary caregiver. At paragraph 45 she wrote:

> 45 Each party seeks to be the primary care giver of Brady. Each party states that Brady's best interests would be served if Brady was placed in his/her respective care. The most significant factors which have been espoused by the parties in support of their positions, and which were examined by me, are as follows:
>
> a) Status quo,
>
> b) Poor decision-making,
>
> c) Nutrition and hygiene,
>
> d) Willingness to facilitate maximum contact,
>
> e) Family attachments,
>
> f) Home environment,
>
> g) Time availability and parenting style, and
>
> h) Cultural and moral development.

Justice Forgeron found shared parenting unworkable in that case.

[83] I wish to consider these factors by reference to the evidence before me. Neither parent herein has demonstrated poor decision making that involves the children. I do conclude that Mr. Conohan is more willing and more able to facilitate contact between the children and their mother than is the reverse. I have commented upon the other factors.

[84] In a more recent “mobility“ decision, Justice Forgeron ordered that a parallel parenting arrangement be established, notwithstanding a conflicted situation. In *Baker-Warren v. Denault*, 2009 NSSC 59, at paragraph 42, she wrote:

> 42 In addition, the factors set out in the second part of the test in Gordon v. Goertz [1996] 2 S.C.R. 27 must likewise be addressed in any parenting dispute. These factors are noted at para. 23 of Burgoyne v. Kenny, 2009 NSCA 34, wherein Bateman J.A. states as follows:
>
> > In para. 49 of Gordon v. Goertz, supra McLachlin J., as she then was, for the majority, summarized the applicable principles. An original custody determination is informed by the following considerations:
> >
> > 1. The judge must embark on an inquiry into what is in the best interest of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
> >
> > 2. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
> >
> > 3. The focus is on the best interests of the child, not the interests and rights of the parents.
> >
> > 4. The judge should consider, inter alia:
> >
> > a) the desirability of maximizing contact between the child and both parents;
> >
> > b) the views of the child, if appropriate;
> >
> > c) the applicant parent's reasons for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
> >
> > d) the disruption to the child consequent on removal from family, schools and the community he has come to know.

[85] Justice Forgeron went on and analysed the child’s best interests by reference to (1) the allegation of parental misconduct: violence; (2) the allegation of parental misconduct : substance abuse; (3) the allegation of child alienation; (4) the maximum contact principle; (5) the impact of a possible move by a parent; (6) the state of the parent-child relationship; (7) the physical environment and financial circumstances of the child; (8) the child’s educational, cultural, spiritual

and general welfare needs; (9) the parent's approach to discipline; (10) the child's health needs; (11) the availability of family support; (12) each parent's time availability; and (13) the child's views, if ascertainable.

[86] Finally, Justice Forgeron concluded as follows:

> 120. It is in Kyra's best interests to have healthy relationships with both parents. Currently, this is compromised by Ms. Baker-Warren's manipulation and alienation, and by Mr. Denault's impulsive and reactive personality. Both flaws pose risks to Kyra.
>
> 121 Despite these significant limitations, the court must, nonetheless, determine the type of parenting plan in Kyra's best interests. Ms. Baker-Warren has been the primary care parent. Mr. Denault does not have the parenting experience that Ms. Baker-Warren has. It is, therefore, in Kyra's best interests to be placed in the shared and parallel parenting of the parties, but in the primary care of Ms. Baker-Warren. This finding is contingent on the parties fully cooperating with the therapies and making the necessary changes in his/her conduct. If the parties refuse or are unable to make the necessary changes, then this parenting plan will likely have to be revisited.
>
> 122 The shared parenting plan is necessary so that Kyra benefits from both of her parents. The parallel parenting regime will permit the establishment of a meaningful and balanced relationship between Kyra and each of her parents. The shared parenting plan will ensure that Kyra's material, emotional, educational, and social welfare needs are met.
>
> 123. The plan will be tailored to meet the needs of Kyra - not the needs of Ms. Baker-Warren or Mr. Denault. Kyra will spend significant block time with each party. Weekly transitions between households will be reduced. The plan will also decrease conflict by providing the parties with few opportunities to make independent scheduling choices.
>
> 124. The parallel parenting regime does not follow Dr. Landry's recommendations on a verbatim basis. Dr. Landry's expert opinion was exceedingly helpful, albeit dated by the time the trial concluded. I have veered from the recommendations based upon the totality of the evidence and to ensure the best interests of Kyra are met. The court cannot delegate its judicial role and responsibilities to health care professionals in any event.

[87] Justice Forgeron then directed a two-week rotation of the parenting time which she described as sharing custody in a parallel parenting regime. Justice Forgeron also outlined very detailed guidelines to govern the parenting arrangement. She authorized the child's move to Gatineau, P.Q.

- Shared Parenting

[88] Notwithstanding complaints the parents herein have about each other's parenting choices from time-to-time, they agree that the other is capable of parenting their children to a level within the range of appropriate parenting.

[89] Shared custody is defined by the Federal Child Support Guidelines at s. 9 SOR / 97-175 as amended and by s. 9 of the Nova Scotia Child Maintenance Guidelines, N.S. Reg. 53/98 as amended. It is defined by the amount of time a spouse/parent exercises a right of access to, or has physical custody of a child. When that reaches forty percent a shared custody situation exists. The arrangement implies a greater role for the parents in the management of the child (ren) and may impact on the child support obligations of the parents. The leading case on the latter issues is Contino v. Leonelli-Contino, [2005] S.C.J. No. 65; 2005 SCC 63. Although the word custody denotes decision making authority there is no statutory direction on how decision making authority associated with shared custody (parenting) is to be allocated.

[90] The 'Act' at s. 18(4) directs that "the father and mother of a child are joint guardians..of the child" unless otherwise ordered. A wide range of descriptions of the decision making authority are possible in a shared parenting arrangement. All decisions need not result from an agreement reached by the parties. Day to day decisions affecting a child are typically made by the parent exercising "access to, or having physical custody " of the child. Other decisions require a consensus to be effective but this is not always the case. The current state of the law is that in most cases, regardless of the parenting arrangement, joint custody is ordered. Most parents accept the obligation and need to consult each other and to keep each other informed on all issues affecting their child(ren).

[91] Jurisprudence on the issue of whether shared parenting should be ordered is very fact specific. I agree with the comments of Justice Wright in *Hackett v. Hackett* [2009] N.S.J. 178, at paragraph 13:

> 13. It is all well and good to look at other cases to see how these principles have been applied, but the outcome in other cases is really of little guidance. Every case must be decided on a fact specific basis and nowhere is this to be more emphasized than in custody/access/parenting plan cases. To state the obvious, no two family situations are ever the same.

[92] Within the assessment of the best interests of a child when shared parenting is proposed a number of factors frequently prove important. These factors are refinements to the best interests analysis discussed earlier. The factors are the following:

1. The proximity of the two proposed homes to each other is an important factor to consider. This is relevant to assessing how shared parenting will impact on all aspects of a child's life, including what school the child will attend, what recreational or social relationships will be disrupted or preserved and how available each parent will be to the other should shared parenting be ordered;

2. The availability of each parent to the child on a daily basis and the availability of step-parents is an important consideration. A court should also consider the availability of members of the respective extended families and whether a shared parenting arrangement impacts negatively or positively on a child's relationship with the extended family;

3. The motivation and capability of each parent to realize their parenting opportunity for the best interests of the child. If a parent is not truly motivated to use the parenting opportunity to enhance the child's relationship with him/her, that weighs against shared parenting;

4. Whether a reduction in transitions between households can be achieved by a shared parenting arrangement. This is particularly important when transitions frequently give rise to conflict between the parents;

5. Whether "mid-week" parenting time or contact with the other parent can be structured without disrupting the child. This contact might be after school or after supper time, for example, the objective being the elimination of extended periods without contact between the child (ren) and a parent and it is an opportunity for a child to share life's experiences with both parents in a timely way. The easier and less

disruptive “mid-week” access is to arrange, the more attractive shared parenting becomes;

6. The opportunity, if any, that shared parenting provides for each parent to be involved in decisions pertaining to the health, educational and recreational needs of the child; the level of interest each parent has in participating in decision making in these areas is relevant to this assessment. As the opportunity increases so does the case for shared parenting;

7. The extent to which shared parenting enhances the development of a routine in each parent’s home. In many cases, the more traditional every other weekend schedule for the non-primary care parent means a routine cannot be developed;

8. Shared parenting imposes responsibility on each parent to share the parenting burden and to be involved in decisions pertaining to the health, educational and recreational activities of the child and requires an assessment of each parent’s willingness to assume their share of that responsibility after entrusted with it. Shared parenting is about more than sharing the child’s time, it is very much about sharing the daily responsibility of parenting;

9. Related to the preceding is a consideration of the employment and career benefits that may accrue to each parent as a result of a shared parenting arrangement and a more equal sharing of the parental responsibilities;

10. Whether improvements in the standard of living in either or both households may accrue as a consequence of a shared parenting arrangement;

11. The willingness and availability of parents to access professional advice on the issue of parenting;

12. The “elephant in the room” in many custody/access disputes is frequently the financial consequences of the court’s custody/access order and the extent to which the allocation of parenting time creates

a winner or loser. Three factors must frequently be assessed: a) whether a parent's proposed parenting plan is really about the child support consequences that flow from a shared parenting arrangement or the alternative; b) the manner in which a primary care parent can use his/her position to have power and control of parenting; and c) whether a parent will abuse the parenting opportunity as a result of anger or insecurity, for example. The parenting regime is often not changed to shared parenting because the parties are too conflictual, notwithstanding that the conflict may result from a power imbalance in the parents' relationship flowing from the parenting arrangement in place. Courts must be cognizant of this dynamic;

13. An assessment of the parenting styles. That assessment should consider the questions posed by Justice MacDonald in *C.(J.R.) V. C.(S.J.)* 2010 NSSC 85, at paragraph 12:

> -- What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?
>
> -- Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent.
>
> -- Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?
>
> -- Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?
>
> -- Is the parent emphatic [empathetic ?] toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?
>
> -- Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?
>
> -- Has the parent made changes in his or her life or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

I must now consider what the evidence allows me to conclude when these factors are applied.

[93] These parents are in the same community and live near each other. This proximity eliminates the risk of the children losing important relationships developed at school, at church or through recreational activities. The extended family in the area can easily be involved in the children's activities, as spectators at sporting events, for example, regardless of where they are residing in a given week.

[94] I am satisfied each parent will maximize the parenting opportunity afforded to them. Each has already made important decisions to be more available to the children.

[95] The number of transitions may be reduced by shared parenting. If I order access every other weekend for the non-primary care parent, I would also order access in between those weekends. Mid-week access when a child is settled for seven days is less disruptive. I am satisfied each parent will be involved in decisions affecting the children. Each will attend educational and health care appointments.

[96] These parents will meet the parenting challenges flowing from a shared parenting regime. They will also benefit from having a break from meeting that responsibility each day. Both parents have important and responsible jobs that undoubtedly require their energy. The freedom to more aggressively pursue professional objectives may improve the earnings of these parents.

[97] I am satisfied that these parents will access resources to assist them as parents if the need to do so arises. They impressed the court in this regard. Mr. Conohan, however, is more open to involving third party professionals in the children's lives than is Ms. Gibney. Her unwillingness to draw upon professionals such as counsellors to assist the children adjust to the family's ongoing transition is a concern, however.

[98] I cannot conclude that either party is motivated by financial concerns. Clearly, Ms. Gibney trusts no one to parent as well as she. She does have a need to control the parenting of the children. She cannot accept Mr. Conohan's position as taken in good faith. I believe it is taken in good faith. Ms. Gibney is subject to

strong pressure from her immediate family, principally her mother and her sister who are clearly of the view that Mr. Conohan's misconduct has disqualified him as a parent and made him unworthy of the same parenting status as Ms. Gibney. To a significant extent, Ms. Gibney shares this opinion.

[99] I do not draw any negative conclusions as a result of evidence of the parenting style of these parents. They impressed the court as genuine parents interested in what is good for the children. I do not believe their parenting styles are much different, in reality.

- The Nature of an Interim Hearing

[100] Ms. Gibney is clear in communicating that, in her view, because this is an interim hearing, the range of options for the court is severely limited. Her pleadings filed in December 2009 state that an interim order is sought. She filed additional pleadings in January 2010 when she sought an emergency order. All pleadings bear the same file number. The significance of this argument, given the facts, is significant for Ms. Gibney. There is case law that places emphasis on "preserving the status quo" as an important consideration at the interim hearing stage.

[101] I have reviewed the decisions of this court in *Horton v. Marsh*, 2008 NSSC 224 (N.S.S.C); in *Walker v. Walker*, 2004 Carswell NS 167. I agree that the court must be vigilant to ensure a parent is not rewarded for unilaterally establishing a parenting regime and then asserting in the context of an interim hearing that the regime is the *status quo* which must be preserved. Mr. Conohan believes Ms. Gibney is doing so.

[102] I have considered the authorities offered by Ms. Gibney and, in particular, *Papp v. Papp* [1971] O.R. 331 (O.C.A.); *Stefanyk v. Stefanyk* (1994) Carswell NS 38; *C.(R.M.) v. C.(J.R.)* (1995) Carswell BC 85 (B.C.S.C.); *Kraynk v. Kraynk* (1978), 5 RFL (2d) 17 (Man.C.A.); *Bryden v. Bryden* 2005 Carswell NS 607; *Hewitt v. McGrath* 2010 Carswell NS 423 and *Lancaster v. Lancaster* (1992) Carswell NS 58 (N.S.C.A.)

[103] The *Lancaster* decision originated as a decision of a Chambers judge. The limitations such a proceeding imposes on the hearing of evidence cannot be

ignored. References to the need to preserve the *status quo* must be read with this in mind.

[104] The 1969 *Papp* decision originated as a decision of a Master who changed *de facto* custody.

[105] In *Stefanyk*, a 1994 decision, Justice Saunders, sitting as a trial judge, hearing an interim application under the *Divorce Act*, described his exposure to the parties as limited (para 30).

[106] In *Bryden*, Justice Coady found that week-on, week-off parenting would be an obstacle to developing roots in the children's community and school and would affect the children's activities (para 18).

[107] In *Hewitt*, Justice MacDonald emphasized the limited nature of evidence before a judge at an interim hearing but also observed that, because of the changing role of parents in the functioning of a family, "it is often difficult to apply the '*status quo*'."

[108] Mr. Conohan argues that the *status quo* to be referenced is that which existed at the time of separation. I agree. However, the more time that passes post-separation, the more the court will be required to give greater weight to the children's current living arrangement. The court's overriding consideration is the best interests of the children and the effect of disruption on them.

[109] I agree with Ms. Gibney that, in some cases, the *status quo* to be considered is a blend of the children's pre and post-separation living circumstances.

[110] Authorities must be considered in the context of a hearing that is more proximate to a parties' separation than that before the court. One must also consider that authorities contemplate a later, more in depth hearing of the evidence pertaining to custody and access.

[111] Herein, the parties separated in June 2009, more than twenty-four months ago. The parties first sought five days for the hearing of this application but ultimately, settled on three but ended up consuming seven days of court time. The parties have a parenting history post separation and each has had the opportunity

to present extensive evidence. It is difficult to envisage a re-hearing of this matter but the rules do permit a final hearing.

[112] Mr. Conohan has argued that Ms. Gibney has pursued a strategy of delay in having the custody and access issue addressed by the courts. Ms. Gibney denies this.

[113] Mr. Conohan points to Ms. Gibney's effort to discontinue this very proceeding as evidence of that strategy. Ms. Gibney submits that she has remained anxious to have matters concluded.

[114] This hearing was initially scheduled to be heard on February 21 - February 28, 2011, in Halifax.

[115] Ms. Gibney filed a Notice of Discontinuance dated February 1, 2011. Mr. Conohan opposed the request. Following a pre-trial on February 15, 2011, the parties agreed to have the matter heard in Sydney at the first opportunity. It commenced March 14, 2011.

[116] Had the interim hearing not taken place, many more months would have passed before the court would have had an opportunity to rule on the parties' parenting arrangement. A new proceeding would have been required.

[117] In early 2011, Ms. Gibney was also questioning whether a divorce hearing could proceed because the Petition for Divorce was served on her by Mr. Conohan personally. She repeated this concern in March 2011 prior to the commencement of this hearing when the court asked the parties whether they wished to proceed under the *Divorce Act* or the *Maintenance and Custody Act*.

[118] It is remarkable that Ms. Gibney would not see the value of an order governing parenting. Had her interest been in having a final hearing, she could have simply proposed that this interim hearing be final.

[119] In her summation on June 28, 2011, Ms. Gibney seemed to be suggesting that her case was prejudiced because she had not offered certain evidence at the interim hearing that she would offer at a "final" hearing. Given the highly relevant nature of the witnesses who did testify and the decision to defer the financial

issues to ensure a thorough hearing of the parenting issue, this is difficult to accept. Nevertheless, she will have that opportunity.

[120] I am satisfied that Ms. Gibney, as an experienced family law practitioner, has been well aware that any court order governing child support and the parties' parenting regime would not likely be any "better" than what she had in place. Her conduct is inconsistent with a party seeking a speedy resolution of those issues by a court.

[121] A consideration of the status quo of children is always relevant. A case can be made to preserve it and the case can be made that benefits exist to changing. The overriding consideration in either case is an assessment of what is in the best interests of the child.

[122] Given the history of the parties since separation, I do not believe the court could/should be restrained in its assessment of the best interests of the children because the pleadings identify this as an interim hearing. There is prejudice to the children should the court be made reticent by the pleadings. The court was presented extensive and detailed evidence to consider.

- Cooperation

[123] The absence of cooperation among parents is often raised as an obstacle to a shared parenting arrangement. There is a need for parents in a joint custody situation to also consult. Both parenting arrangements require a high level of cooperation. Whether the outcome of this proceeding is shared parenting or simply joint custody with one parent having primary care, these parents will continue to be closely involved with each other in the parenting of the children.

[124] In both cases the parents must develop a level of understanding and acceptance of their roles and responsibilities as co-parents. If required to achieve a level of cooperation to make a parenting regime work, most parents will do so. It is the experience of this court that the more unsettled the custody and access regime, the greater the potential for conflict. The greater the insecurity of parents about their roles, the greater the parents' anxiety and this invariably feeds conflict. Once a parenting regime is concluded, parents can focus more on the children and

how they will use their parenting time and less on the strategic importance of their parenting decisions. The absence of a court order has been a source of conflict for these parents and resulted in uncertainty, anger and arbitrary decision making.

[125] Herein the parties have achieved a high level of cooperation, notwithstanding the tension in their relationship. Mr. Conohan enumerates a number of areas where this is so. These parents cooperate on informing each other about the children's health and medical issues; their educational, religious and recreational activities; the children's social activities and they cooperate in sharing special children's events with both extended families.

[126] As stated, Ms. Gibney and Mr. Conohan are law partners and, with one other partner, they own and operate a small law firm. They continue to work "together" as professionals and to operate the business. They would undoubtedly wish they did not have to. However, they must do so and they are doing so. The co-parenting of their children is also an imperative. They are demonstrating a high level of cooperation even though they are in the midst of what to each of them is life altering litigation. The outcome of the hearing before me is significant for the children and also for the parties. The parties have been required to put their lives on hold; to conduct this hearing. They have each prepared detailed affidavits, reviewed the pertinent law and scrutinized each other's case. They are both under significant stress. Nevertheless, they are still cooperating moderately well in the office and I conclude in meeting their parenting challenges.

[127] I am satisfied that their level of cooperation will improve dramatically once a parenting regime is accepted by both and this litigation is concluded.

[128] The parties, while together, each maintained demanding law practices. Their home lives were also demanding and this became more so with the birth of their children. The challenges of raising children in a two parent home of two busy professionals are obvious.

Conclusion

[129] The court has been asked to determine what parenting arrangement is in the best interests of the two subject children, and in particular whether a shared parenting arrangement based on alternating weeks is in the children's best

interests. I believe that it is. I will restate many of my earlier conclusions. I acknowledge many are repetitive.

[130] The parties do communicate at an acceptable level to parent effectively. They have demonstrated that they can do so. They may not enjoy communicating with each other but that is different than being unable to meet their responsibility to do so. Furthermore, the absence of shared parenting will not eliminate the need for the parties to communicate. Both parents will be entitled to information that may first come to the attention of the other. That information may pertain to the health, educational or recreational needs of the child. If both parents are to be very involved in the children's lives, and they agree they will be, regardless of the outcome of this hearing, frequent communication between the parents will still be required.

[131] In addition, the exchange of the children will still need to be coordinated; perhaps more frequently than would be the case if shared parenting were not ordered on an alternating week basis.

[132] Mr. Conohan is promising to have a consistent routine for the children. During his parenting time, that is his responsibility. The routines the parents implement need not be identical. There is value for a child to learn the different approaches available to parents. I do not share the concern that such an experience is presumptively disruptive or stressful for a child. Within an intact family, children often learn that their parents have different attitudes when dealing with the same subject. It would be unusual for children to not have that experience. Of course, evidence that a parent's approach is not in the best interests of a child, raises a different issue. In such a circumstance, it is the routine of the parent, not its inconsistency with the routine the child is exposed to in the other household, which is problematic.

[133] The children herein, will be exposed to two routines and parental styles as a result of the parenting plan espoused by both parties. A decision to deny shared parenting will not significantly impact this concern, should the court find it should be a concern. I do not. I have referenced the words of Justice Sopinka, in *Young v. Young*, supra.

[134] Supra, I identified a number of factors that are frequently relevant to assessing whether a shared parenting arrangement is in the best interests of these children.

[135] I am satisfied that the children will maintain a continuity of peer relationships in a shared parenting situation. The parents live near each other. The children will be remaining in the same school district and within range of their established peer groups. Each parent, by virtue of their proximity of the homes, will also be "available" to assist the other parent and the children when the need arises.

[136] A shared parenting arrangement will continue the availability of members of both extended families to the children. This is an important positive outcome for children in the shared parenting arrangement proposed.

[137] Significant conflict arises between parents when a parenting arrangement establishes a status quo that one parent interprets as a power position, confirming superior authority on that parent. In such circumstances, the other parent often interprets the parenting arrangement as victimizing. To the extent that a parenting arrangement can be concluded, and result in a lessening of this dynamic, it must be considered. Of course, the result must be one that is in a child's best interest. I am satisfied that a shared parenting arrangement will result in less conflict for these parents.

[138] Herein, a shared parenting arrangement structured on an alternating week basis, will reduce the number of transitions. There will be fewer times the children need "to pack" and for the parents to exchange the children. Exchange can be emotionally laden for all involved.

[139] I am satisfied that each parent can spend mid week time with the child with minimal concern for conflict. The alternative, which is the separation of the children from "the other parent" for a week is not necessary. A strong rationale should exist to support such an outcome. The children will be living near each parent. It is in their best interests that their opportunity to share the experiences of the week with both parents be <u>timely</u>. Mid week access is an enhanced opportunity for the children to receive the love of the other parent and for the children to love that parent back. That is an experience for children that must be highly valued.

[140] Herein, both parents want to be informed on all aspects of their children's lives. Shared parenting permits this. I am satisfied that these parents are capable of assisting each other and are willing to do so. They are asking to share the parenting responsibility.

[141] Fulfilling the parenting responsibility is difficult on many days for many parents. It is important that these parents share that responsibility. There is growth as a parent when a parent is required to do so. By accepting the challenges of parenting, each parent is realizing an opportunity to have the child know them and to be cared for by both in a wide range of circumstances. The daily and weekly school routine of a child is an important experience that the child should have the opportunity to share with each parent.

[142] The children herein will have a similar standard of living in each household.

[143] I am satisfied that the parties will access advice on shared parenting if required to do so. They have each made important decisions about their lifestyles to enhance their opportunity to parent.

[144] I am satisfied that a shared parenting arrangement is workable herein, and in the children's best interests.

[145] Finally, I am satisfied that the parenting styles of the parties do not give rise to concerns that the children will be confused. I have addressed this issue in more depth, supra. This is not a concern.

[146] The following is, therefore, ordered:

Parenting

1. On Friday, July 1, 2011, the shared parenting arrangement, structured on an alternating week basis is deemed to have commenced. Mr. Conohan's week shall commence Friday, July 8, 2011, at 3:30 p.m.;

2. The children are to have a period of 3-4 hours with the "other"parent each Wednesday. During the school year, it is ordered that the period end no later than 7:00 p.m.;

3. The parties are to identify a period of two weeks over the summer, beginning in 2012, when the children will be available to each parent for travel or vacation. Obviously, mid-week access will be suspended during this period;

4. The parties shall exchange all information pertaining to the health, educational and recreational needs of the children. They shall do so in a timely fashion; they shall consult each other on issues pertaining to the care of the children;

5, The parties shall give the first opportunity to care for the children to the other parent in the event he/she will be away over night during her/his parenting period;

6. The parties shall develop a budget itemizing the anticipated non-routine costs for the children. These expenses would include those associated with recreational activities; more costly clothing items such as winter jackets, school travel, the "return to school" expenses; special event expenses such as birthday parties for families or friends and for travel. These are but a few examples. There may also be health related expenses such as dental care to be budgeted;

7. The payment of child support is suspended on a without prejudice basis effective June 30, 2011;

8. The parties are encouraged to propose other terms in an order to be submitted by the applicant. The foregoing is not meant to be exhaustive;

9. Should either party plan to move outside the current school district, notice of the proposed move shall be given to the other at least ninety (90) days in advance. Such notice shall be deemed a change of circumstances permitting either party to seek to vary this order.

- Special Expenses

[147] I typically order the sharing of expenses on a proportionate basis adjusted on July 1st of each year and by reference to the preceding year's income. The parties have deferred financial matters and I will hear further evidence and argument, if requested. The parties are to notify the court no later than Friday,

August 5, 2011, if either wishes to schedule a hearing to address the sharing of special expenses.

- Ongoing Child Support

[148] I typically order parties in a shared parenting arrangement to pay off-setting child support based on the tables, adjusted on July 1st of each year and by reference to the preceding year's income. The parties have deferred financial matters and I will hear further evidence and argument, if requested. The parties are to notify the court no later than Friday, August 5, 2011, if either wishes to make a case against off-setting child support.

[149] Additional hearing time will be scheduled for the September - October period to conclude the financial issues deferred as part of the interim hearing.

ACJ