

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Psiuk v. Psiuk, 2011 NSSC 509

Date: 20110812

Docket: SFH1201-060344

Registry: Halifax

Between:

Sheryl Psiuk

Petitioner

v.

Steven Psiuk

Respondent

Judge: The Honourable Justice R. James Williams

Heard: August 10, 2011, in Halifax, Nova Scotia

Oral Decision: August 12, 2011

Edited for Release: February 29, 2012

Counsel: Yvonne LaHaye, for the Petitioner
Kenzie MacKinnon, for the Respondent

By the Court:

[1] Steven Gregory Psiuk and Sheryl Lynn Psiuk are divorced. They have two children - Connor William Douglas Psiuk, born June 23rd, 1996, and Kyle Daniel George Psiuk, born September 4th, 1997. Mr. Psiuk and Ms. Psiuk were married August 19th, 1994. They separated in 2005, and were divorced August 9th, 1996. The Corollary Relief Judgment of that date incorporated the Separation Agreement and Minutes of Settlement dated April 15th, 2005.

[2] The parties come to this Court in disagreement. Simplified, their disagreement concerns Ms. Psiuk's desire to move with the children from Dartmouth to Middleton, Nova Scotia, and Mr. Psiuk's opposition to that move. Middleton is approximately an hour and a half from Dartmouth, where they now reside.

[3] The Corollary Relief Judgment reads, in part, as follows:

1. The Petitioner and the Respondent shall have joint legal custody of the two children of the marriage, Connor William Douglas Psiuk, born June 23, 1996, and Kyle Daniel George Psiuk, born September 4, 1997. The Respondent shall have the primary care of the children, and the Petitioner shall have liberal access to the children, on the following terms and conditions:

(a) The day to day decisions affecting the children shall be made by the party with the care of the children at that time.

(b) The parties will not make any major developmental decision regarding the children, except on an emergency basis, without first consulting with the other party, and if possible, obtaining their consent or acquiescence. In the event of any emergency, the party with care of the children at the time will contact and inform the other party as soon as reasonably possible. A major developmental decision is any decision which may significantly affect the children's education, religious upbringing, health or medical care, or relationship with the other party.

(c) The parties will cooperate with each other as much as reasonably possible to ensure the most appropriate care, upbringing and education of the children.

(f) The parties shall inform the other of any changes in his or her home address, home telephone number, work address, work telephone number, or any other means of contact such as fax or e-mail addresses.

(g) Neither party shall move from the HRM [Halifax Regional Municipality] area without providing, in advance, 90 days notice of intent to relocate. They shall also provide the proposed civic address, together with information setting out the reason for the move and the intended term of the move. Failing consent, the parties shall attempt to resolve the matter through mediation before proceeding to Court to have their Custody and Access Agreement varied accordingly.

They have followed this term.

(h) In the event of a dispute with respect to the care of the children or times either party will spend with the children, the parties shall attempt to resolve such dispute through mediation before proceeding to Court.

Again, they have followed this.

(i) The petitioner's access to the children shall include the following specific times:

(i) two weekends per month (either the 1st and 3rd or every 2nd and 4th depending on the Petitioner's work schedule, and to be agreed upon within two days of the Petitioner receiving his work schedule);

(ii) in the event there are five weekends in a month the parties shall alternate the extra weekend; and

(iii) for seven consecutive days each month, including one of the weekends noted above.

(j) In addition to the terms set out herein, the Petitioner and the Respondent will share their time with the children of the marriage on the following terms:

(i) each of the Petitioner and the Respondent may have two weeks of uninterrupted access with the children of the marriage each year. Each of the Petitioner and the Respondent shall give the other at least one month's notice of his or her proposal for uninterrupted access, which proposal shall not be unreasonably rejected by the other;

[4] The Corollary Relief Judgment also makes provision with respect to Christmas and holidays. It states:

(k) In the event that either party requires childcare, either for work, social or any other purpose, the other party shall be given the first option for care of the children before arrangements are made for a third party to care for the children.

[5] This last clause is one that has been actively employed by the parties in recent years and is flagged by Mr. Psiuk as one of particular importance to him. He has had, over and above the access or contact or care provided explicitly in the agreement, had a significant amount of contact with these children as a result of the fact that he is, in large part, available to provide care or supervision to them after school hours, during the school year, and that Ms. Psiuk's employment, from time to time, has resulted in her working past 5:00 p.m.

[6] The parties and the children have lived in the Halifax Regional Municipality since 2001. After their separation in 2005, Ms. Psiuk and the boys lived initially in the matrimonial home in Haliburton Hills. They then moved to another home in the same neighbourhood, as I understand it, literally around the corner, where they lived with Ms. Psiuk's mother, the boys' maternal grandmother, until her (the grandmother's) remarriage.

[7] Mr. Psiuk says (in his Affidavit of August 5th, 2011, at paragraphs 5, 6, 7 and 8):

5. About a year later, probably in 2007, Sheryl decided to move again to be closer to her work. She also had enthusiastically taken up karate, and wanted to be closer to her dojo, which was in Dartmouth. She also wanted to be closer to some of her friends, who lived in Dartmouth. She bought a home at 122 Regal Road in Dartmouth.

6. Both boys had a strong network of friends in their Haliburton Hills neighbourhood. I was concerned about how the move would break the ties that the boys had with their friends. In response, I moved from Clayton Park to a new apartment on Brookdale Crescent, near Lake Banook in Dartmouth, an eight minute drive from the boys' new home. This was our situation until Sheryl sold her house last month.

7. The boys adjusted well to their new home. I believe that a significant reason for their easy adjustment has been that I have been able to provide the childcare anticipated by our Separation Agreement, which was incorporated into the Corollary Relief Judgment of August 9, 2006. Sheryl works as a nutrition services manager at St. Vincent's Nursing Home in Halifax. I continue to be a

Pilot for Kelowna Flightcraft Group, which is an air cargo service operating across the country. I fly on average 14 times a month, leaving home at about 7:15 p.m., flying out of the Halifax International Airport to a destination or destinations elsewhere in Canada, and returning to Halifax to be back home by 5:30 the following morning. I certainly would prefer to work 9:00 to 5:00, Monday to Friday each week. However, this schedule combined with Sheryl's schedule, has provided me with what I most wanted, which was extensive time with my children.

8. My understanding is that Sheryl works from around 10:00 a.m. to around 6:00 p.m. or so, Monday through Friday. Under the terms of our Separation Agreement, I have had the boys for a minimum of every second weekend and one full week per month. However, since shortly after our separation, including all the time the children have been living in Dartmouth, on Sheryl's days with the children during the school year, I pick the boys up after school virtually every day and spend about three hours with them on average until Sheryl picks them up between 6 p.m. and 7 p.m.. During the summer, the boys come to my home in the morning and stay with me until Sheryl picks them up after work. On Sheryl's weekends during the winter months, I also spend a good part of Saturdays instructing Connor and Kyle. They are active cross-country skiers, members of the Nova Scotia team, and I have been instructing them over the past few years.

[8] While I would not conclude that the times that Mr. Psiuk describes in paragraph 8 of his Affidavit are exactly accurate, certainly the frequency of contact seems largely consistent with the evidence of Ms. Psiuk.

[9] The evidence indicates that the boys have maintained contact with friends in their former community, Haliburton Hills, and done well in the Dartmouth community. I conclude, from the evidence, that both boys do well academically. Their school averages -- one about to enter grade nine, the other about to enter grade ten -- are in the mid to high 80's. Both boys are in French Immersion programs. Connor will be entering high school next year, and may not stay in immersion. Kyle is in junior high, entering grade nine.

[10] Kyle is an active member of the Robot Club at school, and on at least one school team. Both are members of the Nova Scotia Cross-Country Ski Team. Mr. Psiuk has been one of their coaches. They train in Shubie Park (in Dartmouth). The evidence indicates they could train in Middleton if they moved there. If they moved, it would be unlikely that they would train with their father as often as they do in Dartmouth.

[11] Until this summer, both boys paddled at paddling clubs in Dartmouth.

[12] Both boys have juvenile diabetes. Both have been actively involved with the Juvenile Diabetes Research Foundation as Youth Ambassadors for the Foundation.

[13] Mr. Psiuk states at paragraph 34 of his Affidavit:

34. Both Connor and Kyle have been involved with the Juvenile Diabetes Research Foundation. Over the past three years, they have been Youth Ambassadors for the Foundation. The Foundation's manager for the Maritimes, Marilyn, knows the boys and me quite well; I served on the Annual Walk committee for a couple of years. The boys and I operate three candy machines at Montreal airport to raise funds for the Foundation; I make sure that we buy the nuts and candy together, that we count and roll quarters from the machine together, and that we then take the rolls together to the bank. We have raised over ten thousand dollars (\$10,000) in the past few years for the Walk.

[14] Both boys excel at music. Until last year, they had what I take to be a garage rock band with a friend, Evan. Kyle is practising for his grade five piano at the Kiwanis Music Festival.

[15] With respect to their friendships, Mr. Psiuk says at paragraphs 39, 40, 41 and 42 of his Affidavit:

39. Both boys are social and enjoy meeting people. Connor still has old school friends from Haliburton Hills, maintaining contact with Jake and Sean in particular. He has had them over for many sleepovers over the past several years, and went paintballing with them a few weeks ago. His main friends at Ellenvale have been Brett, Connor, Ryan and Michael, with whom I often see him walking home from school. At the Mic Mac Paddling Club, his main friends seem to be Ryan, Gavin, Tilley and James. The boys attend Diabetes Camp each year, and they have made a lot of friends there. They have also made a lot of friends from ski training camps and racing. The third member of their band, Evan, is a friend of both Connor and Kyle. Connor has over 300 friends on Facebook.

[16] I note that the paddling did not continue for Connor this summer. I don't regard friends on Facebook as particularly significant to this process, but clearly Connor is active in a number of areas, and has friends and acquaintances there. Paragraph 40, 41 and 42:

40. Kyle also has made good friends at Prince Arthur Junior High. He recently has been to Brendan's home for sleepovers. They also went paintballing a few weeks ago. His main friends at school are Cameron and Garrett. Kyle was excited to hear recently that his best friend, Adam, is returning to Halifax after being away for a year...

41. Connor and Kyle have skied and trained in Dartmouth with Edward, who is also on the provincial ski team. Jonah and Colin are members of the skiing team with whom they get along best during camps and races. They seem to enjoy each other's company a lot.

42. The boys and I ran in last weekend's Natal Day Road Race; I was pleased to see how many runners and spectators the boys personally knew.

[17] Ms. Psiuk's Affidavit of May 6th, 2011 indicates, at paragraph 6:

6. I have met an individual with whom I have entered into a committed relationship and who resides in Middleton, Nova Scotia. He has two children from a prior relationship.

7. I am informed by my former husband, Steven Psiuk, and do verily believe that he has also entered into what appears to be a committed relationship and our sons are aware of our new partners.

[18] Mr. Psiuk's evidence is that he is engaged; has a fiancée who is a pilot in Toronto, and that his discussions with respect to that relationship have been, essentially, to the effect that he would not contemplate moving and leaving the children until they were finished high school.

[19] Paragraphs 8 and 9 of Ms. Psiuk's Affidavit indicate:

8. I have advised Steven that myself and my partner, Calvin MacDonald, wish to enter into a common law relationship by moving in together and integrating our respective families.

9. I have not yet advised either boy that we will be moving to Middleton, although I did raise the possibility that a move could occur, to see if they would be opposed to it.

I note that the date on this Affidavit is May 6th, 2011. Paragraph 10 of her Affidavit states:

10. Neither seemed to be opposed to it and both are familiar with Calvin's children, who they have interacted with since Calvin and I have been together.

[20] Ms. Psiuk's oral evidence indicates that she and Mr. MacDonald have been together approximately a year and a half. Her Affidavit continues:

11. Calvin has a son, James, who has just turned 17 and a daughter, Josie, who will turn 15 in June.

12. They are presently attending Middleton High and Junior High, respectively, and our boys are also presently in Junior High; although our oldest boy, Connor, is finishing Junior High and will be going on to High School next year. Kyle will be going into grade 9 next year.

18. I retained counsel, and by letter dated March 9th, 2011, I put forward a proposal to see if Steve's concerns with us moving could be accommodated so he would consent to a variation agreement.

24. The proposed move will be approximately 1.5 hours further away from Steven, but I am prepared to do whatever the court deems reasonable to accommodate this including the terms offered in my original proposal contained in my lawyer's letter of March 9th, a true copy of which is attached as Exhibit "B" hereto.

[21] That letter, which is addressed to Mr. Psiuk's counsel and is written by Ms. Psiuk's then counsel, Kevin MacDonald (an associate of her current counsel), reads as follows:

As you are no doubt aware, Connor and Kyle moved with their mother to Dartmouth approximately 3.5 years ago. Unfortunately neither has settled well into their new environment nor schools and even after 3 years, they are still somewhat unsettled in their new surroundings and have not established any firm friendships with other children in their schools or within the area. As such, a move before Connor starts High School in the Fall would be best and what Ms. Psiuk has in mind.

As your client may also be aware, Ms. Psiuk has entered into a committed relationship with an individual who resides in Middleton, Mr. Calvin MacDonald,

and who also has two children from another marriage, James and Josie (17 and 14).

We understand that the children have met each other and get along well together and it is hoped that the families will move in together sometime before school begins in the fall.

Ms. Psiuk has not had any direct conversations with the boys about moving, but in general the concept has come up and they are not opposed to it. I understand recently that your client suggested to Kyle that he wouldn't be seeing him, but of course our goal is to ensure that this move is facilitated to the extent necessary to ensure the Corollary Relief Order is respected.

As your client will no doubt confirm, the parenting plan that was approved by a Court has been modified to accommodate your client and we of course will continue to do so. My client is prepared to schedule his time on weekends and professional development days, such that he gets to select 9 nights a month in advance so that everyone will know the schedule and to ensure that your client is ensured a reasonable and flexible access.

In this regard, we propose to keep the boys involved in karate and training, either with their mother or with their father (when visiting with him and his new partner here in Metro); and, in terms of their music and other lessons, alternate arrangements would be made for those to continue in Middleton.

[22] Ms. Psiuk's Affidavit of July 25th, 2011 indicates, in part, at paragraph 3, 4 and 5:

3. Prior to approaching Steven on February 21st, 2011 to review with him my proposed plan of moving to the Valley with the Boys, I had asked them if they would be opposed to moving to the Valley.
4. Both Connor and Kyle advised me and I did verily believed and advised Steven, that they wanted to move to the Valley. Steven did not accept this as true, and in effect has accused me from time to time since of being a bad mother, negligent, and not having my priorities straight (or various words to similar effect).
5. As such, I agreed to a Wish Assessment being done and which was ordered accordingly. During that process, it was not disclosed to the Assessor, Martin Whitzman, that Steven Psiuk proposed to seek primary custody of the boys in response to my Application to move to Middleton with them.

[23] That said, it appears that in the report of Mr. Whitzman one of the boys did refer to the possibility of being with his father. Ms. Psiuk's July 25, 2011 Affidavit continues:

10. I do not know whether Steven Psiuk will maintain that position at trial; but in response, I say that a move to Middleton is necessary, given that my partner's children presently attend Middleton School Complex, and that a move to Windsor or any other area but Middleton would necessitate their change in schools.

11. Forcing my partner's children to move from their present school is not desirable, both from the point of view of their convenience and also given that the Middleton School Complex is considered one of the top five schools in the province, according to the information that I was able to access on the internet and which I do verily believe.

12. Further, a move to other than Middleton would be unfair to my partner, Calvin MacDonald, as he has an established business of 19 years and most of his customers are in the Valley area.

13. In the result, moving and living in Windsor would add additional significant travel and expense for both he and his business.

[24] The evidence before me does indicate that Mr. MacDonald's business extends to Windsor. That said, it would cause him travel expense to move to Windsor.

14. The proposed move to Middleton would result in travel time between myself and Steven's present residence of approximately 1 hour and 20 minutes - 1 hour 30 minutes. This is about 1 hour 15 minutes more than our present travel time of approx. 10 - 15 minutes (each way).

15. The present parenting plan incorporated in the Custody and Access Agreement, which forms part of the Corollary Relief Judgment, provides that the parties would maintain residences in the HRM.

16. My understanding, both then and now, is that only if one or the other parent wish to move outside the HRM would the Consent of the other or Court Ordered permission be required.

[25] Ms. Psiuk's Affidavit goes on to describe or indicate that her conversations with her children indicate they would not want to be cared or supervised by their paternal grandmother were Mr. Psiuk to have custody of them. Paragraph 24 of the July 25, 2011 Affidavit indicates that:

24. In terms of accommodating Steven's legitimate rights of visitation and access; I have and continue to offer him first choice of vacation, weekends and other times; and, I have offered to ensure that we have an internet and Skype connection so the boys can speak to their father whenever it is convenient.

Mr. Psiuk's contact with the children has been far more direct and meaningful than over Skype or internet communications. Paragraph 25:

25. Additionally, I have offered to co-share any additional costs and driving arising as a result of the approximately 1 hour - 1 hour and 15 minutes extra travel time (each way).

26. In effect, I have and continue to offer as much flexibility as I can, given the necessity of the move to Middleton and how that will impact on Steven Psiuk and his visits with our boys.

[26] Ms. Psiuk's "Reply Affidavit" of August 8th, 2011 indicates at paragraph 4:

4. That I have two degrees, which include physical education and nutrition. Steven is also aware that I am currently working on my Masters in Health Administration which I started a year ago, at the request of my employer, St. Vincent's Nursing Home in Halifax. My educational background and my own personal habits (which include physical training), make me a knowledgeable primary care parent for our two children, who have specialized nutritional needs.

[27] Ms. Psiuk's August 8, 2011 Affidavit goes on to describe discussions between her and Mr. Psiuk following her move to Dartmouth, at paragraph 12:

12. When I was able to buy the home in Dartmouth, Steven also moved to Dartmouth, and at that time and for the next few years, I repeatedly listened to him tell me how he doesn't like Dartmouth, he can't wait to move out of Nova Scotia (he plans to move to Toronto once the boys finish high school), and that he certainly didn't want our children to attend Dartmouth High School as he viewed it as a bad school.

[28] Mr. Psiuk's version of these same events is that he was against the initial move to Dartmouth, he did talk negatively about the schools in Dartmouth for a time, and that he will move to Toronto, or contemplates moving to Toronto, to be with his fiancée, after the children have finished high school. Paragraph 14 of Ms. Psiuk's August 8, 2011 Affidavit states:

14. Calvin and Steven have only met briefly, but I am aware that the boys speak about Calvin and his children, James and Josie, to Steven. Steven has said to me that he is aware that the boys really like Calvin. Calvin has shared custody of his children (James, age 17, and Josie, age 15). Given their ages, the children go back and forth between their parents' households. However, Josie is involved in a lot of sports and plays a high level hockey, and therefore, she tends to spend more time in Calvin's household, as opposed to her mother's household. Calvin is very active, and goes to the gym several times a week.

[29] As states, she indicates that she and Mr. MacDonald have been together one and a half years. At paragraph 16 of this Affidavit she indicated:

16. Steven has spent a significant amount of time in his Affidavit detailing our boys involvement in activities. We are certainly are an active family, however, I have always had concerns (which have formed the topic of many emails between Steven and myself) that he over schedules the boys time, and insists that they work out continuously. His Affidavit specifically notes 5-15 hours per week. I too believe in the importance of physical fitness, but also believe that the boys should be permitted to have down time so that they can develop more social relationships with their peers.

[30] These are boys who are very active; they've been involved in a variety of sports. It does not take a lot of math to figure out that if youth this age are involved in karate, a provincial cross-country ski team, paddling, and periodically other sports or activities like hiking or cross-country running, that they are going to exceed five hours a week of physical activity with ease.

[31] Mr. MacDonald has not testified. The evidence is that Josie, who I assume is his daughter, plays a high level of hockey. I do not have evidence from him about the amount of training that is done to maintain what is described as a high level of hockey, but likewise, I would assume it easily exceeds five hours of activity a week. Paragraph 17 of Ms. Psiuk's August 8, 2011 Affidavit states:

17. Steven should rest assured that in light of my own University education in Nutrition and Physical Education, that the boys would continue to be physically active no matter where they reside.

I conclude that is the case. Her Affidavit continues:

22. Both Kyle and Connor will continue with their music in Middleton, if we are able to go as a family. I am a black belt in karate and also instruct the children in karate. Both boys have their orange belts.

23. Kyle and Connor have not had a band with their friend Evan for approximately a year now. Their "rock band" had a short lifespan of approximately 6 months. The practices were always held at my house.

24. Kyle has also been made aware by Calvin's children and my own investigations by speaking with two teachers who teach at the school that the Middleton School Complex has a wonderful band program. As Steven has referenced in his Affidavit, music is a significant part of the boys' lives, and one that I have always encouraged.

25. Kyle (who has a great passion for music), plays clarinet, guitar and piano. I have never once had to ask him to practice his music because it is something that he continues to initiate on his own.

26. In relation to Steven's comments with respect to Kyle's participation in the robot club and the school table tennis team, I say that Kyle had quit the robot club prior to the end of the school year as he lost interest in the same.

Mr. Psiuk's view is that the Robot Club just came to a natural end.

27. Kyle does enjoy table tennis and the Middleton School Complex also has a table tennis and a badminton team (another interest of Kyle's).

28. My flexible work hours will allow me to stay at home in the mornings so that I can prepare breakfast for the boys and ensure that they are safely off to school before I get ready myself. Often when getting the boys breakfast they have commented that they still had homework to finish, or at around 9:00 p.m. they would tell me that they had homework to complete. My standard line with them is that they are required to complete their homework after school before doing anything else. Both boys have always told me that they could not because Dad wants them to go running or skiing when they are with him. When I have asked Steven to please make sure that their homework was done, his position has been

that he did not want to spend his time with the boys making them do homework. He has also taken the boys out of school to go to Quebec skiing. His trips with the boys often see them returning home late at night and thereby the boys miss school the next morning/day. In an effort to keep the peace, I have not made a big deal out of this as the boys do well in school, but I object to Steven's portrayal of himself as someone who will not allow the boys to miss school or who questions them daily about their homework.

[32] These are 13 and 14 year old boys who are Honour students. I would expect that even Honour students have issues around homework at times, particularly children who are involved in as many activities as they are, whether it be Mr. Psiuk's, and I use this very figuratively because I perceive that the interests lie this way, priority with skiing, or Ms. Psiuk's priority with music and karate.

[33] It is obvious that this couple have adjusted their work schedules to benefit these children so that they have the guidance and supervision of an adult both before and after school. Not many parents are able to do that. Clearly, the children have benefited from their efforts.

[34] Ms. Psiuk's August 8, 2011 Affidavit addresses schools:

29. I was surprised to read that Steven had indicated that Connor had his heart set on attending Prince Andrew High School. I have never once heard my son make such a comment. But on many occasions Steven has criticized the Dartmouth schools as 'bad' or 'lacking.'

30. Although Connor seems to get along with his peers at school, those friendships have not materialized into friendships outside of school, except for his friend, Sean, who he has known since we lived in Stillwater Lake and his friend, Evan, who he knows from karate.

This is not very consistent with the evidence of Mr. Psiuk. Paragraph 31:

31. In the course of doing my Masters Degree studies, I often have the occasion to review papers from the Atlantic Institute for Market Studies (AIMS). It was from that website that I learned that the Middleton School Complex was ranked 5th in the Province out of the 60 schools reviewed. It has a smaller teacher-student ratio. On the other hand, Prince Andrew High School in Dartmouth is ranked 34th, and has a higher teacher/student ratio.

32. Similarly, Kyle has been quite vocal with his criticisms of his current school, i.e. Prince Arthur Junior High, in Dartmouth.

The Affidavit continues:

34. I agreed to the preparation of a Wishes Assessment at Steven's request as he details in his affidavit. Had Connor and Kyle not wanted to move, I would have accepted it and that would have been the end of it. I had assumed that Steven would do likewise so that we would avoid a trial and the prolonged stress that this has put on all of us.

36. I don't know if he is simply trying to assert his independence or stand up to his father (in light of their "past disagreements"; as Kyle indicated to Martin Whitzman) that he has said no matter what happens he plans to move with me to Middleton. In my opinion, Steven is causing greater damage to his relationship with Kyle by not respecting his very clear wish. Neither Connor (who is 6 feet tall) or Kyle (who is 5'6") can be picked up and placed in a car or made to stay where they don't want to be.

[35] I want to be clear with this. I have not been told that Ms. Psiuk has moved permanently to Middleton (or intends to move permanently to Middleton irregardless of this Court's decision) so the context of comments such as these is not necessarily connected to what I am deciding here (unless I assume that she would move to Middleton irregardless of the decision of this Court on the request for permission for her to move the children to Middleton).

[36] I do not have the authority to order that Ms. Psiuk live in Halifax or Dartmouth or wherever; the Court's authority extends to the children here. Adults make decisions on their own.

[37] Her Affidavit states at paragraph 37:

37. Steven has also raised the issue that my job is in Halifax; that is true, although I am actively looking for employment in the Middleton area, and recently had an interview with the Hospital in Middleton. They have my resume and will keep it on record in the event that a position comes available.

[38] The obvious conclusion from that is that there is not now a position available.

[39] In her oral evidence, Ms. Psiuk indicated that the children, who both suffer from juvenile diabetes, have medical expenses of approximately \$1,500.00 a month which are covered virtually entirely by her medical plan. Obviously, this is a significant issue to both these parties, and to the children.

[40] Ms. Psiuk's August Affidavit indicates with respect to her work and school:

38. In the interim, my plan is to continue to work at Saint Vincent's Nursing Home until such time as I have new employment.

40. During the month of May I worked approximately 35 hours from home because we were implementing the new computer system, and it is a lot easier for me to get my paperwork done at home. I have very flexible hours at Saint Vincent's Nursing Home. As the Nutrition Services Manager, I have the option to do some of my work from home.

41. When my employer approached me to do my Masters in Health Administration last year, my hours were reduced from 80 to 76 hours biweekly to accommodate same.

42. Since starting my Masters in September 2010, I have found it increasingly difficult to manage my household as a single parent, cook the meals, maintain the grounds, work full-time and go to university.

[41] The evidence indicates to me that with respect to the children's after school meals, it was really a matter of request or communication between the parties as to whether Mr. Psiuk or Ms. Psiuk would prepare meals for the children after school. There is no instance that was brought to my attention that indicated that he had ever said "no" to such a request.

[42] Ms. Psiuk's Affidavit continues:

43. My partner, Calvin MacDonald, has also been a single parent for approximately seven years. He does the cooking and housework. That will be of significant assistance to me.

44. Last September 2010 when I started my Masters Degree, it became gradually clear as the months went by that something had to give now that I was back in University (although it's all done on-line). I also knew that I had to find a better high school for Connor. Thereby, I decided that we likely needed a

townhouse/condo where I would have help with the grounds and there would be less house to deal with. There was also a smaller well ranked school in Bedford.

[43] There was no indication in this paragraph that the change in schools, the change in locale, was discussed with Mr. Psiuk at the time, as I would conclude is required by the Corollary Relief Judgment (especially with respect to educational issues).

45. Over the ensuing months, I would share my concerns and understandings with my partner Calvin and it was in the context of our evolving relationship and the fact that I planned to move in any event that we decided to move in together and blend our families. It simply made a lot of sense. He had a home that could accommodate us, my children got along with his children, their dogs were welcome to join the household, he loves to cook (and we love to eat), and he kept a good home. He is also financially secure and comes home every night (given that he owns the Company **and makes his own hours**). It frankly seemed like a good solution all the way around, and obviously it allowed us to be under the same roof. [emphasis added]

46. Steven has raised in his Affidavit that we could both move to Windsor, however he adds that he is not sure if his employer would allow that. I say Steven could easily move to Upper/Lower Sackville and be in the exact same distance to his employment to the Airport (i.e. 30 km.). He could in fact move even further to Mount Uniacke which would be approximately the same distance as he was to his employment when he lived in Stillwater Lake.

[44] The limit on Mr. Psiuk's location, on his residency in terms of distance from the airport is, according to him, as a result of Department of Transport regulations concerning pilots. He has indicated that he is a junior pilot within the company he is with, and does not have as much choice about flying times as he might otherwise have.

[45] Ms. Psiuk's August Affidavit states, with regard to the boys' diabetes:

52. As to **paragraph 18** of Steven's Affidavit, that he is responsible for obtaining the diabetes supplies, I confirm that that is the case, however, it was arranged that way because my health plan requires that you pay for everything up front and later obtain reimbursement. I do not have an excess of \$800-\$1,500 at one shot (given the significant disparity in our incomes), i.e. I earn \$65,000.00 per annum, and Steven earns approximately \$160,000.00 per annum) and therefore we set up

a system whereby Steven pays for the supplies and then I sign the reimbursement cheques over to him.

[46] Again, this is simply an example of the fact that this couple has been able to work out arrangements that benefit these children in a way that, to use a phrase, just makes common sense.

[47] Her Affidavit continues:

53. Neither Steven nor I had diabetes. However as Steven has noted in his Affidavit our children are insulin dependent diabetics. Connor was diagnosed when he was 6 years of age, and Kyle was diagnosed at the same time, when he was 5 years of age.

54. Both boys are very independent and self-manage their diabetes.

[48] I do not conclude that Ms. Psiuk means by that that they need no supervision at all or no help with their diabetes. They are 13 and 14 year olds.

[49] Her Affidavit continues:

55. Steven's Affidavit notes that Connor has suffered from Epilepsy. We were both told by the Neurologist at the IWK that Connor had outgrown his epilepsy, and thereby, they took him off his Epilepsy medication in the Fall, 2010.

[50] Again, that seems to have been done with the agreement of both parents.

56. It is true that approximately 1.5 years ago Connor had a seizure, and he also had a seizure in April 2011. Those seizures were low blood sugar related and he was treated accordingly by the paramedics. He did not have to go to the hospital. He simply received IV glucose. Both these seizures occurred in the early morning (i.e. 3 a.m. and 5 a.m).

58. On Saturday, August 6th, 2011, Connor had another seizure at approximately 6:50 a.m. The paramedics arrived within minutes and Connor was subsequently taken to Memorial Hospital in Middleton (which is approximately 4 minutes from Calvin's home in Middleton). We stayed for a few hours and Connor was discharged at 11:00 a.m. Dr. Coles in Middleton spoke directly with Dr. Mohammad (the IWK neurologist) and Connor was given a prescription to go back on his epilepsy medication until he could be followed up by the Neurologist at the IWK. That follow-up will occur within the next weeks.

59. I called Steven to alert him of the morning's events. He was rude and verbally abusive. I told him Connor was in the hospital in Middleton. He indicated that I was late getting them to his place. I said I'd bring him to him, and he said, 'oh, you've done quite enough already.' I asked him what he meant by that, and if he was trying to blame me for this medical emergency. And he said, 'well', I responded that he's created this stress by not respecting the boys wishes. He then said, 'you're a miserable fucking bitch', and I concluded the conversation. I then drove the boys to his place in Dartmouth after Connor was discharged and we went back to Calvin's to get Kyle and pack a bag for the boys for the week.

[51] This illustrates the problem with this kind of Court process and the stresses that parents such as Ms. Psiuk and Mr. Psiuk are under in this kind of situation. I will be plain in my read of the events of that day. Mr. Psiuk showed a significant amount of immaturity in the language he chose to use in the situation and the way he dealt with it. Ms. Psiuk's dig is a little bit more sophisticated, and in it's own way, perhaps even more meaningful. To use her words, "I responded that he's created this stress by not respecting the boys' wishes."

[52] This is not a situation where I conclude that the boys have said, totally independently, "we want to move to Middleton". This is a situation where Ms. Psiuk has asked for permission to move to Middleton with them.

[53] In paragraph 60, Ms. Psiuk indicates:

60. ...However, it was generally Steven who would care for the boys when they were still young enough and they still required 'day care'.

[54] Ms. Psiuk indicated, in her own oral evidence, that she had decided in February of 2011 to move, as she couldn't maintain the house. She said something had to give. It is unclear to me whether this refers to money, maintenance of the home or some other issue around the house or personal pressures. It is clear that there was a developing desire for her to pursue, in a more active way, the relationship with Mr. MacDonald; by active, I simply mean a fashion that brought them closer together.

[55] Ms. Psiuk, in her May 6th Affidavit, says, at paragraph 9:

9. I have not advised either boy that we will be moving to Middleton; although I did raise the possibility that a move could occur, to see if they would be opposed to it.

[56] In her July 25th Affidavit, she says, at paragraph 3:

3. Prior to approaching Steven on February 21st, 2011 to review with him my proposed plan of moving to the Valley with the Boys, I had asked them if they would be opposed to moving to the Valley.

[57] Through counsel in the March 9th letter, she indicates:

Ms. Psiuk has not had any direct conversations with the boys about moving, but in general the concept has come up, and they are not opposed to it.

[58] She did talk to the boys about moving.

[59] The applications before the court are as follows: Ms. Psiuk, by a Notice of Variation Application dated May 24th, 2011 and filed May 30th, seeks a variation under the *Divorce Act*, seeks a variation in access. The parenting plan she files says that she proposes to move to Middleton and for the children to live with her there. She seeks a change in the access, which reads as follows:

Access as per the above noted Corollary Relief Judgment, accommodations made for the extra travel time to and from Middleton, including scheduling access time for the Petitioner/Respondent on weekends and professional development days, such that he would get to select nine nights a month, on average, ensuring the total number of days/nights as is presently the case. In advance of it all the parties will know the schedule and ensure the Petitioner/Respondent is ensured of reasonable and flexible access.

[60] Mr. Psiuk's response seeks a variation of custody, access, child support, and attaches a parenting plan. His position is essentially to oppose the move. He states in the parenting plan:

Under the terms of the Corollary Relief Judgment, the children are to spend nine full days per month with me, which usually worked out to be seven consecutive days and nights and another full weekend each month. However, mostly almost from the beginning, partly because of the work schedules of the Applicant and me, I have usually cared for the children every day after school until the Applicant returned from work, anytime between 5:30 and 7:30, often shortly after

6:00 p.m., and all day in the summer. That arrangement has remained in place until the present time.

[61] In response to the question "Where do you want the children to live?" He states:

I want the current arrangement to remain in place, as it provides for both the Applicant and me spending a considerable amount of time with the children. I have urged the Applicant to maintain the status quo, however, she insists on moving to Middleton. If she goes through with that move, I want the children to be transferred to my primary care. My mother has agreed to move in with me to provide the extra care for the children, on average three later evenings per week while I am at work.

He goes on to indicate that he would be flexible in accommodating and providing Ms. Psiuk with reasonable access.

[62] The legislation dealing with this issue is found in the *Divorce Act*:

s. 17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively, a custody order or any provision thereof on application by either or both spouses, or by any other person. The court may include in a variation order any provision under this Act could have been included in the order in respect of which the variation order is sought.

s. 17(5) Before the court makes a variation order in a custody order, the court must be satisfied that there has been a change in the condition, means, needs or circumstances of the child of the marriage, occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child, as determined by reference to that change.

s. 17(9) In making a variation order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

s. 16(1) A court of competent jurisdiction may, on application by either or both spouses, make an order respecting the custody of or access to a child, or the custody and access to any or other children of the marriage.

s. 16(6) The court may make an order for a definite or indefinite period of time, or until the happening of a specific event, and may impose such other terms, conditions or restrictions in connection therewith, as he thinks fit and just.

[63] In imposing such conditions, it is my view that the principle of the best interests of the child(ren) must be followed.

[64] Section 16(7) of the *Divorce Act* authorizes the creation of what is commonly referred to as a “mobility” clause or a “notice” clause with respect to moving, as is in these parties' Corollary Relief Judgment. I have considered “the *Foley Factors*” (see *Foley v. Foley* (1993) N.S.J. No. 347 S.C.), which are enumerated in Ms. Psiuk’s counsel’s brief. These factors include the provisions of the *Divorce Act* (which I have just referred to), physical environment, discipline, role model, wishes of the child, religious and spiritual guidance, assistance as experts (in this case, Mr. Whitzman, as it relates to the wishes of the children), time availability of a parent for a child, cultural development of the child, physical and character development of the child by such things as participation in sports, emotional support, financial contribution, etc.

[65] The *Gordon v. Goertz* (1996) 2 S.C.R. 27 case is the leading case on mobility or relocation. In that case, the Supreme Court of Canada indicated that the applicable principles in a case such as this should be informed by the following considerations:

- (1) The Judge must embark on an inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
- (2) Each case turns on its own unique circumstances. The only issue is the best interests of the child in the particular circumstances.
- (3) The focus is on the best interests of the child, not the interests and rights of the parents.
- (4) The Judge should consider, among other things:
 - (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 of the child, consequent on removal from the family, schools and community he has come to know.

[66] The principal issue before the court (as indicated by Ms. Psiuk's counsel in her brief of July 27th) is:

Notice of Variation Application was given by Ms. Psiuk on May 19th, 2011, seeking permission of this Honourable Court to move to Middleton, Nova Scotia with her two sons.

[67] Ms. Psiuk has asserted that the children tell her they want to move to Middleton with her. She appears to have sold her house and moved to Middleton in July of this year, awaiting the outcome of this hearing. I do not believe I have evidence that would indicate to me that she has unilaterally permanently moved. She is before this court seeking permission to move the children there for the school year.

[68] The issue before me is whether she may move with the children to Middleton, not whether she may move, herself, to Middleton, or whether she could temporarily do so as part of whatever vacation period she has during the summer.

[69] Martin Whitzman, a registered marriage and family therapist, prepared a Children's Wishes Report following a pre-trial appearance before and the direction to do so from Justice Campbell of this court. Mr. Whitzman did not testify. Both counsel waived their right to cross-examine Mr. Whitzman. His report states, in part, as follows -- the report is dated July 13th:

This assessment was ordered by His Honour Justice Douglas Campbell, a Judge of the Supreme Court of Nova Scotia Family Division. The purpose was stated in the court order as 'The recommendations must address the issue of the children's preferred living location and resulting parental arrangements.' Two office interviews were scheduled and attended by the brothers, who were interviewed individually.

[70] Mr. Whitzman, in discussing Connor, states:

Connor is a 15 year old young man who successfully completed grade nine and will be entering high school during the next year. He understood the purpose of my assessment and indicated the desire to provide the necessary information that I was requesting. It is interesting to note that both children suggested that the relationship between their parents had been quite good, but has significantly changed during the past year. Approximately two years ago, Mr. Psiuk met Ellie, who is also a pilot, who resides in Toronto. Connor noted that his father is now engaged to Ellie. Approximately one year ago Ms. Psiuk met Calvin, who resides in Middleton. Calvin has two children, 15 and 18, and Connor said that he enjoyed interacting with Calvin's children. Connor stated that he liked Ellie and Calvin and had nothing negative to add regarding either partner. When asked whether he had an opinion regarding where he wanted to live, Connor stated, 'I actually don't know. This is not an easy decision. I have only spent four visits of one or two days in Middleton; it would help to spend a week there to see what the place is like. If I do live in Middleton, I want to spend three out of four weekends with dad.'

[71] He goes on to indicate:

'I think moving to Middleton would not be bad...'

This is at a second visit with Mr. Whitzman.

'It would be hard not to see as much of dad.' Connor went on to add that he was accustomed to seeing both his parents on a frequent basis, and this change would be difficult. No matter where he lived, Connor wanted to spend three out of four weekends with the non-primary parent. He concluded the session by adding that moving to Middleton would be an adjustment, but one he felt he could deal with.

Kyle will be 14 in September, and is going into grade nine French Immersion. He provided a similar historical account of his parents' separation and the resulting moves and contact with his parents. When he described his parents, he wanted me to be aware that he's had past disagreements with his father, but they have improved. He did appear as though he was feeling a closer connection with his mother than his father. He had little difficulty placing himself in his mother's situation and offering suggestions that would benefit his mother. He was much more opinionated than his brother, and wanted the opportunity to provide input to the present court involvement. Kyle was asked questions concerning coaching by his parents; he noted that his parents have spoken with him and provided information which depicted their views regarding staying or moving. He described a positive relationship with Ellie and Calvin, but added that he has only been to Middleton six or seven times; in other words, Kyle was not familiar with

Middleton, but liked what he had seen. He quickly provided me with his recommendation when he stated the following: 'I would like to move to Middleton and keep the schedule with dad the same.' He thought this might be a possibility, if both parents moved closer to each other.

[72] The context of his wishes, as described in this paragraph, include his indication that he was not that familiar with Middleton, his indication that he would like to move to Middleton and keep the schedule with dad the same, and that he thought that keeping the schedule with dad the same might be possible if both parents moved closer to each other. This hearing has made it clear that those things will not happen.

[73] Mr. Whitzman indicated further:

Kyle denied that information regarding the custody fight had been provided by his parents. He added that his father believes that 'Mom is a bad influence and has her priorities messed up.' Kyle commented that his mother believes that the school and area is better in the Valley than in the city. Kyle wanted to see his mother every weekend if the court required Kyle to stay with his father. Kyle had the opportunity to spend a few days in Middleton prior to our second interview; he commented the move to Middleton would actually be quite positive because it would allow more time for the boys to be with their mother. It was his view that his mother would not be required to work as much if she lived with Calvin. He also noted that it would be difficult to not see his father as often as he had during the past several years. He again repeated that he had wanted to go with his mother if she decided to move to the Valley. Kyle's final comments revealed his ability to identify with the mother; he stated, 'Mom does want to get on with her life. It's not fair if she has to stay in the city for the next few years. All she does is work, go to university and clean the house.'

[74] These do not seem to be statements that would come from a 14 or 15 year old (unless they had been heard somewhere).

[75] Mr. Whitzman concludes:

To conclude, the children were comfortable with the assessment process and understood the purpose of my report. They are mature and well-spoken young men who choose to reveal their wishes when given a choice. The boys were asked about direct coaching by their parents, and both stated this did not occur. However they both admitted that their parents have spoken with them and provided information which depicted their views regarding staying or moving.

...

This assessment does suggest that both parents have attempted to influence their sons.

That seems patently obvious to this Court.

Connor is leaning towards a move to the Valley but does not want to hurt his father. Kyle is less concerned about the consequences and more comfortable indicating he wants to move to the Valley with his mother. If the boys do live with their mother, they suggest they would like to be with their father three out of four weekends. Kyle also suggested his parents both move closer and allow more frequent contact. The children concluded our meeting by requesting that their parents start getting along better.

Neither parent has focused on this last sentence during this hearing.

[76] I conclude from Mr. Whitzman's report and the other evidence before me, that these boys benefit significantly from the time they have spent with both parents. They are thriving. They like and enjoy Mr. MacDonald and his children. Kyle has some lack of appreciation of the consequences of the move - for example, he says he would like to move to Middleton and keep the same schedule with dad. This is impossible in the circumstances. The schedule with dad includes the after school care. He thought this might be possible if both parents moved closer. Ms. Psiuk has said that she and Mr. MacDonald, were they together, could not move closer, and Mr. Psiuk says he's required by the Department of Transport Regulations to be within a certain distance of the airport. He could, conceivably, move somewhat closer to Middleton; perhaps to Windsor or Mount Uniacke, as Ms. Psiuk has suggested he do.

[77] Connor speaks of the adjustment to a move to Middleton as being difficult, were he to move. Both boys want their parents to get along better, both want to accommodate their mother's desire to move to Middleton. Both parents attempted to influence the boys' wishes during this assessment. Their wishes are very important. The context of their wishes (in this litigation process and their overall best interest) is also important.

[78] I have considered their wishes as part of my consideration of the overall best interests test as directed by the case law I have referred to.

[79] I note also that the question of the children's wishes appears to have focussed on the question of a desire to move to Middleton with their mother. The issue put to the court by Ms. Psiuk has been, as I indicated, as submitted by her counsel at page 1 of her July 27th, 2011 Brief, to seek permission of this Court to move to Middleton, Nova Scotia with her two children.

[80] Ms. Psiuk's evidence before this Court is problematic in a number of respects. She says the move would provide the boys with a better school, and refers to school rankings she has obtained off the internet. The context of the rankings was not provided. The source, beyond the name of an institute, was not provided. How the ranking was conducted, when it was conducted, what years, whether the rankings were based on class sizes, standard test achievements, extracurricular activities or some combination of all of that is not clear. It is opinion evidence. Plainly put, its admissibility is, at best, questionable. It is of very little use, if any, to the Court in this process.

[81] There is another issue with school. It is not clear that Kyle's French Immersion Program would be continued in Middleton. He is in grade eight, entering grade nine, in a French Immersion program. If I have somehow missed it in the evidence, I apologize to the parties, but it appears to me that the evidence did not address whether Kyle would continue in French Immersion in Middleton.

[82] The educational issues under the terms of the Corollary Relief Judgment are issues that are explicitly identified as issues related to the children's development, that the parties should and would discuss if changes in them were contemplated. Ms. Psiuk's evidence, as I referred to it in the affidavits, indicates that she identified educational issues with respect to Connor and the change of high schools as being desirable, as long ago as September of 2010, and that she then embarked on a discussion of those issues with Mr. MacDonald. That discussion should have been had with Mr. Psiuk.

[83] It appears that the educational issue is largely bootstrapped onto Ms. Psiuk's case, if it were, after she decided she wanted to move to Middleton. I do not conclude that a move would benefit the educational placement or schooling of these boys. It would, in a word, disrupt it. Disruption of such a placement is one

of the express considerations in the case law and legislation I have referred to. The evidence indicates to me that these boys are thriving educationally. They're thriving in circumstances where they are extremely active in extracurricular activities.

[84] Ms. Psiuk says that the Dartmouth High School or high schools were bad or poor. She even quotes Mr. Psiuk as saying they were bad or poor but really provides no indication as to what the substance of those concerns are. I have got no information about the curriculum at these schools, whether IB programs are available or are desirable for these children, whether there are particular social problems within one school that do not exist in another school. There is really no context provided to these concerns.

[85] Ms. Psiuk does not mention and seems to ignore the fact that she moved with the boys to Dartmouth, she chose the Dartmouth school system. Mr. Psiuk followed. I am not sure whether she thinks something has happened to the Dartmouth school system since she moved there or whether she says, "I didn't look into it at the time. I was more focused on other things."

[86] Based on the evidence before me, I can see no benefit to these boys, educationally, to be had in a move to Middleton. It would, as I have indicated, be a disruption. It would be a negative factor. As I have mentioned, it is unclear to me whether Kyle could continue French Immersion.

[87] Ms. Psiuk says the boys would benefit from having more friends, especially after school friends, if they moved. Put another way, she says they lack friends in Dartmouth, especially after school friends. The boys moved to Dartmouth in 2007; they are extraordinarily active and academically successful. They have kept friends from their previous community (Haliburton Hills) from which Ms. Psiuk chose to move to Dartmouth. Mr. Psiuk states that they do have a lot of friends and identifies the friends. He has provided more immediate after school care to the children than she has.

[88] These two boys are very, very active and have friends, colleagues, teammates, whatever, in a variety of activities. Effectively, Ms. Psiuk suggests that there is some sort of socialization problem with these children. The evidence before me suggests that there is not. Ms. Psiuk suggests:

(a) that she move them an hour and a half away to an entirely new community where they would be separated from whatever friends they currently have in the Dartmouth community, and separated from the friends that they have kept in touch with from the Haliburton Hills community; and

(b) that Mr. Psiuk move to Mount Uniacke or Windsor, part way to Middleton, to cut down on driving so that the boys' time with him would be in a community where they have no ties, no contact with existing friends without again motoring back into Halifax, and no educational involvement in the community through which to make friends.

[89] This plan, if there is a socialization issue, is one that I conclude would harm, not help, these children. Again, I conclude that in terms of community involvement, in terms of friends and relationships within the community, the move(s) would be disruptive, harmful and create further difficulties for these children, not solve them.

[90] Ms. Psiuk says, in effect, that work, her Masters Degree program and caring for her children created a lot of pressure for her and "something had to give" in February. She says that she knew she would have to move and it "just made sense" to move in with Mr. MacDonald in Middleton. Again, there are problems with this evidence.

[91] Her children are, in a word, thriving. They are doing well. They have a lot of meaningful contact with both parents, she receives child support. There is no indication from her that there are monetary issues or pressures. Her statement that there was pressure and something had to give from some combination of work, school and parenting is difficult to follow.

[92] She says that she would move and continue to work in Halifax until she gets a job in Middleton. The move to Middleton would reduce Mr. Psiuk's time with the children significantly by eliminating all of the after school care that he has provided. The move would cost additional money. She would be driving into work in the Halifax Regional Municipality when she did come into work (and I recognize she states that some of the work can be done from home). When she did commute, she too would be spending less time with the children, because she would be doing an hour to an hour and half's commute each way.

[93] When speaking of wanting to move, she says work is a chore and a pressure, leading to the need for a move. When speaking of how accommodating she can be if allowed to move with the boys, she says how flexible work is. If work is flexible, it can be flexible in terms of relieving some of the pressure that she felt under.

[94] She did not identify finances as a pressure necessitating a move. If money is an issue, she does not seem to have explored alternative housing in Dartmouth. She refers to her Masters program as a pressure but does not say whether it is continuing as it has if she moves. She does not say whether the number of classes can be reduced to reduce the amount of pressure, and does not say if some other accommodation cannot be made with her employer to either stretch out the taking of the Masters Degree, or reduce her hours of work. She does not say if she made any attempts to reduce the course load or requirements on the Masters Degree to reduce the number of classes per year.

[95] She says being a single parent is a burden. She has had significant support from Mr. Psiuk. He has provided a significant amount of after school care. I do not conclude that he provided all of the after school care and supervision, but he certainly provided a significant amount of after school care and supervision. She did not say to Mr. Psiuk, "Could we adjust the schedule? You take some extra time here while I am doing my Masters Degree. Make it up to me in the summer, do this, or do that." She does not say Mr. MacDonald could help in some way, other than to open his home in Middleton.

[96] Mr. MacDonald is in an analogous situation. She says it would be "not convenient" for his children to move. Apparently it is convenient for her children to move. She says it would be a disruption to his children to move. It is apparently not a disruption for her children to move.

[97] She indicated that Mr. MacDonald shares custody of his children but does not identify his specific parenting schedule. She says she will move to Middleton and commute to her work in the Halifax area. I do not know whether she or Mr. MacDonald explored the possibility of his parenting schedule being adjusted so that he could, when he did not have the care of his children, come in to Halifax or Dartmouth, assist her and support her, and he do some of the commuting to his work. Again, it is Ms. Psiuk making the accommodation for Mr. MacDonald. It is Ms. Psiuk's children making the move because Mr. MacDonald's "cannot". It is

Ms. Psiuk's children who are asked to adjust. All of the accommodations, on the evidence I have, is one way.

[98] The evidence indicates that at times Kyle has been strong-willed and that both Mr. Psiuk and Ms. Psiuk have effectively enlisted the assistance of the other to constructively deal with these occurrences. This would be far, far more difficult to deal with if Ms. Psiuk and the children moved to Middleton, and the parents were an hour or an hour and a half away from each other.

[99] Ms. Psiuk has asked for permission to move with the children to Middleton. I can identify no change in circumstances to trigger a best interests inquiry in this situation beyond her wish and desire to move to Middleton being visited upon the children. Her single-minded focus on the move, as it appears from the evidence, resulted in her analysing the educational and socialization needs of her children in a fashion that appears to be distorted by her own wishes and her perception of the needs of Mr. MacDonald and his children. Mr. MacDonald's children, she explicitly says, cannot move.

[100] She has, in my view in this proceeding, had a significant lack of appreciation for the needs of Kyle and Connor, as they relate to the benefits of their relationship with their father.

[101] The change in circumstances here, I would find, is her apparent failure to follow the terms of the Corollary Relief Judgment related to the requirement of communication and consultation (concerning developmental and educational issues) with Mr. Psiuk in a meaningful way. Her assertions to the effect of, "Well, I could move to Sheet Harbour under the terms of the Corollary Relief Judgment without Mr. Psiuk's permission", misapprehend both the provisions of the Corollary Relief Judgment related to joint custody and consultation regarding education and development, and also her broader obligation to her children to parent in a good faith and cooperative fashion that considers their best interests. Saying "I could move to Sheet Harbour" is not a constructive way of approaching this kind of issue.

[102] Her application to move with Connor and Kyle to Middleton is denied.

[103] I conclude it is in the best interests of Connor and Kyle to order that they be registered for school and reside within the boundaries of what is referred to as the

Dartmouth school system - schools feeding either Prince Andrew or Dartmouth High School. This is the school system and community Ms. Psiuk chose for her children when she moved to Dartmouth in 2007. The order will provide that the children reside within the boundaries of this system and attend these schools, unless expressly agreed to the contrary by Mr. Psiuk.

[104] The existing custody order will remain in place, subject to the above adjustment, it being understood that Mr. Psiuk will generally continue to provide after school care and supervision, as has occurred over the last year or more. I conclude that it is clearly in the best interests of these children to continue to benefit from the parenting arrangement they have enjoyed and thrived within in recent years. They are very close to both parents. They are attached to their mother. They are attached to their father. I conclude from Mr. Whitzman's reports that in some respects their attachment to their mother is more significant than that to Mr. Psiuk.

[105] I conclude that the best interests of these children lie in maintaining significant and meaningful contact with both parents in the community they are in and have thrived in. I am well aware in considering the best interests issue, in the context of an application for permission to move the children in circumstances such as these, that the status quo is not to be regarded as a default position. I have not regarded it in that fashion. I have considered the existing arrangement as part of the best interests consideration.

[106] Ms. Psiuk may decide to move to Middleton. That would polarize these issues for these boys and deny them the benefit of the level of involvement from both parents they have had. In that circumstance, were she to move to Middleton, the evidence indicates she would be continuing to travel to Halifax for work.

[107] Mr. Psiuk's plan in that circumstance would be to have his mother provide for the children's care when he could not, when he was flying. The boys are clear in indicating that they would prefer not to have that arrangement at this point. I have considered that. I have also considered that were Ms. Psiuk in Middleton, with her travel to work in Halifax, that it would appear that the children would have more contact with both parents if Mr. Psiuk had primary care. That option has the added significant advantage of maintaining the educational, extracurricular and social circumstances and benefit that they have thrived in. To disrupt the community, educational and social stability that they are thriving in on the back of

their mother's new relationship with Mr. MacDonald is not, in my view, consistent with their best interests.

[108] To be explicit, should Ms. Psiuk move to Middleton, Mr. Psiuk will have primary care of the boys. Ms. Psiuk will have access as is agreed to by the parties, and determined by this Court. However, I want to be clear in saying that, in my view, the best interests of these children lie in continuing the parenting plan that has been in place over the last number of years.

J. S. C. (F. C.)

Halifax, NS