SUPREME COURT OF NOVA SCOTIA
Citation: Clarke-Boudreau v. Boudreau 2013 NSSC 173

Date:20130605
Docket: SFHMCA-081210
Registry: Halifax

Between:

Sarah Jane Clarke-Boudreau

Applicant

and

Gilles Boudreau Respondent

DECISION

Judge:	Justice Carole A. Beaton
Date of Hearing:	April 24, 2013
Written Submissions:	By the Applicant, May 8, 2013 By the Respondent, May 8, 2013
Date of Written Decision:	June 5, 2013
Counsel:	Brian Newton, Q.C., counsel for Sarah Clarke-Boudreau LouAnn Chiasson, Q.C., counsel for Gilles Boudreau

By the Court:

[1] The parties came before the Court on April 24, 2013 for a hearing on the Wife's June, 2012 Application pursuant to the *Maintenance and Custody Act*, 2000 R.S.N.S c.160. The parties married in October 2006, separated in November 2011, and are the parents of two children who are presently five years of age and two and one half years of age. In the fall of 2012 the parties were able to resolve matters related to spousal support, partial retroactive child support and division of assets and debts. The remaining matters in dispute are fact-driven, and may be categorized as follows:

(a) what parenting arrangement is in the best interests of the children?

(b) what is the appropriate quantum of child support payable prospectively and retroactively (if any)?

(c) what is the appropriate quantum of Section 7 Guideline special expenses payable by each party prospectively and retroactively (if any)?

Background

[2] Both parties have been employed throughout the marriage and post-separation as paramedics, each working an eight day cycle of four shifts followed by four days off. From separation until the sale of the matrimonial home two months later, each party was involved in caring for the children as their respective employment schedules permitted. The Wife then moved to the home of her parents and devised a parenting schedule which saw her caring for the children and/or having them cared for by a third party for six days in each eight day work cycle, while the Husband cared for the children for two days of that eight day period.

[3] In March 2012 the Wife purchased a home very close to that of her parents; they have provided some child care and financial support to their daughter and grandchildren since the separation. In September 2012 the Husband purchased a home approximately one kilometre from that of the Wife, his intention being to

create a very short distance for the children between their parents respective homes.

[4] The parenting schedule was amended by the Wife in November 2012, after the Husband arranged to switch platoons to secure a work schedule opposite to that of the Wife, in order that he could gain closer to fifty percent of the parenting time. In actuality he gained an extra ten to twelve hours with the children in each eight day rotation.

[5] It is the position of the Wife that she should have primary care of the children. The Husband seeks a shared parenting arrangement. The Wife asserts the Respondent's position is motivated solely by money - that he seeks to have a shared parenting schedule to trigger a set-off calculation pursuant to section 9 of the *Federal Child Support Guidelines,* SOR/97-175, with a view to reducing his child support obligation.

[6] The Husband's position is that the best interests of the children are met by permitting them to spend an equal amount of time with each parent and to avoid the children being in the care of a babysitter during times when he is available to parent them. He proposes that as the parties have operated on mirror opposite shift schedules since November 2012, the amount of time when child care is currently required could be greatly reduced if the children rotated between each parent as each parent was off work every four days.

[7] As to financial arrangements for the children, the Husband has by consent made a previous lump sum retroactive payment of child support, certain monthly payments of child support (although not always in amounts consistent with the *Guidelines, supra)* and contributions to the children's special/extraordinary expenses . The Wife maintained that to the date of hearing the Husband continued to be in arrears of child support. The Husband expressed an intention to pay child support according to the *Guidelines, supra* as dictated by which parenting schedule the Court determines appropriate, although in advocating for an equal parenting plan he made a commensurate argument for child support calculated pursuant to the s.9 *Guidelines, supra* set off method.

Issue No.1 - What parenting arrangement is in the best interests of the children?

[8] The following provisions of the *Act, supra* are relevant to the question:

> 18(2) The court may on the application of a parent or guardian or other person with leave of the court, make an order
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> (a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or
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> (b) respecting access and visiting privileges of a parent or guardian or authorized person.
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> . . .
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> 18(4) Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to 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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> 18(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.

[9] The Wife testified that having the children reside primarily with her will best meet their needs. The Wife's evidence was that she has been the primary caregiver to the children during much of their young lives, because she was at home with them during her two maternity leaves and further, as the *de facto* primary parent post-separation she is positioned to continue that role. Pointing to the children's young ages, the Wife relied on *Foley v. Foley* (1993) 124 N.S.R. (2d) 198 (N.S.S.C) "...which in this Province is often cited as the source of a comprehensive listing of the factors which may assist a court in assessing a child's beset interests": *Burgoyne v. Kenny*, 2009 NSCA 24 (para.24).

[10] In *Burgoyne v. Kenny, supra* Justice Bateman said this about the list of 17 best interests factors enumerated in *Foley, supra*:

> [25] The list does not purport to be exhaustive nor will all factors be relevant in every case. Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors. As Abella J.A., as she then was, astutely observed in *MacGyver v. Richards* (1995), 11 R.F.L. (4th) 432 (Ont. C.A.):
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> > 27 Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. Deciding what is in a child's best interests means deciding what, objectively, appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention. Because there are stages to childhood, what is in a child's best interests may vary from child to child, from year to year, and possibly from month to month. This unavoidable fluidity makes it important to attempt to minimize the prospects for stress and instability.
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> > 28 . . . the only time courts scrutinize whether parental conduct is conducive to a child's best interests is when the parents are involved in the kind of fractious situation that is probably, in the inevitability of its stress and pain and ambiguity, least conducive to the child's or anyone else's best interests.
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> > 29 Deciding what is best for a child is uniquely delicate. The judge in a custody case is called upon to prognosticate about a child's future, and to speculate about which parenting proposal will turn out to be best for a child. Judges are left to do their best with the evidence, on the understanding that deciding what is best for a child is a judgment the accuracy of which may be unknowable until later events prove -- or disprove -- its wisdom. (emphasis added)

[11] Reaching a conclusion about what is in the best interests of the two children of these parties must be done without the benefit of knowing how their respective

futures will unfold, and must be done with the focus squarely on the children's needs while avoiding the "politics" of the relationship between the parents.

[12] During the hearing, the Wife agreed with the Husband's evidence that prior to separation he was actively engaged in the tasks of caring for the children and performed those functions entirely appropriately. Nonetheless, the Wife insisted that going forward an equal parenting arrangement would not be appropriate because she had been with the children more of the time during their brief lives than had the Husband, a "routine" she now wishes to maintain. The Wife advocated continuing the current parenting arrangement, altered only to the extent that moving forward it should reflect that over her eight day work cycle the Husband would have the children for an additional six hours, intended to address the Husband's concern about either party caring for the children immediately after completing night shift. Both parties testified the current parenting schedule requires engaging a babysitter, regardless of the Husband's availability, at a total cost of $525.00 per month.

[13] The Wife was adamant there were very few occasions post-separation when the Husband sought additional time with the children and only several times when he suggested a permanent schedule in the nature of a shared parenting regime. Appearing to contradict herself on the point, the Wife nonetheless also agreed that within days of separation the Husband identified his preference for the parties to share equal time with the children. She reported she had refused the Husband's suggestions of shared parenting and told him more than once to "take me [her] to court". During cross-examination the Wife confirmed that she believed she alone had the ability to dictate when access would occur and that unless the Husband mounted a legal challenge he would not gain additional time with the children.

[14] I am satisfied on the whole of the evidence that the Husband made his position regarding shared parenting well known to the Wife at the outset of the parties' separation, and further, that his position was not borne of an effort to influence the quantum of his child support obligation. It is troublesome that the Wife has clearly been of the view that litigation is the only vehicle through which the parties can explore differing positions about what might be the best parenting arrangement *for the children*.

[15] The evidence of both parties made it abundantly clear that the pattern of

contact between the children and both parents has been a function of a schedule dictated by the Wife, to which the Husband has acquiesced while awaiting the outcome of the litigation. As the Husband testified, he never imagined the issues in dispute would take so long to wind their way through the court system.

[16] There is no question the Wife is a loving and capable parent, however the entire tenor of her evidence demonstrated her perception of her own success as a parent being to some degree connected to the amount of time she has the children in her physical care and/or how she exerts control over their schedules when not in her care. An incident which served to illustrate this point was found in the parties mutually corroborative evidence concerning the Husband's post-separation request that the Wife agree to him securing more time with the children by switching his work platoon to acquire a shift schedule opposite to that of the Wife. During the hearing the Wife unabashedly acknowledged that she had previously threatened the Husband that she too would proceed to switch platoons if he achieved a switch, thereby effectively sabotaging his attempt to achieve more parenting time. Her rationale was that it would be "unfair" if the Husband was able to gain more time with the children than she would have and that "...if he can switch to gain more access, then I can switch to gain more access too". This approach failed to focus on the children, and instead emphasized the quantity of parenting time.

[17] Much of the Wife's evidence centered around her perception that her own worthiness as a parent justified continuation of the present parenting arrangement. This short-sighted view fails to attend to the possibility that the children could benefit from having their father be more than a secondary parental figure. The Wife clearly sees herself as being "in charge" of the children, with the Husband relegated to a supporting role.

[18] A year after separation the Husband achieved a platoon switch regardless of the Wife's lack of agreement. The Wife was then critical of the Husband for not achieving a switch earlier than he did, suggesting his failure to do so illustrated he was not truly motivated to spend more time with the children. I accept the Husband's evidence that ultimately he might have been able to arrange the switch three weeks to a month sooner than occurred, a negligible amount of time at best.

[19] Following the platoon switch by the Husband, the Wife created a new parenting schedule giving him an additional ten hours in each work cycle; when he

questioned why he would not then have the children for an extra day, she told him to either take the new schedule or revert to the old one, because he alone was responsible for having new work hours and should have thought about the consequences of his switch. Surely even the most reasonable of people would be hard pressed to "keep up" with such circular reasoning.

[20] I am satisfied on the evidence that the Wife has been motivated to thwart all efforts by the Husband to gain more time with his children. The Wife would have the Court accept that failure to seek additional time with the children has been strictly the Husband's shortcoming and that she has and will be prepared to facilitate requests for additional time. However, the Wife's evidence also corroborated that of the Husband regarding incidents that would suggest otherwise. By way of example, two such events were the Wife's refusal to let the Husband take the children to New Brunswick to visit his parents in the summer of 2011, and her pronounced upset over the Husband's spontaneous decision on a day in June 2012 to take the children on an outing of several hours before returning them to their babysitter, while the Wife was working.

[21] These incidents also highlighted the confusing and contradictory nature of certain aspects of the Wife's evidence, such as, for example, the frequency of the Husband's requests for additional time with the children. I am satisfied on the evidence that the Wife's focus has not been on the potential for the children to have additional time with their father, but instead on how to maintain her self-appointed authority over the children and all decisions regarding them.

[22] The Husband agreed with the Wife's counsel that between November 2011 and November 2012 the access schedule in place was for the most part realistic as it reflected both parties work schedules. He also agreed there were times when the Wife agreed to him having additional access, and times when she did not agree. He reported there were times when the two could "get along" and there were times when they could not, but they "mostly got along" and disagreements were the exception and not the rule. Despite her position on primary parenting, the Wife did agree with counsel for the Husband that if the parties were to equally divide their respective time with the children according to their opposite work schedules, it would make sense that the only time child care would be required would be for a few hours on the day(s) when one parent or the other was coming off night shift.

[23] Witnesses for both parties supported the Court's observation of a paucity of evidence that could impeach or even bring into doubt the parenting capacity of either party. For example, the Wife's mother's evidence contained no criticism of the Husband's parenting skills. The Husband's mother agreed with counsel for the Wife that she is a "very good mother". The Husband's witness Ms. Tracy Jay testified to having observed both parties actively engaged in the routine tasks of parenting (e.g. feeding, bathing, bed time) on those occasions when she visited their home after the birth of the parties' first child. Ms. Jay was complimentary of the parenting style of *both* parties even though she and the Wife suffered a falling out in their long-standing friendship several years ago.

[24] There was no suggestion in the evidence of the Wife that the Husband was somehow inadequate in his parenting style, much less incapable of caring for the children. The Wife agrees the Husband can appropriately parent the children when they are with him, which begs the obvious question: what would be the impediment to the Husband parenting during those times when the Wife is working but he is available and seeks to do so?

[25] There is simply no evidence whatsoever to call into question the suitability of either party to parent the children. There is no evidence that could persuade me anything other than a joint custodial designation as presumed in the *Act, supra* would be inconsistent with or contrary to the best interests of the two young children. There was an absence of any evidence whatsoever, much less any persuasive evidence, that spending more time with their father would be contrary to the children's best interests. Each parent is, on the evidence, able to provide structure and discipline and act as a positive role model; each parent has the ability and willingness to support the educational, cultural, social and physical development of the children; each parent lives in very close proximity to the other; each parent promotes the children having contact with extended family; each parent has a history of recognizing the value of and seeking the assistance of experts when appropriate (*Murphy v. Hancock*, 2011 NSSC 197). The children are entitled to benefit in a meaningful way from the capacities of both parents.

[26] The parents' work schedules ideally position them to facilitate a parenting schedule that will allow the children to enjoy an optimal amount of time with each parent, rather than with a third party. As an added bonus, each parent is ideally positioned to understand the pressures and demands of the other's employment as might occasionally affect a parenting schedule. In short, each party is equally

capable of contributing to raising the children, which is clearly to the benefit of the children, despite the fact their parents now live under separate roofs. An equal shared parenting plan is the most reasonable one for the children, the specifics of which should mirror the parties' respective work schedules (as advocated by the Husband) with the children rotating between the home of each parent every four days as each parent is off work.

[27] One could argue that the rigidity, inflexibility, and need to maintain control that the Wife's evidence demonstrated might not bode well for a shared parenting plan, in terms of her future ability to put her own interests aside when making decisions for or about the children that might have the effect of having them spend additional time with their father. The Wife presents as an articulate, intelligent and capable woman. The Court is confident that in finding an equal shared parenting regime to be in the best interests of the children, their interests will not be comprised in future once the Wife proceeds to focus on the new parenting arrangement. In that respect there are parallels between this case and observations made by O'Neil, A.C.J. in *Gibney v. Conohan*, 2011 NSSC 268:

> [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.
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> [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....
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> [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. (emphasis added)

[28] The Wife should approach the shared parenting arrangement as an opportunity to demonstrate going forward that she is able to act in what the Court

has deemed to be the best interests of the children. It is not necessary to require as part of the Order flowing from this decision that the Wife attend counselling as she testified she is already doing so, however she could undoubtedly benefit from that type of assistance in relinquishing the need to have, as between her and the Husband, total and sole "control" of the children. If she is unable to live by the new parenting plan she runs the risk that a future decision maker might determine her unsuitable to participate in a shared parenting arrangement, or indeed even to act as a primary parent.

[29] Regarding the making of major or significant decisions in relation to the children's overall development, in his evidence the Husband agreed with the Wife's counsel that during the marriage the Wife was the parent responsible for arranging preschool, recreational enrollments and health appointments for the children, which both parents have been involved in attending. The Husband was asked whether he would be agreeable to the Wife having the "final say" regarding major decisions concerning the children in the event any dispute simply could not be resolved. The Husband replied that he hoped as adults the parents could resolve any such disagreements. If not, the Husband would consult with his children to understand their views, but "ultimately Sarah has made good decisions so far" and so he would be agreeable to her having "the final say". In light of the Husband's position, the Order giving effect to this decision shall reflect the same. The Court's endorsement of this arrangement assumes that the making of any and all major decisions regarding the children will be predicated upon sufficient prior exchange of information and prior meaningful consultation between the parents. As a note of caution, the Wife will need to exercise her veto both rarely and judiciously in order to live up to her obligations in an equal shared parenting arrangement.

Issue No. 2- What is the appropriate quantum of child support payable prospectively and retroactively (if any)?

<u>Prospective child support</u>

[30] In light of the parenting arrangement created by this decision, section 9 of the *Guidelines, supra* must be given consideration in the analysis of the question of prospective child support. That section provides:

> 9. Where a spouse exercises a right of access to, or has

> physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
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> (a) the amounts set out in the applicable tables for each of the spouses;
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> (b) the increased costs of shared custody arrangements; and
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> (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[31] In the leading case of *Contino v. Leonelli-Contino*, [2005]35 S.C.R.217, Bastarache, J. identified the methodology to be employed to determine child support in a shared custody arrangement, while reminding parents that the amount of child support that should be paid does not necessarily change once the so-called "40 percent rule" threshold is met:

> 30 These comments may lead some parents to think that there should be an automatic reduction in the amount of child support in a case such as this one. In my opinion, there is only an automatic deviation from the method used under s. 3, but not necessarily *from the amount* of child support. As submitted by the mother, it is quite possible that after a careful review of all of the factors in s. 9, a trial judge will come to the conclusion that the Guidelines amount will remain the proper amount of child support (see, e.g., *Berry v. Hart* (2003), 233 D.L.R. (4th) 1, 2003 BCCA 659).
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> 31 Thus, not only is there no presumption in favour of awarding at least the Guidelines amount under s. 3, there is no presumption in favour of reducing the parent's child support obligation downward from the Guidelines amount (Wensley, at pp. 89-90).

[32] In the instant case it is apparent, based on the nature of the evidence provided and the submissions made to the Court, that the parties have assumed if shared parenting was determined to be appropriate, as is the case, then the Court would conduct a simple mathematical set-off as between the incomes of each parent. In *Contino, supra* the Court instructed trial judges to begin with the set-off as a starting point only, from which to extend the analysis:

> 49 Hence, the simple set-off serves as the starting point, but it cannot be the end of the inquiry. It has no presumptive value. Its true value is in bringing the court to focus first on the fact that both parents must make a contribution and that fixed and variable costs of each of them

> have to be measured before making adjustments to take into account increased costs attributable to joint custody and further adjustments needed to ensure that the final outcome is fair in light of the conditions, means, needs and other circumstances of each spouse and child for whom support is sought.). Full *consideration* must be given to these last two factors...
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> 50 It should be noted here that the Table amounts are an estimate of the amount that is notionally being paid by the non-custodial parent; where both parents are making an effective contribution, it is therefore necessary to verify how their actual contribution compares to the Table amount that is provided for each of them when considered payor parents. This will provide the judge with better insight when deciding whether the adjustments to be made to the set-off amount are based on the actual sharing of child-related expenses.[emphasis added]

[33] A simple set-off calculation does not attend to the discrete "conditions, means, needs and other circumstances" analysis required to reach a realistic assessment of the parties' child support obligations. I am unable to conduct that analysis in a precise fashion, although I do note given what is found in the evidence regarding the parties' similar incomes, their expenses and lifestyles, the nature and proximity of their respective residences, and their equal sharing of section 7 expenses (as discussed elsewhere herein), the Court can be reasonably satisfied that employing the straight set-off calculation of child support is likely not going to result in a figure that is wildly unrealistic or misrepresentative of the goal of ensuring a consistent standard of living for the children across both households.

[34] Given the information that is available to the Court, and recognizing the Wife did not advocate as her primary position a shared parenting arrangement, the prospective child support calculation can be represented as the difference in the Table amount payable on the income of the Wife ($63,434.50 per year per Exhibit 8) being $881.00, versus that of the Husband ($79,140.72 per year per Exhibit 11) being $1090.00. Therefore it falls to the Husband to make a payment to the Wife representing the difference ($1090.00 minus $891.00) which is $209.00.

[35] The Husband shall pay child support to the Wife in the amount of $209.00 effective June 1, 2013 and continuing on the 1st day of each month thereafter. The parties shall exchange the necessary tax information on or before June 1 of each

year to permit them to make any necessary adjustments to the child support amount going forward.

Retroactive child support

[36] The Husband was employed in three separate paramedic jobs at the time of separation. He was challenged as to why he left his part time, on-call employment with Praxis after separation, which had the effect of decreasing his income by approximately $6000.00. He indicated the job was such that he was required to be available to be on call during his days off from his other employment, which would affect his ability to be available to care for the children during his days off. A third job may have been realistic when the parties were parenting together rather than separately, but I am satisfied that as with his platoon switch, the Husband's decision to eliminate the third job was primarily motivated by his desire to maximize the time he could be available for the children. The Husband has now recaptured some of that lost income by renting a portion of his home to a friend.

[37] Both parties gave evidence about the child support paid between October 2012 and April 2013, and the Husband acknowledged that not all payments made by him were commensurate with the correct *Guideline, supra* amount. The Husband testified he did not make sufficient child support payments for several reasons: he was attempting to secure a parenting schedule that would allow him more time with the children, he was reorganizing his finances to address his monthly expenses in light of his purchase of a home, and he had been paying what he could each month. He described a "couple of tough months" and observed the litigation had carried on much longer than he had anticipated.

[38] The Wife submitted the Husband should have paid the table amount of child support from October 2012 to date. Absent any reasonable excuse, which the evidence does not sustain, I agree that the support is owed. While the Husband may not have agreed to the parenting schedule in place during that period, it cannot excuse his failure to pay in each month the Table amount commensurate with his income. The more difficult task relates to calculating the amount of retroactive child support owed.

[39] The Wife set out in detail in her Affidavit evidence those amounts she had received from the Husband representing child support paid between October 2012 and the time of hearing. On cross examination she agreed that some of the figures

she had provided were inaccurate to the extent that in October 2012, November 2012, March 2013 and April 2013 the Husband had in fact paid more than she had originally reported, and in two of those months the sum was significantly more than first reported. It was also clear from her evidence that when answering questions about payments received, the Wife was by times discussing a "global" payment that included child support, section 7 expenses and a retroactive component, because the Husband was providing the various funds to her in one lump sum payment in some months. The evidence of the Husband was more vague as to the exact amounts he had paid, and neither party explained the possible reasons for discrepancies between their respective figures. I did not form the impression the parties were being deliberately misleading or vague; it is recognized that it is not always an easy exercise to recount past payments with precision. The effect of this evidence was that it left confusion as to exactly what might be the precise amount of child support owing.

[40] The evidence established the Husband should have been paying child support in 2012 at the rate of $1185.00 per month and in 2013 at the rate of $1090.00 per month. Given the Husband's acknowledgement that he did not provide any child support payment in two months of the relevant period and did not pay the total requisite Guideline amount in some months, I am satisfied it is appropriate to fix child support arrears at $3000.00.

[41] There is no evidence at the time of preparing this decision as to what if any child support payments were made by the Husband in the month of May 2013; child support for that month would be properly calculated as owing given the timing of this decision as to the new parenting regime. If the table amount of support or any portion thereof is owed for May 2013, it too should be paid consistent with this decision, which requires payment of arrears to commence effective July 1, 2013 (running concurrently with the arrears schedule set out in the November 2012 Order still in effect). Arrears shall be payable on the 1st day of each and every month at the rate of $300.00 per month until paid in full.

Issue No.3 - What is the appropriate quantum of section 7 Guideline special expenses payable by each party prospectively and retroactively (if any)?

[42] The parties both spoke to their practise since separation of contributing equally to section 7 *Guideline, supra* expenses. The Husband stated there were many discussions with the Wife about financial arrangements in the days

following their separation, when they agreed to share equally the cost of daycare and soccer for the oldest child and to each make equal contributions to the children's RESP accounts. The Husband reported the RRSP contributions have been made by him consistently since separation. He reported sharing equally in the cost of child care and to making certain additional contributions to miscellaneous special expenses between November 2011 and November 2012, which the evidence established were modest amounts totalling at most several hundred dollars, effectively cancelled out by the Wife's evidence as to the shortfall in the Husband's contributions to section 7 expenses in January and February 2013. I am satisfied there are currently no arrears of section 7 expenses owing by the husband. As submitted by both parties, they shall continue to share equally in all section 7 expenses incurred on behalf of the children going forward. I note the new parenting schedule should also have the effect of reducing section 7 expenses related to child care given the reduction in the amount of time that such care will be required.

Summary and Conclusion

[43] Counsel for the Applicant shall prepare an Order giving effect to this decision, portions of which will be consented to as to form only in light of the decision, and including the following features:

1. The parties shall have joint custody of the children and engage in an equal parenting arrangement.

2. The parenting schedule shall be on a four day rotation. The schedule shall commence on the next of the Wife's four days off that occurs within ten days of the date of this decision, unless the parties are able to identify a different mutually acceptable commencement date. The Wife shall parent in her home during that four day period followed by the Husband parenting in his home for the next four day period coinciding with his days off and continuing thereafter in a four day rotation between the home of each parent.

3. The parties shall arrange for third party childcare for those periods when either party is unable to parent

immediately following completion of a night shift, or for any other periods mutually agreed upon when child care is needed to facilitate the parents' work schedules. The child care provider shall be an individual as agreed upon by the parents in advance from time to time. The rate of pay for the caregiver shall be agreed to by the parties from time to time and the cost shall be shared equally between them.

4. Either party is free to secure and fund themselves any childcare as they may deem necessary during their respective parenting time, provided the other parent is offered the opportunity to parent before a babysitter is secured.

5. Child support shall be payable by the Husband to the Wife in the sum of $209.00 on the first day of each month effective June 1, 2013.

6. Arrears of child support (totalling $3000.00 plus any contribution owed for May 2013) shall be payable by the Husband to the Wife in equal monthly installments of $300.00 commencing July 1, 2013.

7. Section 7 Guideline expenses related to the children shall continue to be shared equally by the parents going forward.

8. The evidence established the parties have previously worked through an issue concerning alcohol consumption and came to the conclusion that a condition as to abstention from alcohol during parenting time is appropriate for both parties; that condition shall continue.

9. The parties shall, where and when mutually agreeable, make such alterations or adjustments to the parenting schedule as may be necessary in the best interests of the

children from time to time.

10. The parties did not give any detailed evidence or submissions as to their respective positions regarding sharing of holidays or special occasions. Therefore, it is assumed they are prepared and able to address these matters and identify a mutually agreeable schedule going forward that will respect the equal parenting arrangement. Any detailed schedule may be incorporated in the final order as the parties may wish.

11. The Order may include standard clauses as to information sharing, access to records/information held by third parties and/or advance notice of vacation itineraries involving the children, if the parties believe this would assist them going forward.

12. The terms of the November 2012 Consent Order pertaining to retroactive support, RESP's, medical insurance and life insurance (paragraphs 2, 3, and 4) are not affected by this decision and remain in force.

13. The Order may include any other provisions that the parties believe might assist them going forward which did not previously form part of the relief requested at the hearing.

[44] In the event the parties are unable to agree on the matter of costs by June 30, 2013, they may contact the Court scheduling office to secure one hour on my docket for a hearing on the matter. Counsel for the Applicant shall file written submissions six days in advance of that date and counsel for the Respondent shall file written submissions three days in advance of that date.

J.