SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *E.L.(W.) v. E.L.*, 2019 NSSC 14

Date: 2019-01-15
Docket: 1201-068709
Registry: Halifax

Between:

E.L.(W.)

Petitioner

v.

E.L.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Cindy G. Cormier

Heard: June 11, 12, 13, 14, 15, 18, 19, 20, 21 and October 19, 2018, in Halifax, Nova Scotia in Halifax, Nova Scotia

Written Decision: January 15, 2019

Subject: Family law, custody, shared parenting, parallel parenting, access, child support

Summary: The primary issue in dispute was the parenting of two six-year old children. Both parties consented to joint shared care of their children with neither paying child support and both parties sharing expenses. The parties also agreed the children would be raised in the Greek Orthodox Christian faith (Catholic). They signed a Separation Agreement in June 2014 settling parenting and property issues. Prior to the parties' physical separation in July 2014, the children had lived from birth, over two years in a multigenerational home with their mother, father, grandmother and grandfather. The father's sister also lived in the home at times and she was also very involved with the care of the children.

The mother made various allegations against the father, accusing him of one incident of violence against his mother, his father and his sister. The allegations were not proven. Some months after making these allegations the mother alleged the father had sexually

assaulted her on two occasions. The father was charged with 2 counts of sexual assault in 2015 and found not guilty of either in 2017.

In July 2015, the mother sought primary care of the children with authority to make medical decisions on their behalf, and she also sought to limit the father's parenting time to supervised access and have him pay child support. She argued she had signed the parties' Separation Agreement under duress.

The mother also expressed concern about the different parenting styles the parties were using with the children. The mother advocated a more authoritarian style, and she suggested the father left much of the hands-on parenting to his mother and his sister who she described as more permissive with the children. The father's sister observed instances of the mother reacting inappropriately (overly emotional) to the children's comments or behaviour.

The mother had difficulty managing the children's behaviours and became concerned that mixed messages being sent to the children by the different caregivers was undermining her ability to manage them and interfering with her ability to meet her goals for raising the children. She believed the conflicting styles were confusing the children.

The father did not readily agree with the mother's point of view and he did not acknowledge a need for any changes to his, or his families' approach to parenting their children. The father accepted the mother's personal choices and that she had a different parenting style. He did not ask her to change her approach to parenting. The mother and father did not see eye to eye regarding parenting style and some major and minor developmental decisions involving the children's health, children's educational needs, children's religious and cultural upbringing predominantly, which resulted in significant conflict between the parents and resulted in various service providers being drawn into the conflict, including the children's doctors, school representatives, day care staff, religious leaders, and volunteers with the children's soccer association.

The mother repeatedly attempted to have the children referred for assessment and referred for treatment through play therapy or counseling to establish she was right. The court denied her motions prior to trial and has determined that given the level of animosity and distrust between the parties, it is not in the best interests of the children to have the parties attempt to communicate to reach consensus on major developmental decisions for the

children involving their health, education or their religious and cultural development.

The court finds that given the status quo which existed before the parties' separation, given the level of support available to the father and the children in his home, and mom's lack of similar support in her home and her lack of availability some evening(s) during the week and some periods on the weekend, and given the ongoing animosity and conflict it is in the children's best interests to spend more time in their father's home. It is also in the children's best interest that the father be authorized to make final decisions in the areas of health, education after he considers the mother's written suggestions. The father will have responsibility for ensuring the mother is kept up to date with respect to any major decisions.

Legislation: *Divorce Act*

Result: Divorce Granted

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Heard:	June 11, 12, 13, 14, 15, 18, 19, 20, 21 and October 19, 2018, in Halifax, Nova Scotia in Halifax, Nova Scotia
Written Release:	January 15, 2019
Counsel:	Philip Whitehead for the Petitioner Terrance Sheppard for the Respondent

By the Court:

Introduction

[1] Six-year old K and V are the sons of Mr. L and Ms. W. The boys enjoy soccer, basketball and many other activities. They have been described by various family members in very positive terms including beautiful, active, bright, smart, strong and kind boys. They have also been described by some as somewhat anxious, inattentive, aggressive and non-compliant. The children have been inappropriately burdened with conflict arising from the separation of their parents.

[2] Ms. W had a difficult pregnancy. Mr. L's mother and sister assisted Ms. W when she was placed on bed rest prior to her delivery and assisted her after delivery. The boys were born premature in March 2012 and were discharged home in May 2012. Mr. L's mother, the children's paternal grandmother moved in with the parties to assist Ms. W while she was on bedrest, and both the paternal grandmother and paternal grandfather resided with the family to assist with children after then were born and when they arrived home. Mr. L's sister, the children's paternal aunt also provided ongoing assistance after Ms. W was placed on bed rest, and she moved in with the family when Ms. W and Mr. L separated but Ms. W remained in the home. After the parties physically separated, Mr. L's sister arranged to stay with Mr. L, their parents and the children during Mr. L's parenting weeks.

[3] In early 2014 Ms. W expressed dissatisfaction with her relationship with Mr. L. In late May 2014 Mr. L accused Ms. W of infidelity. Ms. W denied the allegations. The parties separated in late May 2014 but they remained in the same home with the children, with Mr. L's parents and with Mr. L's sister until Ms. W left the home following a disagreement on or about July 10, 2014.

[4] Despite their unhappy differences, on June 30, 2014 the parties signed a Separation Agreement, both signed after obtaining advice from lawyers. The parties divided their property and Ms. W received an equalization payment of $97,500.00. With respect to parenting, the parties agreed to share care of the children equally based on but not limited to the following terms: agreements that neither would pay child support, that they would share expenses for the children, and they would raise the children in the Greek Orthodox Christian faith.

[5] After signing the Separation Agreement Ms. W expressed dissatisfaction with the shared parenting arrangement. Initially, Ms. W expressed concerns about Mr. L's mother and sister being overly involved or having too great an influence on the children. She also expressed concern that Mr. L had never been overly involved with the children and that he was unconcerned about the children's long term development.

[6] In February 2015 Ms. W alleged that she had witnessed incidents of Mr. L behaving in an aggressive or violent manner toward his family members including his father, his mother and his sister. There were many inconsistencies in Ms. W's various

statements about the events and Mr. L's family denied the allegations. Mr. L was not charged with any offence.

[7] At the same time, Ms. W reported that the children were behaving aggressively toward her and they were experiencing disturbances in their sleep patterns. Ms. W suggested there may be a link between the children's behaviours and the past and any ongoing aggression or violence in Mr. L's home. Ms. W wanted the children to be assessed and / or for them to attend play therapy or counseling. Mr. L denied all allegations and did not agree the children should be assessed.

[8] In May 2015 Ms. W reported two instances of past sexual violence against her to child protection services.

[9] In June 2015 Ms. W filed a Petition for Divorce and sought an interim order granting her interim primary care of the children with authority to have the children assessed and referred for services. She also sought to reduce Mr. L's parenting time, changing the terms to supervised parenting for Mr. L and she sought to have Mr. L pay her interim child support for the children including section 7 expenses

[10] In June 2015 Ms. W filed her petition for divorce.

[11] In July 2015, Ms. W gave a statement to police. Mr. L was charged with two counts of sexual assault and a prohibition against Mr. L having contact with Ms. W was put in place Ms. W contacted child protection services to advise them of the charges and

conditions and to request that Mr. L have only supervised parenting time with the children and that he be directed to attend anger management counseling.

[12] In July 2015 Ms. W filed her motion for primary care of the children.

DIVORCE

[13] I am satisfied that all jurisdictional requirements of the *Divorce Act* have been met and that there is no possibility of reconciliation. I am further satisfied there has been a permanent breakdown of this marriage. The parties have lived in Nova Scotia and they have continued to live separate and apart from one another in Nova Scotia for a period in excess of one year from the commencement date of this proceeding, including immediately before the proceeding. A divorce judgment will be issued.

ISSUES

[14] The following will be addressed:

a. What is the applicable burden of proof?

b. What factors have been considered in the credibility determinations which have been made?

c. What custodial arrangements are in the best interests of the children K and V pursuant to sections 16 and 17 of the *Divorce Act*?

i. Should the parties share decision making in relation to health, education, religion, or extracurricular programs?

ii. Should certain terms included in the Separation Agreement continue?

iii. Should the terms included in the Consent Order regarding School Placement be incorporated into the Final Order for ease of reference?

iv. Should terms included in the Interim Order regarding Medical Decisions continue?

v. What other terms should be added, if any?

d. What parenting schedule is in the children's best interest?

i. Is joint shared parenting or is parallel parenting appropriate given the level of conflict between the two parties?

ii. Should either party have primary residence and care of the children?

e. What is the appropriate amount of child support?

BEST INTEREST OF THE CHILDREN AND THE CIVIL STANDARD

[15] All court decisions involving children must be based on their best interests. In assessing the evidence related to best interests, this court must have regard to the standard

of proof and make credibility determinations. In **C.(R.) v. McDougall**, 2008 SCC 53 (CanLII), Rothstein, J. confirmed that there is only one standard of proof in civil cases - that is proof on a balance of probabilities. In every civil case, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must not be considered in isolation, but must be based upon its totality. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities test.

CREDIBILITY DETERMINATION

[16] Further, the court must assess the impact of inconsistencies on questions of credibility and reliability, which relate to the core issues. It is not necessary that every inconsistency be addressed, but rather a judge must address in a general way the arguments advanced by the parties: **C.(R.) v. McDougall**, ***supra***, paras. 40, 45 and 49.

[17] In **Baker-Warren v. Denault**, 2009 NSSC 59 (CanLII), as approved in **Hurst v. Gill**, 2011 NSCA 100 (CanLII), this court reviewed factors to be considered when making credibility determinations at paras. 18 and 19, which state as follows:

> 18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. c. Gagnon**, 2006 SCC 17 (CanLII), 2006 SCC 17 (S.C.C.), para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to

precise and complete verbalization:" **R. v. M. (R.E.)**, 2008 SCC 51 (CanLII), 2008 SCC 51 (S.C.C.), para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Novak Estate, Re**, 2008 NSSC 283 (CanLII), 2008 NSSC 283 (N.S. S.C.);

b) Did the witness have an interest in the outcome or was he/she personally connected to either party;

c) Did the witness have a motive to deceive;

d) Did the witness have the ability to observe the factual matters about which he/she testified;

e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: **Faryna v. Chorney** 1951 CanLII 252 (BC CA), [1952] 2 D.L.R 354;

g) Was there an internal consistency and logical flow to the evidence;

h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and

i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: **R. v. Norman** (1993), 1993 CanLII 3387 (ON CA), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Novak Estate, Re**, supra, at para 37:

> There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1966] 2 S.C.R. 291 at 93 and **R. v. J.H.** supra).

[18] I have reviewed the totality of the evidence. I have only considered the evidence that was properly before the court by way of exhibits, or as elicited while a witness

testified, and I have done so in conjunction with the submissions of counsel, and consideration of the applicable legislation and case law. I have assigned the civil burden of proof to Mr. L or Ms. W, as it relates to his or her application to vary the terms of the Separation Agreement signed by the parties in June 2014. Both have argued the circumstances have changed materially and the previous Agreement is not workable or complete as is. Each party bears the burden of proof in respect of their applications for custody and parenting time with K and V.

[19] I have also made credibility determinations. Where there is conflict in the evidence, I accept the evidence available from third parties including school officials, day care staff, medical professionals, and I rely on documentary evidence entered as exhibits including business records, electronic messages, audiotaped or videotaped information, and professional or third party reports or correspondence, over the affidavit or viva voce evidence of either Mr. L or Ms. W.

[20] There were many inconsistencies in the evidence provided by Ms. W. The judge who presided over the criminal matter involving the parties to this proceeding made findings of credibility based on much of the same evidence presented in this civil proceeding. I found many of the same inconsistencies that judge found when I reviewed Ms. W's evidence in this matter, "there were multiple inconsistencies in her (Ms. W's) evidence at trial, between her evidence at trial and prior statements, including prior statements made under oath, between her evidence and / or statements and records of

electronic communications as well as independently and automatically generated documents such as credit card statements and phone cards".

[21] I also find Mr. L, his mother, and his sister appeared hesitant to testify about occurrences which are most often described as part of a child's, especially a child between the ages of approximately two and four years, normal development such as an occasional "meltdown" or "tantrum", or an occasional moment of frustration resulting in some aggression toward another child or caregiver. Or arguably even part of an older child's development, although less likely and / or possibly and hopefully less frequent.

[22] I find that at trial and other times any minimization may relate to the lack of clarity with respect to what period the witnesses may have been asked to comment about. The children were just two years old when the parties separated in 2014 but they were six years old at trial.

[23] I find it is more likely the witnesses, including Mr. L, his mother and his sister minimized some issues which arose with the children while attempting to diffuse Ms. W's attempts to challenge Mr. L's skills and his involvement as a parent (or alleged lack thereof), and / or Ms. W's attempts to challenge his mother's and / or his sister's skill in caring for and therefore their continued involvement with the children.

[24] In early 2015 Mr. L and Ms. W agreed to exchange weekly reports. In his weekly reports to Ms. W, Mr. L did not provide much if any feedback regarding certain issues

Ms. W raised as concerns. He did not report about any nosebleeds a child might have had, or give much feedback about a child's irritated ear, or provide regular updates with respect to a child experiencing some anxiety at night or when being dropped off at school, and he did not report any concerns about the occasional tantrum or the occasional toileting accident a child may have had.

[25] However, Mr. L's reports were always respectful and appropriate. He did provide relevant updates to and make inquiries of Ms. W about the children. In every weekly report, even in those when he disagreed with Ms. W about some issue, he maintained a respectful manner. Based on Mr. L's weekly reports, his viva voce evidence and audiotaped evidence I conclude Mr. L either had support in place to assist him in composing his written responses to Ms. W, or he is best able to interact with Ms. W in written form when he would have time to consider his questions, requests and or responses very carefully.

[26] Ms. W's weekly reports were not always respectful and appropriate, which she has acknowledged to the court.

[27] I do not find Mr. L was quite as thoughtful, respectful or careful with his presentation and his responses when he testified in court or when he was audiotaped during a joint appointment he had with Ms. W.

[28] I conclude there has been ongoing animosity and distrust between the parties for almost four years, and there is no end in sight despite the legal advice they have received from counsel over the years and the direction from the court over the same period. I conclude that the parties have had significant ongoing and repeated difficulty engaging in meaningful in person communication and Ms. W has struggled with written communication on important issues involving their children.

[29] I find it is more than likely the case that the children exhibited some of the behaviours referenced by Ms. W while they were in their father's care. For instance, it is more likely than not, that one of the children experienced the occasional nosebleed, and that they both experienced some disrupted sleep or difficulty settling, in other words the child could not self soothe (which was acknowledged by Mr. L's sister during her interview with child protection services in early 2015), while in Mr. L's care or his families' care.

[30] I also find it is more than likely the case that Mr. L avoided reporting to Ms. W about behaviours that he and his family believed were within the norm (although possibly elevated at times), or any health issue they felt was minor and they were confident they could deal with based on experience or information or advice they had sought out. I find Mr. L sought medical attention at appropriate times and monitored situations not requiring immediate intervention. I find that if they avoided reporting an issue to Ms. W, they did so because they thought they were right in their assessment of the child's needs,

and because they wanted to avoid criticism, finger pointing, conflict and confrontation if possible.

[31] Ms. W did not always provide full disclosure of information to Mr. L, and I find she did not report for similar reasons. For instance, Ms. W failed to advise Mr. L in a timely way about the timing and level of contact the children were having with her new intimate partner, Mr. D and with his young daughter. Ms. W also failed to advise Mr. L that she had taken the children to her partner's church, a Baptist Church where the children "may have taken little pieces" of communion, as reported by Mr. D.

[32] In September 2015 Mr. L indicated he was unaware of who was caring for the children while Ms. W was working an evening during her parenting week, or when she was working on the weekend during her parenting week. Ms. W testified that her brother, sister, mother and her partner Mr. D, provided care for the children. At trial Ms. W was evasive when she replied to questions about whether she was still in contact with her family and if there was a schedule of who would be caring for the children. Ms. W is no longer in a relationship with Mr. D, it is unclear whether she still has meaningful contact with her family members and if so who, and it is unclear what her plan is for

[33] childcare when she works in the evenings or on the weekend.

WHAT CUSTODIAL ARRANGEMENTS ARE IN THE BEST INTERESTS OF K and V

[34] Parenting decisions pursuant to the *Divorce Act* must be based on the best interests of children. The *Divorce Act* provides the court with direction in section 17 (10) requiring the court to:

> ...give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[35] There is no presumption that it is in the best interest of children to be parented by both parents in an equal time sharing arrangement. The question is how much contact with each parent is in the best interest of these children given their ages, stage of development, personalities, educational and other needs in the context of the ability of each parent to carry out his or her parental responsibilities and obligations.

[36] The best interests principle has been described as one with an inherent indeterminacy and elasticity: **MacGyver v. Richards** (1995), 1995 CanLII 8886 (ON CA), 22 O.R. (3d) 481 (Ont. C.A.), paras. 27-29. The test is a fluid concept that encompasses all aspects of a child, including the child's physical, emotional, intellectual, and social well-being. I am concerned not only with the day to day needs of K and V, but also with their ability to mature, develop, and grow into confident, happy, and well-adjusted young men.

[37] The Supreme Court of Canada, in **King v. Low**, 1985 CanLII 59 (SCC), [1985] S.C.J. No. 7 (S.C.C.), directed the court to review the plans of rival claimants and chose the course which will best provide for the healthy development of the child. In **Foley v.**

Foley (1993), 1993 CanLII 3400 (NS SC), 124 N.S.R. (2d) 198 (N.S. S.C.), Goodfellow, J. provides a series of factors for courts to consider and balance in determining the best interests of children. I have considered all of these factors in the context of the evidence and the submissions of the parties including:

1. Statutory direction ***Divorce Act*** 16(8) and 16(9), 17(5) and 17(6);
2. Physical environment;
3. Discipline;
4. Role model;
5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;
6. Religious and spiritual guidance;
7. Assistance of experts, such as social workers, psychologists, psychiatrists, etcetera;

8. Time availability of a parent for a child;

9. The cultural development of a child;

10. The physical and character development of the child by such things as participation in sports;

11. The emotional support to assist in a child developing self-esteem and confidence;

12. The financial contribution to the welfare of a child.

13. The support of an extended family, uncle's, aunt's, grandparent's, etcetera;

14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. The ***Divorce Act*** s. 16(10) and s. 17(9);

15. The interim and long range plan for the welfare of the children.

16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and

17. Any other relevant factors.

The duty, of the court in any custody application is to consider all of the relevant factors so as to answer the question.

> With whom would the best interest and welfare of the child be most likely achieved?
>
> The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.
>
> Nevertheless, some of the factors generally do not carry too much, if any weight. For example, number 12, the financial contribution to the child. In many cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the financial contribution is to the welfare of that child, there would not likely be any real appreciation of such until long after the maturity of the child makes the question of custody mute.
>
> On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

[38] In addition, I agree the factors included in section 18(6) of the *Parenting and Support Act* are informative. They include the following:

a. the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

b. each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

c. the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

d. the plans proposed for the child's care and upbringing having regard to the child's physical, emotional, social and educational needs;

e. the child's cultural, linguistic, religious and spiritual upbringing and heritage;

f. the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can be reasonably be ascertained;

g. the nature, strength and stability of the relationship between the child and each parent or guardian;

h. the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

i. the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child; and

j. the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

   i. the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

   ii. the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[39] Turning to an application of these criteria to the evidence, I am satisfied that the physical environment, is sufficiently comparable in the homes of both parties.

[40] I am satisfied that both parents will support the involvement of both K and V in recreational events, and both are willing to attend events; to attend at school meetings and any other appointments or meetings for the children.

[41] I find Ms. W has exhibited poor decision making involving both K and V. She has jeopardized her relationships with the children's day care providers, the children's school teacher and their principal, the children's religious leaders, and the managers and coaches of the children's soccer club. Ms. W shall be entitled to attend at the children's day care, their school, their church and their after-school programs. Ms. W is entitled to receive any updates Mr. L receives about the children either from Mr. L or the above noted service providers, and he shall ensure Ms. W's name is provided as a contact person for any service provider dealing with the children or to the managers of any program the children are involved in.

[42] However, if Ms. W has concerns regarding the services being provided or if she has requests of any kind of the service provider, she must put her requests in writing to Mr. L and he must consider the concern(s) or request(s) and decide whether it is in the children's best interests to raise the concern with the service provider. Within one month he must provide a response to Ms. W in writing indicating if he intends to proceed, and if so, how he intends to proceed and provide updates with respect to the outcome. If he does not proceed then he must provide a rational about why he chooses not to proceed.

[43] With respect to the children's health care. Ms. W shall be prohibited from making or attending appointments involving the children's physical, psychological or emotional health. Mr. L shall be required to advise Ms. W in writing in advance of any such appointment, one full month's notice if possible with an explanation about the reason for

the appointment. Ms. W shall be entitled to provide Mr. L with a written note (no more than one to two-page summary), of any comments she wishes to make or concerns she wishes to raise about the issue(s) being addressed. Mr. L shall either provide Ms. W's written summary to the doctor or he shall summarize Ms. W's concerns for the doctor. Mr. L must then provide Ms. W with a written summary of any of the service provider's findings and recommendations within two weeks (or sooner) after any such appointment.

[44] Ms. W has damaged what might have been left of any meaningful co-parenting relationship she may have had with Mr. L, and with his extended family. Ms. W has done this while on a single-minded quest to obtain information to prove Mr. L and / or his family are somehow responsible, if not fully then at least partially, for behaviours she has witnessed while the children are in her care. I find it is more likely than not that Ms. W made false and she made exaggerated allegations to gain primary care of the children, medical decision making, and in order to limit Mr. L's parenting time and have him pay child support to her.

[45] I also find Mr. L has not always approached the problem as well as he could have. However, I find that any elevated response by Mr. L exhibited when in Ms. W's presence can be partially attributed to his ongoing efforts to defend himself against repeated allegations raised by Ms. W with third party service providers.

[46] Ms. W acknowledges she signed the Separation Agreement with the benefit of advice from counsel of her choosing. However, she argued she signed the Separation

Agreement always believing the children should be primarily with her but fearing she would not be able to convince a court due to the status quo which existed for the first two years of the children's lives. The evidence supports a finding that Ms. W recognized the children had spent the first two years of their lives with their paternal grandmother and paternal aunt providing significant hands on care for the children. Ms. W understood this may have an impact on her ability to convince the court that these young children should be placed with her as the "primary care parent".

[47] In *Burns v. Burns* 2000 NSCA 1 (CanLII), the Court of Appeal did provide some guidance with respect to identifying a "primary care parent". Justice Roscoe stated:

> 29.....the actual period of time spent with the children is not the only determinant. More importantly, in my opinion, is which parent has taken primary responsibility for all the important decisions concerning the health, safety, education, and overall welfare of the children, since the parties separated.....
>
> 30 In addition to the major matters, the primary caregiver is the parent who deals with the countless less significant, but nonetheless obligatory, daily arrangements for the children's clothing, haircuts, hygiene, extracurricular activities and everyday mundane affairs. Who would buy a present for them to take to a school friend's birthday party? Who makes the appointments and takes then to the dentist? Which parent is keeping the record of their vaccinations, and fills their prescriptions? Who goes to the parent-teacher interviews? Who chose the pre-school?.....

[48] Ms. W did take advantage of the bulk of the parental leave with the children but Mr. L also took some parental leave. Ms. W alleged Mr. L was not present with the children during his parental leave. Mr. L denied her allegation. I accept Mr. L's version of the facts in this regard.

[49] Both Mr. L and Ms. W worked outside the home after their respective parental leaves ended. Prior to separation, Mr. L's parents and sometimes his sister cared for the boys while their parents worked. Mr. L's mother and sister and sometimes his father, were heavily involved in supporting Mr. L and Ms. W with the children. Ms. W breastfed for an extended period, pumping her milk as the children were in hospital for approximately two months. The evidence points to the likelihood that it was Mr. L's sister and mother who responded to the children at night, giving them expressed breast milk while Ms. W rested. I find it more likely than not that the family worked together to assist with the boys and as a result, the children were bonded with all family members.

[50] The children started daycare shortly after their parents separated.

[51] The children reportedly attended day care the full five days during Ms. W's work week, with Mr. L observing that they continued to attend much of the time Ms. W was off on stress leave in or around September 2016 through November 2016. The children attended day care 3 days per week on Mr. L's parenting week and otherwise they were cared for by his mother, his father, and his sister. Mr. L's family continued to be heavily involved in the care of the boys during his week.

[52] There was a period between July 2014 and December 2014 when Mr. L preferred not to have direct contact with Ms. W and enlisted the help of his sister to discuss child related issues with Ms. W on his behalf. This was not an ideal situation, but perhaps understandable given the parties' recent separation. Mr. L's sister became less directly

involved in communicating with Ms. W in relation to the children sometime in December 2014.

[53] The parties started providing each other weekly written reports in or around January 2015. The reports were lengthy and dealt with many different issues. It is clear from the reports that both parents were very interested in planning for the welfare of their children.

[54] After Ms. W gave a statement to police in the summer of 2015, Mr. L was charged with two criminal offences and he was prohibited from having in person contact with Ms. W (until his conditions were dropped when he was found not guilty in June 2017). This added a layer of complexity for Mr. L but he remained involved and engaged. He continued to provide weekly updates through his lawyer and continued to take an active role in his children's lives. The children continued to spend one week with their mother and one week with their father.

[55] In *C.* (*J. R.*) v. *C.* (*S. J.*), 2010 NSSC 85, Justice MacDonald commented about the decision in *Burns*:

> [12] The decisions and activities described by Justice Roscoe are critical to a child's well-being and may be overlooked by a parent who has never been required to make these decisions or carry out these activities. **However, because the primary care parent in a relationship was frequently the female partner, this analysis has come under attack particularly from fathers. The division of labour within a family often evolves to place the female partner in the role of primary care parent.** It is easier to have one person attending to many of the above described parenting functions. **But these are functions the other parent can learn to perform. It may be more important to examine the nature and quality of the child's relationship with each of his or her parents than it is to merely add up the number of parenting tasks performed by**

each and assume the parent who performs more of these tasks is the "primary care parent" who should therefore have day to day care of the child. More illuminating might be answers to questions like these (my emphasis):

1. What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?

   I find Mr. L has put a plan in place to ensure he has the support necessary to care for the children.

   I find that the evidence raises concerns about Ms. W's ability to manage the children, concerns about her plan to provide care for the children when working an evening during the week, or on the weekend, concerns about her commitment to learning new parenting strategies, and concerns about her ability to respect or find ways for two different parenting strategies to co-exist.

2. Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent. The evidence is not clear in this regard.

   There is evidence to suggest Ms. W suffers from symptoms of anxiety and may be prone to react emotionally in situations.

Mr. L has been described as having strong feelings about certain issues. Both parents have strong opinions about the children and about parenting. No other evidence was provided.

3. Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?

The evidence suggests Mr. L and / or his family members may acquiesce to the children's demands as they prefer a more laid back approach to parenting and they have the resources to do so. There is no clear and cogent evidence to suggest they have done so to the detriment of the children.

There is evidence to suggest that at times Ms. W has been unable to control the children in various environments, including in the school setting. There is also evidence indicating Ms. W has overly high expectations of the children. I conclude Ms. W has not yet been able to assertively set appropriate boundaries and restrictions in her home.

4. Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?

I find there is ample evidence the children enjoy time with Ms. W. However, Ms. W has attempted to blame Mr. L and his family for any negative emotions shown by the children.

The evidence suggests the children are quite bonded with Mr. L's mother and sister and they seek them out for reassurance. There is also evidence the children enjoy being with Mr. L.

5. Is the parent empathetic toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?

I find both parents are capable of being empathetic toward the children. However, I am not convinced that either parent appreciates the negative effect and long lasting impact the animosity and distrust they have for each other can have on their children.

6. Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?

I find that if Mr. L is granted decision making authority for important issues he may have difficulty allowing Ms. W to have meaningful input into the decisions he makes. However, I find it is encouraging that Mr. L attended some parenting classes and I would encourage him to

participate in continuing parenting education to help him address his children's changing needs.

I also find it encouraging that Ms. W attended some parenting classes. Interestingly Ms. W attended classes for children who were older than her children's stated age at the time. I find that Ms. W has been unable to realistically consider the potential pitfalls of the ongoing conflict between she and Mr. L, and of having the children assessed or attend play therapy.

I find Ms. W has been unable to objectively consider the parties' past and recent history, and the notion that all the conflict may have had an impact on the children's perceptions of events, and that more than likely it would be impossible to rule out the concern that the children had been inappropriately influenced by either parent in order to determine an absolute "truth". I find the "best medicine" for the children would be to have their parents behave in a mature, understanding, patient and respectful manner toward each other, toward extended family and friends, and toward service providers.

7. Has the parent made changes in his or her life or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

> Both parents have indicated they have attended parenting classes and would not be averse to attending additional classes to address the children's changing needs. I recommend both attend ongoing parenting classes.

THE ABILITY TO NEGOTIATE AN EVER-EVOLVING PARENTING PLAN

[56] Assessment of the children: Interim motions were heard in relation to who should make decisions regarding the health of the children. Ms. W was denied final decision making authority regarding health care for the children without consulting Mr. L. The issue of the children being assessed and participating in play therapy or counseling continues to be a live issue for Ms. W despite comments made by this court previously. Most recently indicating she wants the children to be assessed to determine if both homes are adequate. Ms. W apparently fails to understand that this court is making the determination based on all the evidence, and a determination of that importance would never be made based on the children's comments about their parents, especially given the level of interference noted in this matter.

[57] School placement for September 2017: While in a relationship the parties chose to reside in a certain school district after considering the benefits of the local schools in that community. Mr. L remained in the former matrimonial home and in that school district. Ms. W moved after separation and Mr. L argued it was unclear whether she would be staying in her new community's school district for an extended period. It took considerable effort by Mr. L to convince Ms. W that it would be in the best interests of

the children to start school in a school district in which they had the most connections. I find Ms. W's arguments did not focus on the children's overall best interests, but I acknowledge the parties did come to an agreement in the end.

[58] Alternating Christmas holidays per Separation Agreement: I find it concerning that Mr. L needed to file a motion with affidavit evidence as he was concerned Ms. W would not alternate the Christmas holiday as agreed in their Separation Agreement. It concerns me that Ms. W even considered the possibility of not following the terms set out in the parties' Separation Agreement. The parties also settled this issue but not before Mr. L had to file a motion with the court.

[59] Ms. W withholding consent to travel: Ms. W took issue with Mr. L's plans to travel with the children. Despite the clear terms of the Separation Agreement, Ms. W initially advised Mr. L that she would not give her consent for the children to travel. Ms. W's refusal was ill advised and had the effect of potentially depriving the children of positive experiences with Mr. L and his family. Eventually agreement was reached but only after some months.

[60] Easter Holiday: There are other issues which continue to be contested even after there appeared to be clear terms included in the Separation Agreement. "Canadian" Easter vs Greek Orthodox Easter, parenting time has been raised as an issue. One year Ms. W had care of the children most of the "Canadian" Easter Weekend (not Thursday), and her parenting weekend also happened to fall on the Greek Easter weekend and so she

had the children for both. I understand that the following year Mr. L argued he should have both Easter weekends as well. Ms. W objected, arguing that if he insisted on the children being raised in the Greek Orthodox faith, then he should have them the Greek Orthodox Easter weekend and not the "Canadian" Easter weekend.

[61] Children being raised in the Greek Orthodox faith and community: Ms. W is challenging the importance of the children's Greek heritage and their involvement in Greek school and attendance for communion at the Greek Orthodox church. Ms. W is minimizing Mr. L's involvement and the importance of the Greek culture, religion and community to the children.

[62] Ms. W is also continuing to dispute whether various medical or health concerns require referrals to specialists, or may still require referrals to specialists despite the clear advice of the children's pediatrician.

[63] Mr. L now opposes shared custody, arguing that the parties cannot share decision making. He seeks a change to the terms of the Separation Agreement based on evidence that the parties are unable to co-parent. He seeks primary care and decision making for the children and he suggests Ms. W have parenting time with the children every second weekend with one evening and one "non-overnight" evening during the week she does not have parenting time but according to her work schedule.

[64] He proposes the specified holiday time in the Separation Agreement remain the same, with the sharing of special occasions such as Christmas, Saint Name Days, and the "Canadian" Easter weekend specified, while all other holidays are shared equally as agreed to between the parties. If any holiday falls on Ms. W's usual parenting time it will be necessary for Mr. L to make up any holiday parenting time to Ms. W.

[65] In the alternative, Mr. L has suggested that if the court does not grant him primary care of the children and decision making authority, then he is seeking a parallel parenting regime giving him the authority to make all major decisions for the children. He argues that the "context of this case reflects the exact circumstances imagined by Justice Forgeron in *Baker-Warren* v. *Denault,* in which joint custody would not be appropriate and one party should be granted decision-making authority.

[66] In *Dorey* Associate Chief Justice O'Neil states:

> (11) In a more recent "mobility" decision, Justice Forgeron ordered that a parallel parenting arrangement be established, notwithstanding a conflicted situation. In *Baker-Warren v. Denault*, 2009 NSSC 59 (CanLII), 2009 NSSC 59, at paragraph 42, she wrote:
>
> > 42 In addition, the factors set out in the second part of the test in Gordon v. Goertz 1996 CanLII 191 (SCC), [1996] 2 S.C.R. 27 must likewise be addressed in any parenting dispute. These factors are noted at para. 23 of Burgoyne v. Kenny, 2009 NSCA 34 (CanLII), 2009 NSCA 34, wherein Bateman J.A. states as follows:
> >
> > In para. 49 of Gordon v. Goertz, supra McLachlin J., as she then was, for the majority, summarized the applicable principles. An original custody determination is informed by the following considerations:
> >
> > 1. The judge must embark on an inquiry into what is in the best interest of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.

> 2. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
>
> 3. The focus is on the best interests of the child, not the interests and rights of the parents.
>
> 4. The judge should consider, inter alia:
>
> a) the desirability of maximizing contact between the child and both parents;
>
> b) the views of the child, if appropriate;
>
> c) the applicant parent's reasons for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> d) the disruption to the child consequent on removal from family, schools and the community he has come to know.

[12] Justice Forgeron went on and analysed the child's best interests by reference to (1) the allegation of parental misconduct: violence; (2) the allegation of parental misconduct : substance abuse; (3) the allegation of child alienation; (4) the maximum contact principle; (5) the impact of a possible move by a parent; (6) the state of the parent-child relationship; (7) the physical environment and financial circumstances of the child; (8) the child's educational, cultural, spiritual and general welfare needs; (9) the parent's approach to discipline; (10) the child's health needs; (11) the availability of family support; (12) each parent's time availability; and (13) the child's views, if ascertainable.

[13] Finally, Justice Forgeron concluded as follows:

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

> 124. The parallel parenting regime does not follow Dr. Landry's recommendations on a verbatim basis. Dr. Landry's expert opinion was exceedingly helpful, albeit dated by the time the trial concluded. I have veered from the recommendations based upon the totality of the evidence and to ensure the best interests of Kyra are met. The court cannot delegate its judicial role and responsibilities to health care professionals in any event. (my emphasis)

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

Shared Parenting

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

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

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

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

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

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

> 1. The proximity of the two proposed homes to each other is an important factor to consider. This is relevant to assessing how shared parenting will impact

> on all aspects of a child's life, including what school the child will attend, what recreational or social relationships will be disrupted or preserved and how available each parent will be to the other should shared parenting be ordered;

[67] The parties have had some disagreements with respect to the children's school placement, some discussion about which soccer club the children will continue to be enrolled with despite their established routine with one soccer club, they have had disagreements with respect to which Church the children will attend despite a prior agreement on this issue, many disagreements may relate back to the proximity of the two homes to services.

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

[68] Mr. L works a traditional weekday workweek, sometime between approximately 9:00 am to 5:00 pm. Ms. W works beyond 5:00 pm some evenings and most Saturdays. Mr. L has the support of his parents and sister. It is unclear what supports Ms. W has.

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

[69] Questions have been raised about Mr. L's availability for the children. I find that during his parenting weeks he is child focused and available. I conclude that his role with the children likely changed somewhat since Ms. W left the home but that his parents and his sister are still providing a significant amount of support to him in parenting the children in his home.

[70] It is unclear what Ms. W's plan is or what her parenting arrangements have been for the kids when she works late or during an evening or on Saturdays. Mr. D provided care previously but he left the relationship in the summer of 2018. Ms. W has stated she no longer lives with Mr. D but they remain friends. Mr. D provided evidence indicating "our breakup was not easy" but did not elaborate. It is unclear what if any involvement Ms. W's family has.

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

[71] The parties have had a shared parenting arrangement since Ms. W left the matrimonial home in July 2014. They have generally dropped the kids off and picked them up at day care or school. This has not had the effect of reducing conflict to an acceptable level.

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

[72] The court was not advised about any formal mid-week contact the children were having between July 2014 and October 2018. However, after the no-contact restriction ended, the parents attended the children's extra-curricular events during the others parenting week. There has been some minimal conflict with respect to the contact at some events.

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

[73] The biggest source of conflict in this matter is both parents' involvement in decisions related to the children's health, education, religion, recreational opportunities and decisions related to the extent of ongoing involvement by extended family.

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

[74] Ms. W has expressed concern about the different expectations in the homes and the negative effect this has had on the children. The parties have not cooperated in developing similar routines in each home to facilitate consistency in the children's lives. I find it is highly unlikely the parties could agree on similar parenting practices although some progress could be made on the implementation of similar routines in each home.

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

[75] Neither parent is able to communicate effectively to reach many of the joint decisions which need to be made in relation to the children. Mr. L is unable to fully engage with Ms. W, quite possibly due in part to well-founded fear of further unfounded allegations. Ms. W is unable to control her emotional reactions and be respectful of Mr. L's parenting choices.

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

[76] No evidence was provided.

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

[77] Ms. W will suffer financially if shared parenting ends and Mr. L is granted primary care. There will be little financial impact if a shared custodial arrangement continues.

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

[78] Both Ms. W and Mr. L gave evidence about their willingness to participate. What is unclear is whether either parent will implement the information presented to them.

> 12. The "elephant in the room" in many custody/access disputes is frequently the financial consequences of the court's custody/access order and the extent to which the allocation of parenting time creates a winner or loser. Three factors must frequently be assessed: a) whether a parent's proposed parenting plan is really about the child support consequences that flow from a shared parenting arrangement or the alternative; b) the manner in which a primary care parent can use his/her position to have power and control of parenting; and c) whether a parent will abuse the parenting opportunity as a result of anger or insecurity, for example. The parenting regime is often not changed to shared parenting because the parties are too conflictual, notwithstanding that the conflict may result from a power imbalance in the parents' relationship flowing from the parenting arrangement in place. Courts must be cognizant of this dynamic;

[79] The above noted factors are of concern based on the evidence in this proceeding.

> 13. An assessment of the parenting styles. That assessment should consider the questions posed by Justice MacDonald in C.(J.R.) V. C.(S.J.) 2010 NSSC 85 (CanLII), 2010 NSSC 85.
>
> See paragraph 44 for questions to be considered and the determinations made.

[80] In *Arsenault* v. *England*, 2017 NSSC 332 Justice Chiasson wrote:

> I have been referred to decisions on behalf of counsel for Ms. Arsenault in relation to shared parenting: *Dorey v. MacNutt*, 2013 NSSC 267 (CanLII), C.(J.R.) v C.(S.J.), 2010 NSSC 85 (CanLII), *Hustins v Hustins*, 2014 NSSC 185 (CanLII), and the multitude of cases referred to therein. I am well acquainted with the case law which suggests that a conflictual history between the parents may make a shared parenting arrangement unworkable.
>
> [24] The court must make a sound and reasoned decision in the best interests of Parker. Best interests was described by Judge Daley in the case of *Roberts v Roberts*, 2000 Carswell NS 372 (Fam. Ct.), where he stated:
>
> > "These interests include basic physical needs such as food, clothing and shelter, emotional, psychological and educational development, stable and positive role modelling, all of which are expected to lead to a mature, responsible adult living in the community..."
>
> [25] The custodial options that the court may consider were aptly described in the case of *V.K. v. T.S.* 2011 ONSC 4305 (CanLII), 2011, ONSC 4305, at paragraph 68:
>
> > "68 The term "custody" refers to parental decision-making and authority respecting a child. As the Supreme Court of Canada stated in Young v. Young, "the custodial parent is responsible for the care and upbringing of the child, including decisions concerning the education, religion, health and well-being of the child." Traditionally, the options respecting custody which the courts have considered have been sole custody or joint custody, which accords both parents full equal parental control over and responsibility for all aspects the care, upbringing and education of the child. In more recent years, a third option has evolved, referred to as "parallel parenting…"
>
> [26] I have considered the totality of the evidence before me and have concluded that a parallel parenting arrangement will be in Parker's best interests. Parallel parenting was defined in the *V.K.* case, *supra*, at paragraph 77:
>
> > "77 As noted previously, in recent years, the concept of "parallel parenting" has developed in Family Law practice and in the case-law. This phrase has been used to describe various types of parenting arrangements, and in fact there is some dispute in the academic literature about the precise definition of parallel parenting. **In some circumstances, parties and the courts have used the phrase "parallel parenting" to describe what is essentially a joint custody regime with additional, more specific terms to address particular areas of decision-making. In other cases, parallel parenting is described as a "sub-category of joint custody" which involves granting each party separate, defined areas of parental decision-making authority independent of each other**. For ease of reference, I will refer to this latter concept as "divided parallel parenting." (my emphasis)

> Parallel parenting as defined in the social science literature is not a manifestation of joint legal custody in the sense of the parents making major decisions jointly, but rather; parallel parenting involves **each parent making the final decision about a different domain.** In other words, each parent has sole custody, only over a different domain of decision-making." (My emphasis)
>
> [27] A number of cases in Nova Scotia have adopted the reasoning in *V.K. v. T.S., supra,* and have imposed a parallel parenting regime in appropriate circumstances. In this regard I refer to the cases of *Cooke v. Cooke*, 2012 NSSC 73 (CanLII), *Denninger v. Ross* 2013 NSSC 237 (CanLII), and *MacDonald v. Ross*, 2013 NSSC 117 (CanLII).
>
> [28] In the present case, I am referring to divided parallel parenting in relation to major developmental decisions. I am also satisfied that a continuation of the relatively equal sharing of Parker's time is in his best interests. Although the assessor has recommended a week on/ week off arrangement, I do not accept this schedule to be in Parker's best interests. He is about to commence primary and for such a young child, the commute necessitated by Ms. Arsenault's relocation would be too onerous fifty percent of his schooldays.
>
> [29] A number of factors are to be considered in determining whether parallel parenting with an equal sharing of time is appropriate:
>
> 1) The significant involvement of both parents in the child's life. The involvement of the parent must not only be temporal involvement (i.e. significant time) but must also include involvement in all aspects of the child's upbringing: including issues of childcare, education, and social upbringing.

[81] Both parents have been involved in all aspects of the children's upbringing.

> 2) Both parents have a close and loving attachment to the child.

[82] I believe both parents love their children. I am concerned about possible problems the children may have with attachment to either parent given the level of conflict thus far and if conflict continues between the parents.

> 3) Both parents have their own relative strengths and weaknesses. The child can benefit from each party's strengths and should have the best each of the parents have to offer. The relative weaknesses of each parent and the impact on the child can be minimized if the parallel parenting arrangement is appropriately structured.

[83] If Ms. W and Mr. L would both focus on spending quality time with their children when they are able and would not engage in a struggle to impose their beliefs on the other parent, a parallel parenting arrangement could work.

[84] However, Ms. W has attempted to impose her views forcefully in every realm of the children's lives. Ms. W either misunderstands or re-interprets advice or recommendations provided by service providers to suit her world view or goals. Ms. W often goes to extreme measures when she is unhappy with someone, including making a complaint to child protection services on the children's day care when a child had a rash, reporting the children's pediatrician to their governing body, complaining to the children's soccer program to name a few.

[85] I find Mr. L has the necessary support in place to assist him to think carefully about the choices he is making for the benefit of the children. Unfortunately, Ms. W does not have the same level of support or she is not able to make use of the supports available to avoid reacting negatively to stressors. Her outbursts or attempts to unilaterally impose her will or manipulate situations to meet her goals have had a negative impact on the parties' ability to co-parent.

> 4) The ability of the parent to independently make decisions that are in the child's best interests. Such situations are often marked by the complete inability for the parents to communicate and cooperate, but if working independent of one another, each has the capacity to make decisions that are child focused and well-reasoned.

[86] I believe Ms. W can make day to day decisions for the children during her parenting time (meals, bedtime, excursions with friends, non-religious events they attend, changes in social environment), also including but not limited to Ms. W being responsible for cutting the children's hair, or for making arrangements to have their hair

cut (this has been an issue for Ms. W), and for choosing and paying for an extracurricular activity she would like the children to attend.

[87] I find Mr. L has supports in place to help him make major developmental decisions for the children in the area of health, education and religion. I find he has structured his life to provide a stable base from which to consider the children's present and future needs.

> 5) The extensive conflict between the parties is a product of the parties' interactions and both parents are responsible to some extent for the level of conflict. A parallel parenting arrangement will ensure that the child is the focus of the decision being made, not the reaction of the other parent or the effect on the other parent. By removing the defensive reactions of each parent, both are better able to focus on the needs of the child.

[88] I find it is in the best interests of the children to have Mr. L seek Ms. W's input into any major developmental decision, and if there is disagreement then Mr. L shall have final decision making authority.

> 6) To provide either parent with joint custody with final decision making may well empower one parent to minimize and significantly impact the role of the other parent in the child's life. Separate and distinct from the myriad of cases where there are allegations of "parental alienation", this factor seeks to address a far more subtle form of marginalization of the other parent's role in the child's life.

[89] As suggested in ***Faber v. Gallicano***, Mr. L is cautioned not consider the authority to make major developmental decisions as a victory but as a very big responsibility. He has a tremendous responsibility to keep Ms. W informed and to allow her to have meaningful input. Ms. W, must abide by the final decision of this court and be a support to the children. She must not interfere with the decisions Mr. L makes on their behalf.

> 7) A highly structured parallel parenting plan will reduce the necessity for communication and thereby reduce the opportunities for ongoing parental conflict.

[90] As noted above, I find there is sufficient evidence to indicate it is not possible for Mr. L and Ms. W to negotiate issues related to the children's major developmental needs.

[91] I find it is in the children's best interests to have Mr. L make major developmental decisions for the children but he must ensure Ms. W has an opportunity to express any concerns she may have. I find it would be sufficient for Mr. L to provide a monthly update to Ms. W or to update her as needed with time sensitive information. The updates should be sent by Mr. L at the first of every month, by the 5th day of every month. Ms. W is expected to send an update to Mr. L or to respond to all relevant questions about the children within two weeks of receiving Mr. L's monthly update or questions. Any written correspondence, monthly reports or other communication between the parties should be concise, respectful and relate to matters involving the children only.

[92] The exception would be any health-related appointments where Mr. L is obligated to provide at least one month's notice in advance, seek Ms. W's written comments about the issue and ensure the doctor is aware of Ms. W's concerns or questions, and provide Ms. W with an update no later than two weeks following the appointment but as soon as possible.

[93] Unfortunately Ms. W will find her decision making authority quite limited. Mr. L will have authority over all major developmental areas. I conclude Ms. W has had significant difficulty focusing on the children's best interest when attempting to make

joint decisions with Mr. L for the benefit of the children over the past four years, and it is in the children's best interest that her decision making authority be limited.

[94] Unlike the case of *Denninger v. Ross, supra*, at paragraph 47 wherein the court states:

> "47 While the parties are no longer able to parent jointly, the solution to their conflict and lack of communication will not be found in arbitrarily putting one parent solely in charge of the children, but instead in making each parent responsible for separate areas of decision-making."

[95] This decision is not arbitrary. Ms. W has shown she has not been able to keep the children's best interests in mind or take reasonable and reliable advice when considering issues related to their health (will not follow their pediatrician's advice), their education (will not follow the school's advice), and their religious upbringing (shows no awareness of the children's need for consistency in their lives and no awareness of Mr. L's cultural and religious beliefs).

[96] There is a risk Mr. L will be unable and possibly not willing to incorporate Ms. W's ideas or wishes when making decisions but the risk to the children is less than the risk of allowing Ms. W to continue to make demands for intervention without regard to any advice or without a realistic appreciation of the children's needs.

[97] Of the two parties, and especially with the support of his family, I find Mr. L is best able to consider the children's realistic needs and their best interests when making decisions about their health, education, and about religion.

WHAT PARENTING ARRANGEMENT IS IN THE BEST INTERESTS OF THE CHILDREN? THE PARTIES' POSITIONS

[98] Ms. W:

a. As noted previously, Ms. W filed a motion in July of 2015 for interim primary care of the children and decision making in relation to medical issues. Ms. W also sought to have Mr. L's parenting time supervised and that he pay child support.

b. However, in advance of the final trial Ms. W sought a parallel parenting regime with equal parenting time and equal input into decisions made in relation to the children.

c. Specifically, Ms. W sought a structured and comprehensive parenting plan which she felt would be in the best interest of the children, which she believed should include the following terms:

    i. The status quo would be maintained regarding parenting time, week on / week off.

    ii. An order that the parties attend joint mediation counseling with a therapist with the hope of addressing how they can respond cooperatively to the behavior the children exhibit while in her care.

Ms. W acknowledged she had been steadfast in her belief that the children have behavioural issues, and she acknowledged there were trust issues between the parties but she pointed out that despite those issues she did not unilaterally reduce Mr. L's parenting time.

Ms. W indicated she was hopeful they would develop trust and Mr. L would acknowledge the children exhibit some behaviours from time to time and he could work with her to develop and share strategies to co-parent consistently, and make joint decisions about medical concerns which arise rather than avoid discussing them.

iii. An order confirming Dr. S2's and Dr. S's involvement if they consent.

iv. An order specifying the parties must follow Dr. S2's advice to have the parties meet with Dr. KP to work on co-parenting.

v. An order to include a direction that they will follow the recommendation of Dr. KP regarding the children.

vi. An order incorporating the Consent Order regarding schooling, this would be for ease of reference I believe.

vii. An order allowing Ms. W to take the children to her church on her weekends.

viii. An order that the children continue to attend Greek school.

ix. An order that the children will continue to attend Kids & Company Daycare.

x. An order that the children will continue attending extracurricular activities, but that costs related to soccer and basketball in the 2017/2018 season be waived.

xi. An order which includes a dispute resolution mechanism.

[99] Mr. L:

a. Primary care and custody of the children.

b. Parenting time for Ms. W every other weekend as well as one non-overnight evening during the week, to be determined according to Ms. W's work schedule. Mr. L indicates that Ms. W's new work schedule "does not line up nicely with the children's school schedule" and provides an outline in his brief which was submitted May 18, 2018:

Tuesdays 8:00 am to 5:00 pm;
Wednesdays 11:00 am to 7:00 pm;
Thursdays 1:00 pm to 9:00 pm;
Fridays 8:30 am to 6:00 pm;

Saturdays 8:30 am to 5:00 pm.

c. The holiday schedule outlined in the parties' Separation Agreement continue, with clarification that the parties will alternate the "Canadian" Easter holiday and not the Greek Orthodox Easter weekend.

d. The children continue in their current school placement (and in future attend the feeder schools in that school district), and they continue to attend their current Excel program.

e. If there is a need for day care for PD days or in the summer months, that the children attend Kids & Company Daycare.

f. Decision making authority for the children's health, religion, and education.

g. An order that Ms. W must not discuss medical issues with the children and she cannot take the children to doctor's appointments.

h. An order that Ms. W must not make negative comments about Mr. L and his family in the children's presence,

i. An order that either party may attend and participate in the children's extracurricular activities.

[100] Mr. L has argued that joint shared parenting or divided and shared parallel parenting will not work. Mr. L has observed that Ms. W does not want to be in his presence and she claims to be afraid of him. He reminded the court that Ms. W has

accused him of being violent and untrustworthy. He reminded the Court that Ms. W threatened his liberty and his parenting time with the children.

[101] Mr. L notes that Ms. W is still seeking that the children be assessed and it is his position that she seeks an assessment to obtain evidence to pursue sole custody of the children. He notes there is "zero" evidence of any issues of any significance with the children when they are in his care.

[102] Mr. L argues that Ms. W has failed to effectively deal with the children's behaviours when they are in her care or she is exaggerating her concerns about the children. He suggests she is failing to cope effectively with every day issues which arise when she is parenting the children. Mr. L noted that he had not pointed a finger at Ms. W or her family to explain any issues involving the children, but Ms. W insists he and his family are responsible or are the key to resolving various issues Ms. W has identified with the children while they are in her care.

[103] Mr. L notes that day care staff, school staff, the Greek School staff have all indicated the children's presentation is within the "range of normal". Furthermore, he has noted that the children cope well when attending extracurricular programs such as soccer. I accept this to be the case.

[104] Mr. L argued that he did not highlight for the court all the changes in the children's lives while with Ms. W, including: Ms. W's residential moves, the introduction

to the children of members of Ms. W's previously estranged and allegedly abusive extended family, or her new relationship with Mr. D and the introduction of his daughter in the children's lives, or the introduction of two new churches and communities, the introduction of a third language, as reasons to limit Ms. W's parenting time. Mr. L argues that he seeks to change the parenting arrangement because Ms. W is unable to co-parent with him.

[105] The evidence clearly points to there being an issue with either Ms. W's parenting or the conflict between the parties or most likely both. In any case, the risk to the children must be minimized as much as possible while still allowing as much contact as possible with both parents. I considered imposing supervised parenting time for Ms. W, or eliminating overnight visits. However, I am hopeful that a parenting schedule which: reduces Ms. W's contact during the weekdays; places the children with dad to ensure attendance at Greek school; recognizes the need for flexibility if the children are not attending school or Greek school (summer or reach age 12); or flexibility if Ms. W's work schedule changes, will provide the children with more stability and predictability and will help the children feel more safe and secure.

CHRONOLOGY OF THE RELATIONSHIP OF THE PARTIES AND THE CONFLICT REVOLVING AROUND THE CHILDREN AFTER SEPARATION

[106] Like the case of *Faber* v. *Gallicano*, 2012 ONSC 764, this case "is a fact specific case and it warrants a much greater inclusion of some of the relevant testimony and evidence into my reasons for judgement." As with the case of *Faber* v. *Gallicano*,

although I have taken into account the whole of the evidence, “I have also only highlighted the evidence and those particular instances that form the central foundation for my findings”

[107] The parties began their relationship in the summer of 2005.

[108] Ms. W had a strained relationship with her parents and moved out of her parent’s home in October 2005.

[109] Ms. W indicated that she left a violent and abusive home environment, and that on at least one occasion child protection services removed Ms. W’s two younger sisters from her parent’s home. The child protection business records were not entered as exhibits and Ms. W’s family did not testify. However, Ms. W indicated in correspondence to an extended family member that she left her home because: “1) my dads a drunk and crazy 2) my mom takes our money and no one has any idea where it all goes 3) I was always abused physically and emotionally (ex two black eyes) 4) Just Johnnie alone beat me up more than anyone 5) My mom tried to marry me off for money 6) Both my parents tried to physically keep me home from going to work becuz I wouldn’t give them money anymore 7) THESE ARE ONLY A FEW EXAMPLES”. Ms. W denied that she authored the electronic message. I do not accept her suggestion that someone other than her wrote the message.

[110] Mr. L indicated that Ms. W's father threatened to kill both parties with a knife, and on one occasion Ms. W's brother "warned him" to "sleep with one eye open, bitch". Given that Ms. W was approximately 18 years old when she left her parents' home and given the circumstances surrounding her leaving the home, I accept there was animosity toward Mr. L.

[111] Ms. W moved in with Mr. L in late December 2005 or in early January 2006.

[112] Mr. L began working at CIBC in February of 2006.

[113] The parties married in October 2006. Ms. W's family did not attend the wedding.

[114] Ms. W began working at CIBC in a similar capacity as Mr. L in 2007.

[115] In November 2011 Ms. W and Mr. L found out Ms. W was pregnant.

[116] Ms. W had a difficult pregnancy and Mr. L's parents moved in with them to help before the children were born.

[117] Mr. L indicated that his mother and his sister took care of Ms. W when she was pregnant and on bed rest. Ms. W's family were not involved. He explained that he and Ms. W waited until his parents retired before they had children.

[118] The boys, K and V were born on March 23, 2012, prematurely at 29.5 weeks and stayed in hospital for just over two months. There is no question that caring for

premature twin boys would be a rewarding but also sometimes a demanding task for all involved.

[119] The boys came home from the hospital on May 27, 2012. Ms. W took a ten month leave from work and thereafter Mr. L took a two-month leave. Mr. L's parents lived with the parties and the children.

[120] Ms. W's family did not attend the birth, or the children's baptism, or their first or second birthday parties or their name day celebrations. Mr. L indicated that Ms. W's family members were not involved in the children's lives while the parties were together.

[121] The children were baptized in June 2013 in Las Vegas at a Greek Orthodox Church.

[122] Mr. L indicated that it was in February 2014 that Ms. W first raised the possibility that the children should attend day care. She felt they needed to have more interaction with other children, rather than spend their days with his family while the parties were at work. Mr. L disagreed and stated the opinion that the children were benefiting from their daily interaction with his parents and that the parties were saving money by having his parents care for the children.

[123] Police business records indicate Ms. W provided a statement indicating that on or about March 26, 2014 (her birthday), she decided to leave Mr. L. She explained she made the decision following Mr. L's refusal to help her shovel their driveway in the early

morning of her birthday. Ms. W indicated that Mr. L refused to help her and he suggested to her that she ask his mother to help her shovel. She stated "I just had to build enough courage up to leave him without losing my kids".

[124] Mr. L, and his family members noted that Ms. W's behavior appeared to change in or around March 2014. They testified that they observed Ms. W was spending more time on her cellular telephone and taking more care with her appearance (she talked about getting a Brazilian wax). Whether Ms. W was involved in a relationship in March, April, May, June, July or August 2014 is not an issue this court must determine. Many factors influenced Ms. W's decision to leave her relationship with Mr. L. The question this court must ask is what custodial arrangement is currently in the children's best interests given the children's particular history and the children's current circumstances.

[125] Mr. L reported that the children were assessed in March 2014 by the IWK Hospital Perinatal Centre follow up program and that the children "passed with flying colours" and were discharged from the follow up program. There is no evidence to contradict this statement. There is no medical evidence, or other evidence to suggest that the children have any outstanding special needs of any kind.

[126] However, I find that the parties have engaged in ongoing conflict which poses a significant risk to the children's emotional health.

[127] Situational conflict or heightened emotion when parties first separate is often of concern to courts but in many cases this dissipates once both parties start to rebuild their separate lives. I find there is no end in sight when considering the parental conflict between these parties.

[128] Mr. L acknowledged that Ms. W did raise the possibility of attending counseling in April 2014. He explained that at that time he was unclear why they would need counseling. I conclude Ms. W had made her decision to leave Mr. L but she had not told him why. In retrospect, the parties could have benefited from some intervention to address Ms. W's disillusionment with the Lazaros' families' way of life and her concern that the children would end up just like their father (which Ms. W perceived to be a negative outcome), if she did not limit his, and his families' contact with the children.

[129] Mr. L stated that the parties' relationship came to an end when he found intimate electronic messages sent between Ms. W and Mr. D in late May 2014. He denied any threat to hurt himself after finding the messages. The court need not determine this issue as there is no evidence of any current concern that Mr. L plans to harm himself or anyone else. Mr. L does acknowledge that the parties' argued about the alleged messages when he found them in late May 2014.

[130] In her affidavit filed June 1, 2016 Ms. W indicates she was in a relationship with Mr. D beginning in the "late Fall of 2014", and she no longer had her cellular telephone from that period and "text message event details, which include dates, times, and

telephone numbers of sent and received text messages, are retained for approximately 150 days…".

[131] In his affidavit sworn June 16, 2017 Mr. D stated that he had started dating Ms. W in the fall of 2014, and he confirmed he moved in with her and he was living with Ms. W (he indicated in a supplementary affidavit filed in April 2018 that they began residing together in the summer of 2016, although at one point in his evidence he had indicated they began residing together in May 2016).

[132] Mr. D swore an affidavit indicating he could not remember what his telephone number was between March 1 and May 15, 2014 and that he did not remember sending or receiving text messages to or from Ms. W between March 1, 2014 and May 15, 2014. Mr. D indicated he obtained a new telephone number in 2014. In his viva voce evidence, he drew a distinction between text messages, Facebook messages and other forms of messages and admitted to some form of electronic communication with Ms. W in the late Spring of 2014. I believe that in late May 2014 Mr. L found explicit text communication between Ms. W and Mr. D.

[133] Ms. W's testimony heard in September 23, 2015 was somewhat inconsistent in that Ms. W testified "we started talking in September but we were dating in December" clarifying it would have been in 2014.

[134] Ms. W testified that she waited until May of 2015 to introduce Mr. D to her children. I do not accept Ms. W's testimony with respect to when she started dating Mr. D or when she introduced her children to Mr. D. There was information received from one of the children's doctors indicating Ms. W was taking the children to see their doctor with her "new boyfriend" by early 2015 or sooner.

[135] Mr. L argued that Ms. W accused him of using "some sort of application to send fake text messages on her phone", and he claims those allegations were "false and vexatious". He also denies any allegation he "followed her around". I can see no reason why Mr. L would send fake text messages to Ms. W's telephone and I do not accept her suggestion that Mr. L did so. It is more likely than not that Ms. W and Mr. D were involved in a relationship earlier than the fall of 2014. It is not necessary for me to comment any further about the issue other than to indicate that I accept Mr. L's testimony with respect to finding the text messages and asking Ms. W to leave after he found them.

[136] However, it was Ms. W who first identified that the relationship should end and started planning how she would leave. She had not yet told Mr. L about her decision but was seeking information about how to go about leaving the relationship "without losing her kids", and has suggested she thought they should be with their mother.

[137] Mr. L indicated he wanted Ms. W to leave their home in May 2014 but she refused.

[138] The parties separated in late May 2014 (ended their intimate relationship), but continued to reside in the same home with Mr. L's parents and his sister, who moved into the home full time when the parties decided to separate and stayed in the home full time until Ms. W left on or about July 10, 2014.

[139] I accept that after May 2014 and possibly before then, Ms. W sometimes referred to Mr. L as an asshole or a pussy in his mother's and the children's presence. I also accept that after Mr. L asked Ms. W to leave the home, he preferred to spend time with the children when Ms. W was not present and that he, and / or other members of his family also said unkind things about Ms. W which was more than likely overheard by the children. I believe the children did at times, and may still refer to their mother as a "bitch" on occasion.

SIGNED SEPARATION AGREEMENT

[140] The parties signed a Separation Agreement on June 30, 2014. The agreement addressed the issue of custody of their twin boys, K and V. The parties agreed to a shared custodial arrangement, neither pay child support, they would share extra expenses, and they agreed to raise the children in the Greek Orthodox Christian faith, to name a few of the terms for parenting.

MS. W LEAVES THE MATRIMONIAL HOME

[141] Ms. W left the home she had lived in with Mr. L, the children, and his family in early July 2014 following a dispute between the parties. The parties argued about whether Mr. L had locked away some of Ms. W's belongings in a room with his belongings prior to him taking a trip to Las Vegas. The police responded to the dispute but neither party was charged with an offence.

[142] After leaving her home with Mr. L, Ms. W purchased a two-bedroom condominium and the parties started a shared parenting regime.

[143] Ms. W indicated that she reconnected with her family of origin. It is unclear whether the alleged past abuse and conflict was still of concern to Ms. W.

CHALLENGE TO THE VALIDITY OF THE SEPARATION AGREEMENT

[144] Ms. W claimed she left the relationship due to Mr. L's behavior and his lack of involvement with the children (or his family's overinvolvement). Ms. W claimed she felt compelled to sign the Separation Agreement when she did.

[145] She explained that the children had lived with the parties and Mr. L's parents since birth, and that she was living with Mr. L and his family when she signed the Separation Agreement. She indicated she was afraid the court would not grant her more than shared custody based on the circumstances existing prior to separation or the "status quo".

[146] I accept that Ms. W would have preferred having primary care of the children, having final decision making authority, and having Mr. L pay child support to her on

behalf of the children. I do not accept that Ms. W was afraid of Mr. L, or his parents for any other reason than the strong claim she believed they had to continue to be meaningfully involved in the children's lives.

[147] I believe Ms. W no longer wanted to be in a relationship with Mr. L for several reasons, including that she did not feel he was living up to her standards as a husband or as a father to their children. I find that at some point, either before or after separation (it appears that at times her position changed depending on the circumstances), Ms. W decided she no longer wanted Mr. L and his family to have such a significant influence on how "her" children would be raised. She appreciated and relied on their assistance but wanted them to do things her way.

[148] Mr. L objects to Ms. W relying on events alleged to have occurred prior to Ms. W signing their Separation Agreement in June 2014, to try to change the terms of their Separation Agreement. Due to the number of inconsistencies, I place very little weight or no weight on the allegations of abuse made by Ms. W about Mr. L, to prove Mr. L is aggressive or abusive. In any event, even if those events had occurred, and I find it more likely than not that they did not occur, this court would have been considering how to move forward to help the family address the issue and not necessarily limiting their contact with the children. However, the fact that the allegations were made, the number of inconsistencies, and the timing of the allegations raise a concern about Ms. W attempting to manipulate and achieve her own goal by fabricating evidence.

[149] I believe Ms. W signed the Separation Agreement as she was afraid she would not do better than shared custody if she went to court in June 2014. However, I find Ms. W's decision to settle the matter rather than risk a less certain outcome in court does not amount to coercion. Ms. W made an informed decision and she signed the Separation Agreement knowing the history of her relationship with Mr. L and the circumstances which existed at that time. Both parties had the benefit of advice from legal counsel.

CHANGES IN CIRCUMSTANCES AFTER THE SEPARATION AGREEMENT WAS SIGNED

[150] Mr. L provided evidence of the parties' amicable negotiations in the summer of 2014, including the division of their assets, payments for the children's extracurricular activities, agreement to enroll the children in daycare, and the payment of child care expenses.

[151] However, there were some concerns identified by Ms. W prior to or shortly after the parties' separation. For instance, Mr. L's sister indicated Ms. W contacted 811 in June 2014 as they had had a heated discussion about "potty training the children". Ms. W alleged the argument happened May 11, 2014.

[152] The children had turned 2 years old in March that year. Toilet training can be a controversial topic. Although children could be ready to toilet train at age two, these children were born premature. It is possible they would not be able to physiologically monitor and to control waste removal from their bodies, or have developed the gross

motor ability or fine motor abilities necessary for the task. Then there are the mental and emotional aspects.

[153] It is generally known, that most advice given about toilet training revolves around telling parents they should offer guidance and encouragement in a consistent, calm manner and let nature take its course. I find that whatever the right advice might be, a "heated" discussion between caregivers would not be in the children's best interests.

[154] Mr. L offered evidence of how he assisted Ms. W relocate to her new home after they had a disagreement in July 2014.

[155] Ms. W testified and she indicated that she reconnected with her immediate family after she left the matrimonial home she had lived in with Mr. L, the children, and his family for over two years. She stated that she reconnected with her mother, her father, her two sisters and her brother after little or no contact in ten years. At trial Ms. W was asked if she was estranged from her family again and she indicated "not necessarily". Ms. W's family members did not testify at trial and it is unclear exactly what involvement they have had with the children.

[156] Ms. W stated that her brother stayed with her for a period before Christmas 2014. Ms. W also noted that her mother stayed with her after her mother had hip surgery, and that one of her sisters would occasionally spend the night at her home. She stated that

‘nobody moved in”. Ms. W did not provide very much information and as noted, her family members did not provide evidence.

[157] Mr. L noted that the children began attending day care in either late July 2014 or early in August 2014, but they only attended day care three days per week when they were in his care. Mr. L explained that on Tuesdays and Thursdays during his week with the children, they were cared for in his home by his parents. He explained that in addition to his parents, that his sister spent Tuesday and Thursday mornings with the children and she lived at their home with Mr. L, their parents and the children during the week the children were with him. He explained that his sister often picked the children up from daycare.

[158] In August 2014 Ms. W offered to give the children to Mr. L for his birthday which was during her scheduled week with the children.

[159] In September 2014 Ms. W raised an issue of K having a problem with his right ear. She stated to Mr. L’s sister that the doctor indicated K may need to see an ear, nose and throat specialist (ENT), but it was yet unclear.

[160] Mr. L’s sister referenced an incident in October 2014 when she saw Ms. W’s sister reprimand V by yelling at him, then “grabbing” him and putting him in time-out in his gated bedroom with the lights off. Mr. L’s sister stated that V was left crying and that Ms. W did not intervene. The children were two years and 7 months at that time.

[161] In October 2014 Mr. L's sister also reported that she picked the children up from daycare and observed V's face looked swollen and irritated on the right side. Ms. W explained that the children had gotten into a fight the previous morning and K had scratched V's face. Ms. W reportedly explained to Mr. L's sister that she had not had time to cut the children's hair or nails as they would not cooperate with her. She indicated that the children kept screaming and pulling her hair and she gave up. Mr. L subsequently took V to a walk-in clinic and V was prescribed antibiotic drops for his right eye.

[162] Ms. W obtained new employment in or around November 2014 and was no longer working the same schedule as she had been. It has been difficult to determine what Ms. W's schedule was based on the information she has provided.

[163] Mr. L provided evidence that his sister facilitated contact with Ms. W and that he observed that his sister and Ms. W worked together "fairly reasonably" until late December 2014. Mr. L's sister agreed.

[164] Mr. L stated that after December 30, 2014 he suggested to Ms. W that they provide each other with weekly written updates regarding the children and Ms. W agreed. The updates began in January 2015.

[165] Mr. L noted that on December 31, 2014 Ms. W unilaterally changed the children's family doctor from Dr. TK to Dr. NY and Ms. W failed to inform Dr. NY that the parties had a shared parenting arrangement.

CHILDREN'S ALLEGED RESPONSE TO WITNESSING ALLEGED PAST ABUSE IN MR. L's HOME

[166] Ms. W alleged that in January 2015 the children woke up screaming and crying with their eyes closed, and based on the children's utterances at that time she believed Mr. L might have hit his sister in the eye. Ms. W indicated that thereafter she observed the children's sleep schedule to be disrupted with the children waking up screaming and crying on a regular basis. I do not accept this description of a child's utterances as credible or reliable, nor do I accept what the child or children may have said being reliable.

[167] Mr. L and his family members deny observing any such sleep behavior when the children were with them. He explained that after the parties separated in May 2014, his sister moved into the home full time. He further explained that after Ms. W left the home his sister would reside with he and his parents during his week with the children.

[168] Mr. L suggested that perhaps the children's sleep was disturbed when they were with Ms. W because they were sleeping with Ms. W's intimate partner's daughter on an air mattress in the living room of her two- bedroom condominium on the weekends. Given that at times Ms. W had her brother, her mother and her sister staying with her it is

possible the children stayed on the air mattress more often than just on weekends. Ms. W testified that she did not feel she needed to provide Mr. L with information about persons who slept over only. She stated that according to the Separation Agreement, she need only provide information about those persons "living" with her in her home.

[169] Ms. W indicated she spoke with daycare staff about reducing the children's nap time to encourage them to sleep more soundly. I find this was not a sound request given the ages of the children and the stage of their development. It is common knowledge that sleep begets sleep and that children are often still napping in the afternoon at age three.

[170] On February 12, 2015 Ms. W contacted child protection services to report that the children were exhibiting behaviours including being "clingy", having temper tantrums, and night terrors. She reported information about incidents of violence or aggression alleged to have happened in Mr. L's home. Ms. W alleged that while the parties' had been residing together, Mr. L exhibited aggression on three occasions, once toward his mother, another toward his father, and finally once with his sister. She surmised that the children could be reacting to the violence they had witnessed or they were witnessing in their home.

[171] Mr. L's family members testified and denied all allegations. His family members gave evidence in his support. I accept their evidence over the evidence of Ms. W.

[172] Mr. L's father, mother and sister are all very close to Mr. L and to the children. I find they tended toward giving evidence in their own, or in Mr. L's favor when testifying in relation to minor issues regarding the children's behavior, but overall I accept their evidence. It is of some concern that they did not acknowledge any wrongdoing by Mr. L or any concerns about his behavior, however minor. I would note that on at least one occasion police reported that both parties were involved in a dispute. Police noted "we separated the parties as they were yelling at each other". The family members did not elaborate about this or any other incident.

[173] Mr. L and his mother provided evidence that she was present when Mr. L was reading the texts Ms. W had received from Mr. D. Mr. L's mother did not mention his behavior being elevated during the incident. I think his behavior ought to be described as elevated at times even if the behavior was situational. I find Mr. L's family members' testimony showed indications of some bias and tended to be somewhat inconsistent with the testimony of the witnesses who did not have an interest in the proceeding, such as day care providers, police, and school staff.

[174] Contrary to her position that she had never observed her brother to act in an aggressive way, in May 2015 when Mr. L's sister was asked by child protection services if Mr. L had any "aggressive or controlling tendencies", and Mr. L's sister indicated in part, that her brother could "feel strongly about things". This comment was not explained further.

[175] Mr. L's sister also reported to child protection services that the only people who could calm K were Mr. L and his mother. This would have been when the children were turning three. This may be contrary to Mr. L's sister's claims that the children had no difficulties. However, may be explained depending on what period the sister was referring to. For instance, when Mr. L's sister stated the children had no sleeping issues it may have been true in June 2018.

[176] It is noteworthy that in May 2015 Mr. L's sister advised child protection services that the children would at times "call out a name", and she or her mother would enter the children's rooms and comfort them until they fell back to sleep. In May 2015 Mr. L's sister indicated that K believed Mr. L's mother was his mom, and that V thought that she was his mother. One can see how one child believing Mr. L's mother was his mother and the other believing Mr. L's sister was his mother, would be upsetting to Ms. W. It would be inappropriate for anyone to try in any way to confuse the children about who their mother is, regardless of the circumstances.

[177] In Mr. L's sister's sworn testimony in September 2015 she stated "if the children wake up when they are sick, usually K will ask for her mother and V would ask for her. Once we put our hands on the children's stomachs, they fall quickly back to sleep". Slightly different information. Indicating the children will wake when they are sick (rather than "at times"), leaves a slightly different impression. Also, there is no mention

by Mr. L's sister that she thinks K or V consider anyone other than Ms. W to be their mother, and call out to them.

[178] These inconsistencies are minor but do support Ms. W's claim she felt hurt that the children spent more time with and appeared to be more attached to their aunt and grandmother. It also supports Ms. W's claim that the children had trouble sleeping or going to sleep and it is possible the children had developed a dependency on their grandmother and aunt to help them fall or get back to sleep. All of which would have made things difficult for Ms. W who was arguably parenting the children on her own for the most part.

[179] Arguably, Mr. L's family may not have perceived there was a problem as the children were accustomed to the sleep routine in that home, and both their grandmother and aunt were available in that home to help soothe them if they woke up. This may not have been perceived as a problem. However, a bed time routine for the children requiring the grandmother and aunt to be on hand to soothe the children would have made it difficult for Ms. W.

NIGHT TERRORS

[180] Ms. W indicated she took the children to see Dr. NY and spoke to him about what she described as the children's "night terrors". Ms. W indicated Dr. NY recommended the children sleep with her. Dr. NY did not testify. I do not accept that Dr. NY

recommended that the children sleep with Ms. W. I believe it is more likely than not that Ms. W wanted Mr. L to believe Dr. NY made the recommendation.

[181] Mr. L indicated Ms. W advised him she was taking the children to see the doctor because of a cough and because of concerns she had mentioned about bad dreams. Mr. L stated that Ms. W did not mention anything about "night terrors" until late February 2015, at which point she indicated Dr. NY was also recommending play therapy.

[182] Mr. L contacted Dr. TK and he was informed Ms. W had requested the children's files be transferred to Dr. NY.

[183] Dr. NY advised Mr. L that Ms. W attended his office with another male, and she had not mentioned a shared parenting agreement. He explained that because Ms. W had alleged abuse he had made a referral to psychiatry, and he had not made a referral or recommendation for play therapy as Ms. W had stated to Mr. L.

> In the referral Dr. NY had written "3 year old (symbol for male), boy start difficult to sleep crying mom worry about child abuse or ??PTSD after he saw his dad hurt sister in front of him please see patient".

Mr. L entered copies of the children's medical files and the children's day care files as exhibits. He noted that no sleep related issues were mentioned accept on the referral form prepared by Dr. NY.

[184] In her affidavit sworn in June 2015 Ms. W indicated she had received a call from a child protection worker on March 9, 2015 in response to her previous report to them and

her queries, and on that same day Ms. W stated she had received information from the day care staff, specifically Ms. W stated:

> That same day a member of the daycare staff, Jen (I cannot recall her last name), indicated to me and I verily believe that K looked terrified during his nap. She also indicated he looked stunned when he woke up, and that she had never noticed that before.

I do not accept Ms. W's testimony in this respect. I would note that the day care worker was not called to testify but various other day care staff testified and provided sworn affidavits and they did not confirm Ms. W's statement.

[185] The children were seen by child protection staff on March 12, 2015. Business records indicate the children were not able or they were unwilling to engage in conversation with child protection staff. They would have been just shy of three years old at that time.

[186] Child protection business records entered as exhibits at trial by Mr. L include an excerpt dated March 9, 2015 wherein the social worker indicated that Ms. H (day care staff person) had stated "the parents try to gather information about the other parent, an example was that they try to determine if the children cry more with the other parent. Ms. H assured that the workers at the daycare do not make comments or give information about the other parent. Ms. H identified the mother who asks these type of questions most often..."

[187] Ms. W identified that in March 2015 she had concerns about Mr. L's mother and sister doing too much for the children, and referred to Mr. L's mother and sister being

over involved at the children's birthday party; and also offering the opinion that Mr. L's sister was not direct enough with the children when she needed to leave them. Ms. W expressed concern that Mr. L's parents and his sister spent the most time playing with the children and that Mr. L should be spending time playing with the children.

[188] Ms. W noted that her primary concerns at that time were the children's night terrors and about inconsistent discipline between the homes. Ms. W indicated she wanted the lines of communication open with Mr. L and she did not want to have to also speak with his mother or sister about co-parenting the children.

[189] In an excerpt from the child protection services' business records, dated March 31, 2015, the worker indicates Dr. NY advised he had "last seen the children" in February 2015 for a cough and the children were seen at a walk- in clinic in March 2015. At that time, he described the children as "healthy with no noted delays" and observed the children "often come with the mother and the mother's new boyfriend, or alone with the mother".

[190] Dr. NY noted that he had suggested Ms. W check with the children's daycare about the frequency of their tantrums. Dr. NY confirmed that based on his observations he did not believe the children required play therapy, that he had made the referral given Ms. W's concern regarding the children's tantrums, and that he later cancelled the referral after speaking with Mr. L. Dr. NY indicated he did not have any concerns about his contact with Mr. L.

[191] The daycare incident reports were filed with the court.

a. On August 25, 2014 (crying and throwing himself down, the note did seem to suggest this was not uncommon at that time), September 24, 2014 (slipped and injured self), May 13, 2015 (V was reaching to hug K and instead bit him), July 13, 2015 (was playing and fell), August 14, 2015 (he slipped and fell) reports were created in relation to K; and

b. On May 19, 2015 (playing roughly with another child and sustained a bruise on his cheek), June 3, 2015 (V was trying to take blocks from another child and one of them was bitten), July 20, 2015 (another child hit V).

[192] Mr. L's sister, indicated that on Good Friday in 2015 she dropped the children and some items off to Ms. W. Mr. L's sister noted that Ms. W appeared quite upset after the children were initially hesitant to enter Ms. W's building. She observed that Ms. W was not happy with her attempts to assist with the children. Ms. W reportedly yelled at Mr. L's sister, stating that it was unnecessary for the children's aunt to hold the children's hands. Shortly thereafter Mr. L's sister received a text from Ms. W indicating she did not want the children's aunt giving the children all the attention and assistance "they think the children need." Stating "they're going to become lazy and always dependent on others if you guys continue this way".

[193] Mr. L indicated that Ms. W first advised to them that she wanted to make changes to the custody and access agreement in May 2015.

COMPLAINT AGAINST THE DAY CARE

[194] On May 8, 2015 Mr. L's sister observed that Ms. W commented about the children having a bad diaper rash. Ms. W subsequently filed a complaint against the day care with child protection services. She alleged a doctor had diagnosed V with a diaper rash. Mr. L remarked that the medical records entered as exhibits at trial indicate Ms. W did not remain at the hospital long enough for V to be seen or assessed by a doctor in relation to the alleged rash.

[195] On May 10, 2015 Mr. L's sister noted when Ms. W and her brother arrived to pick the children up from her and Mr. L at Citadel High, that K did not want to go with Ms. W. When Mr. L's sister asked Ms. W about K's reaction, Ms. W indicated she believed he was upset as she had dropped him off at daycare the previous Friday. Mr. L's sister further observed that the adults participated in a portion of the basketball program and at one point K chose to be near her rather than with Ms. W and Ms. W yelled out "why is he so attached to you?", and then Ms. W's brother stated "yeah, why are they not attached like that to their father?". It would appear the child was placed in the middle and the parents should have avoided putting the child in a position of having to choose between them or of feeling badly when he chose to be with one and not the other.

COMPLAINT AGAINST MR. L

[196] On May 19, 2015 Ms. W made a referral to child protection services indicating V had stated "baba says Jedou hits us". Ms. W explained to the child protection worker that "Jedou" was her father and she had asked V if Jedou hurts him or ever hit him and V stated "no". The children were seen by child protection staff on May 19, 2015 and staff observed a small bruise on V's cheek. The children were not able or they were not willing to engage in a meaningful conversation with staff.

[197] During her conversation with child protection services Ms. W also made allegations of two incidents of sexual assault by Mr. L (as noted on the Child Protection Services Referral form dated May 19, 2015 and filed as an exhibit at trial). Child protection services decided this complaint did not fit their criteria for investigation.

[198] In the summer of 2015 Ms. W contacted the police and gave a statement about Mr. L allegedly sexually assaulting her on two occasions, once in May 2014 and another time in June 2014. Mr. L denied the allegations. A no contact Order was put in place through the criminal courts. The parties' legal counsel arranged for the parties to provide their weekly updates about the children through their offices.

[199] Ms. W had alleged that the first sexual assault took place while Mr. L and Ms. W were still in a relationship in May 2014, and the second took place after they were separated but while they were still living in the same home in June 2014. Mr. L was

charged with two counts of sexual assault against Ms. W. He was found not guilty of both charges in June 2017.

INTERIM MOTION

[200] In July 2015 Ms. W filed an interim motion in court seeking primary custody and decision making authority in relation to health care, permission to have the children assessed or for them to attend counseling, and for Mr. L to have supervised parenting time with the children and pay child support, including extra expenses.

[201] On July 31, 2015 Ms. W contacted child protection services to advise them of Mr. L's arrest based on information she had provided to the police. Ms. W requested child protection services intervene to ensure his parenting time with the children would be supervised, and to ensure Mr. L would be directed to participate in anger management counseling. Ms. W also raised a concern about Mr. L refusing to allow the children to see a therapist, alleging Mr. L was hiding something.

[202] In August 2015 Ms. W provided child protection services with a copy of a video showing Ms. W questioning K. Child protection services indicated they did not feel the video was reliable. I do feel the video is a clear indication of the lengths Ms. W will go to prove her point. I find the video to be a clear example of Ms. W trying to create evidence supporting her point of view.

[203] During the interim hearing held in September 2015 Ms. W testified. As noted previously, Ms. W has stated that she felt she had no choice but to sign the Separation Agreement because she had no family to support her when they separated. Ms. W also indicated she believed a mediator or an expert might later determine, once her plan was in place, that since Mr. L had not parented the children (from her perspective), and the boys were small children, that they should be with their mother.

[204] Ms. W described Mr. L as lazy and uninvolved with his children. Mr. L provided evidence of his involvement with the children at birth and afterwards which was contrary to some of Ms. W's claims.

[205] Mr. L's mother filed an affidavit on September 15, 2015 denying any family violence and corroborating Mr. L's comments about her involvement with the children and his involvement as a father.

[206] Mr. L's sister, his mother, his father, and his aunt all filed affidavits in support of him in September 2015. Mr. L's sister indicated the children were doing well at that time and were still napping in the afternoon.

[207] The motion was heard on September 23, 2015. Ms. W's requests for interim primary care and decision making, and for Mr. L's parenting time to be supervised and for child support were denied. An Interim Order was granted directing that;

> "with regard to any medical assessment and / or treatment with regard to sleep difficulties identified by the Petitioner, both parties shall sit down with Dr. NY,

> explain their respective positions and respect whatever recommendation Dr. NY gives".

[208] An Order for Production for the Minister of Community Services' child protection business records in relation to the parties and their children was granted.

[209] Mr. L indicated that in September 2015 he did not know who had been caring for the children when they were in Ms. W's care but he believed she worked a two-week rotation as follows:

a. Monday to Saturday from 8:30 am until 4:30 pm, except Friday where she works from 11:30 am until 8:00 pm; and

b. Tuesday to Friday 8:30 am until 4:30 pm, except Thursdays when she works from 11:30 am to 8:00 pm.

Mr. L understood that Ms. W's mother and brother were caring for the children on Saturdays and he believed Ms. W was off on Mondays.

[210] In September 2015 Ms. W testified that her hours of work fluctuated, and that this had **"just changed"** (she started a new job in November 2014 and it was not clear what her hours were initially). She stated that previously she worked "9:00 am to 5:00 pm, they were always 9:00 to 5:00 pm". She explained that her new schedule was as follows:

Monday and Tuesday 9:00 am – 5:00 pm

Wednesday 12:00 pm – 8:00 pm

Thursday 9:00 am – 5:00 pm

Every second Friday 9:00 am – 6:00 pm (otherwise 9:00 am – 5:00pm)

Every second Saturday 8:00 am – 4:00 pm.

[211] However, in her Parenting Statement filed July 2, 2015 Ms. W indicated her schedule at that time was:

Week one: Monday, Tuesday, Wednesday, Thursday and Saturday 8:30 am – 4:30 pm. Fridays 11:30 am – 8:00pm

Week two: Tuesday, Wednesday, and Friday 8:30 – 4:30 pm, Thursdays 11:30 – 8:00 pm.

Ms. W testified she was scheduled to have the children on the Saturdays when she was off work but she had also given evidence that her mother and her brother often looked after the kids on the Saturdays when she worked.

[212] Mr. L raised the possibility that the children might be experiencing difficulties adjusting to Ms. W's new home, her renewed involvement with her family of origin, her new work hours, new caregivers and her involvement with a new intimate partner and the children's exposure to his young daughter. Mr. L indicated he did not observe the same concerns when the children were with him and as of September 2015, Ms. W had not discussed the issue of discipline practices between the homes.

COMMUNICATION AND COOPERATION FOLLOWING THE INTERIM HEARING

[213] While the parties were discussing the wording of the Interim Order granted in September 2015, there were ongoing negotiations between the parties regarding whether the children should be referred to the IWK Hospital for assessment or for counseling. Ms. W stated that Dr. NY had recommended the children attend and he had made a referral.

[214] The parties engaged in discussions regarding whether it would be best for them to see DG, Psychologist, per Mr. L's suggestion that they meet with DG to determine if play therapy was necessary, or to refer the children directly for play therapy with JD, Psychologist per Ms. W's suggestion.

[215] Mr. L and Ms. W disagreed about Ms. DG's stated position on seeing them. Mr. L was concerned about the children participating in any play therapy at all as he felt it was unnecessary and he was concerned about Ms. W's motives for having the children seen.

[216] In addition, he felt that if play therapy was recommended, that JD would be in a conflict of interest. Mr. L indicated that Ms. W knew Dr. JD's children personally. Mr. L also noted that at one point he and Ms. W's former intimate partner Mr. D, and Dr. JD's partner had all worked in the same department. Mr. L noted that Ms. W had also previously worked for the same company. Mr. L reported that in addition, he had had previous community connections with Dr. JD's daughter.

[217] In October 2015 Mr. L took the position that the children did not require play therapy. As support for his position he referenced an entry in the business records obtained from child protection services pursuant to an Order for Production and entered as an exhibit at trial. An excerpt dated March 31, 2015 indicates in part:

> "Dr. NY and the mother discussed play therapy for the children which he subsequently completed a referral for the children to engage in play therapy. Dr. NY noted in observing the children, he does not believe the children are required to engage in play therapy rather, it is a recommendation given the mothers noted concerns of the children's tantrums."

[218] In October 2015 Ms. W raised concerns about what adult information was being shared by Mr. L's family with the children. She alleged the children were making comments about not being able to ask about Ms. W while they were in the care of their father or the police might come. In addition, Ms. W suggested the children had made remarks indicating Mr. L was being abusive toward his family members. Ms. W further raised a concern about Mr. L failing to advise her about taking the children on a day trip to Moncton, New Brunswick.

[219] It was subsequently discovered that Ms. W had been spending time with Mr. D and his daughter taking various day trips. Specifically, images taken from one of Ms. W's social media accounts and they were filed as exhibits.

[220] I find that Mr. L failed to advise Ms. W of his day trip to Moncton. However, I find Ms. W not only failed to advise of her trips, she attempted to portray Mr. L in a negative light despite the fact she had done the same thing. It should be noted that no

harm was done in either situation but it would be far more appropriate for both caregivers to know about the children's excursions and be able to talk to them about them.

[221] Mr. L filed photographs as exhibits during the trial depicting Ms. W and the parties' children had gone to the beach with Mr. D and his daughter in the summer of 2015, that in July 2015 the parties' children were on a beach with Mr. D, that Labour Day weekend of 2015 they took a "road trip" to PEI with Mr. D and his daughter, and that in September 2015 they were taken on another trip, this time to Shelburne with Mr. D and his daughter. Other photographs filed depicted the children sleeping with Mr. D's daughter on a bed on the floor in the living room of Ms. W's home, and Mr. D spending time with the children on Halloween and at Christmas time in 2015.

[222] On October 8, 2015 Ms. W reported concerns about Mr. L's sister

[223] In November 2015 Ms. W updated Mr. L about a dental appointment the children had attended. Mr. L respectfully requested notification from Ms. W before the next dental appointment, indicating that perhaps a family member of his could attend given that he was prohibited from having contact with Ms. W. Ms. W referenced the parties' Separation Agreement and indicated she had not agreed to have anyone except a parent attend any appointments. Ms. W's interpretation of who could attend appointments with the children was quite limiting to Mr. L given that a no contact order was in place following allegations made by Ms. W, and the resulting charges against Mr. L.

[224] Around the same time, Ms. W once again raised concerns about the children needing to spend more time with other children rather than with Mr. L's family members.

[225] In late December, the parties disagreed about signing the children up for extracurricular activities. Both did agree to consider the options and discuss further.

ALLEGATIONS OF ABUSE BY MR. L's SISTER

[226] On December 28, 2015 Ms. W took V to see Dr. D. Indicating the child had reported his aunt hit his head and that his head hurt and there was a lot of blood. No injury was observed.

[227] Ms. W alleged that V had stated his aunt hit him, and Ms. W stated that a doctor agreed the explanation given by the child could not have been made up by him. At one point writing to Mr. L and stating in part, "V was complaining about pain and blood on his head all weekend.

[228] On December 31, 2015 Ms. W contacted child protection services alleging V had told her that "his aunt hit him on the head, stating that she was mad and crying, and that there was a lot of blood". Child protection services business records reflect that Ms. W reported she had not observed any injuries on V's head. It was further noted that the child was taken to the doctor at a walk-in clinic and no injuries were noted.

[229] On January 14, 2016, in response to Ms. W's allegations, on January 14, 2016 a child protection worker spoke with V. The worker noted that initially the children were

shy and would only give her one word answers. The worker noted that after Ms. W stimulated some conversation about V hitting her, V indicated he did hit Ms. W but did not indicate why he was hitting Ms. W. Ms. W then left the room and V told the worker that his aunt hit him on the head before. He stated it hurt and he cried. V indicated his aunt hurt him because he was not listening to her. When V was then asked about whether he'd "witnessed anyone else hurt", he stated "baba hurt T (his aunt's name)", and pointed to his stomach when asked where, stating "punched in the belly". The agency ultimately found the child's testimony inconsistent with the doctor's reported observations.

[230] Ms. W indicated she did not believe Mr. L would intentionally hurt the children but she was concerned about what they were witnessing and how this may harm them emotionally.

[231] Ms. W indicated she continued to have concerns about the children's sleep "issues" and that she had concerns about the children's tantrums. She indicated she felt the children's issues may be due to inconsistent discipline. She indicated she was also concerned about Mr. L's refusal to allow the children to be vaccinated. Ms. W also identified that the children had started to experience a form of speech disfluency.

[232] The parties disagreed about how to respond to Ms. W's concern about the children's speech disfluency. Ms. W wanted to have the children assessed by a speech pathologist as soon as possible and Mr. L preferred to monitor their progress rather than refer the children directly to see a speech pathologist. It is noteworthy that Mr. L saw a

speech pathologist as a child and he and his family had some familiarity with the problem.

[233] Regarding how to address the children's behaviours Ms. W stated in part, "I am very stern when it comes to their manners and teaching them between what's right and wrong. They need to understand the word "No" and understand morals and values, not get whatever they want because they say so or they throw a temper tantrum". Ms. W identified that Mr. L was not supportive of her efforts. The children were not yet four years-old at that time.

[234] In January 2016, before the Interim Order was issued Dr. NY's office wrote to Ms. W to indicate Dr. NY had taken a leave of absence from his practice. Both parties turned their minds to securing a new family doctor for the children. Ms. W commented about the need to deal with the issue quickly.

FINDING A NEW FAMILY DOCTOR

[235] The issue of finding a new family doctor became contentious between the parties.

[236] On January 26, 2016 Mr. L advised Ms. W he had made an appointment with a family doctor he preferred, Dr. S with an appointment scheduled February 6, 2016. On January 29 Ms. W advised she had arranged an appointment with her preferred doctor, Dr. D2 on February 3, 2016.

[237] Mr. L stated that on February 2, 2016 Ms. W gave him 24 hours to respond to her about the new family physician she preferred and she advised that if he did not respond she would go ahead and have the children's files transferred to the doctor she had identified.

[238] Mr. L noted that he was in the middle of preparing for a preliminary inquiry in relation to allegations of sexual abuse Ms. W had made, and he subsequently responded to Ms. W on February 8, 2016 indicating he needed more time to respond. He later advised her that he had concerns about Dr. D2's availability and he believed Dr. S was very experienced and that his location was more conveniently situated.

[239] Subsequently, Ms. W took both children to the hospital at 4:00 a.m., as she reported K woke up with a bad cough. She noted that K was diagnosed with the croup and questions were raised about the children's lack of immunizations. Ms. W subsequently took both children to see Dr. D2 to confirm K's diagnosis and suggested he was the children's new doctor. Mr. L did not agree. Dr. D2 indicated to Ms. W that he would not treat the children without Mr. L's consent given the shared custody arrangement which was in place.

[240] Mr. L noted in his weekly update to Ms. W in February 2016 that he advised her he understood they had an agreement to "slowly vaccinate" the children before they attended school. He stated this had been discussed with previous doctors due to the children's low birth weight and research related to vaccines containing "thermerasol"

(believe he intended to indicate Thimerosal). Mr. L indicated he was happy to have the children vaccinated when they were "not sick, and with the understanding that the vaccinations were not given all at once and did not contain "Thimerosal".

[241] In February 2016 Mr. D was served with a Discovery Subpoena. In March 2016, prior to the scheduled discovery, Mr. D refused to participate.

[242] In March 2016, the parties had a disagreement about registering the children with Dunbrack soccer, and they struggled to communicate effectively regarding programs available through the Canada Games Centre including karate and swimming. Ms. W was in favour of the children registering to attend an HRM soccer program and swimming but she had missed spring sign up. Ms. W felt the programs offered through the Canada Games Centre and Dunbrack soccer were too expensive despite the financial assistance for registration from Mr. L's family.

[243] In March 2016 correspondence was received from Dr. S, the doctor preferred by Mr. L (copied to Dr. D2, the doctor preferred by Ms. W), dated March 9, 2016, stating in part:

> Given that the parents, (Mr. L) and (Ms. W) currently involved in an adversarial and apparently acrimonious matter before the Supreme Court of Nova Scotia, Family Division, and given that the aforementioned children would likely have special healthcare requirements based upon their birth history, it is my belief that their medical care would best be served by a pediatrician skilled in such care. I thus feel that it would not be in the children's best interests for me to assume care, and so must decline.

Dr. S did follow through with a referral to Dr. S2, pediatrician, and he agreed to see the children as necessary when they were with Mr. L.

[244] Given the conflict between the parties and the children's birth history, the family doctor identified by Mr. L indicated it would be best to have the children referred to a pediatrician. A referral was made to Dr. S2, pediatrician, in April 2016.

[245] On March 7, 2016 Ms. W noted K had been behaving aggressively toward her, kicking and hitting her and her partner, Mr. D. Mr. D reportedly told K he should not be behaving that way and when asked why he was behaving that way K reportedly stated "baba hit T".

[246] On March 9, 2016 Ms. W asked Mr. L's sister to pick the children up from daycare for her, indicating she needed to attend a medical appointment and had nobody to care for the children. Mr. L's sister observed V had a bruise under his right eye and day care staff advised her that V had arrived at day care that morning with the mark and the children had not been in daycare on Monday or Tuesday that week as Ms. W reported they had fevers.

[247] A new subpoena was served on Mr. D in April 2016.

[248] In April 2016 Ms. W raised toileting as a major issue, stating "a serious talk is needed or the doctor should look into this as it may be a medical issue…they are four years old, they should not be going backwards this way, especially when it comes to their

bathroom skills". In addition, Ms. W once again raised a concern about having the children see a specialist about their speech disfluency.

[249] Ms. W advised Mr. L that the children stated they were being prohibited from calling her when they asked to call her. Ms. W alleged Mr. L was intentionally calling the wrong number and tricking the children into thinking she was not answering or not interested in speaking with them.

[250] Mr. L denied the allegations. Ms. W indicated the children never asked to call him on her time but Ms. W refused to believe Mr. L when he indicated they did not ask to call her. Ms. W also continued to have concerns, especially regarding V, saying she believed he was having "intentional" toileting issues.

[251] Ms. W spoke with Mr. L about having the children attend dental appointments every six months. Mr. L arranged an appointment six months in advance to allow his sister to accompany him on November 7, 2016. Ms. W then questioned Mr. L regarding why he would schedule an appointment six months in advance.

[252] Ms. W remarked negatively when Mr. L completed a form to allow a child to attend a day care field trip to the city without first discussing the issue with her. Mr. L was in the habit of filling in one form for one child and leaving Ms. W to fill in the form for the other child. Ms. W did not have any reason to object to the excursion during the children's time in daycare, but chose to put a negative spin on Mr. L's effort.

[253] The Easter long weekend came up as an issue between the parties. Mr. L noted that Ms. W had the children the previous "Canadian Easter" and she also had the children on her regularly scheduled weekend which ended up being the "Greek Orthodox Easter weekend" in 2015.

[254] Ms. W objected when Mr. L suggested he planned to have the same parenting time for the upcoming holidays that year, both Canadian and Greek Easters. Ms. W argued that in fact "Greek" Easter was her regular weekend and she only had the kids starting on Friday for "Canadian Easter", and not Thursday during Canadian Easter the previous year.

[255] I find it will be necessary to review all statutory holidays in order to ensure both parents have opportunities to spend time with the children. Given that Ms. W will have less time with the children than Mr. L, it will be important for him to make up any time she gives up sharing other holidays with him on what might have been scheduled to be her regular parenting time.

REFERRAL TO A PEDIATRICIAN

[256] Mr. L advised Ms. W that the children were scheduled to see a pediatrician on May 30, 2016. Ms. W agreed to the referral to the pediatrician. In her response to Mr. L Ms. W stated "hopefully, she is not scared off by you and your families' demanding ways, the same way you scared off the other doctors."

[257] In May 2016 Mr. D filed a motion to revoke the Discovery Subpoena he had been served with. His motion was denied.

[258] Mr. L filed an Affidavit in June 2016 indicating Mr. D and his daughter had moved in with Ms. W in May 2016. He argued that Mr. D's evidence was relevant. Ms. W indicated that Mr. D moved into her condominium with her and with the children in the late summer of 2016.

[259] Ms. W's position, as stated in her update at the end of January 2016 was "…Nowhere in our agreement does it state that I need to tell you who sleeps over, but only who is living with us. The kids can have as many sleepovers with as many friends as they want in my home as long as I agree".

[260] In June 2016 Ms. W objected to Mr. L renewing the children's passports to allow Mr. L's sister to travel with the children to Atlantis in the Bahamas, and to Disney. Ms. W also objected to the children travelling to Toronto, all travel was intended to be on Mr. L's parenting time. In July 2016 Ms. W renewed her objections to the children travelling, stating she would not allow them to travel when they were experiencing sleeping and behavioural issues.

[261] In 2016 Ms. W expressed she had concerns about the children's toileting, observing they had regressed. Ms. W had asked Mr. L to address issues related to the children's registrations for various activities including soccer, karate, private swimming

vs HRM swimming, and she had expressed concerns about Mr. L's sister's involvement with service providers including representatives at the children's pre-school.

[262] Various Orders for Production were endorsed by the court.

[263] In May 2016, a revised Order for Production for the business records of the Minister of Community Services was granted.

[264] In June 2016, an Order for Production for the Halifax Regional Police business records in relation to Mr. L was granted.

[265] In June 2016 Ms. W raised the possibility of sending the children to St. Antonios Sunday School in the fall, a Catholic Church. Mr. L referenced the parties' previous agreement to raise the children in the Greek Orthodox faith in the Greek Orthodox church, also Catholic. The children had been members of the Greek Orthodox Church of Saint George since birth and baptized in a Greek Orthodox church. St. Antonios is not a Greek Orthodox church.

[266] An appointment was arranged with Dr. S2, pediatrician, on July 14, 2016. Both Ms. W and Mr. L's sister attended the appointment. In speaking with both Ms. W and Mr. L's sister, Dr. S2 determined there was an ongoing custody dispute. Ms. W spoke with Dr. S2 about her observations of the children's difficulty with toileting and sleep, including Ms. W observing "night terrors". Mr. L's sister indicated that her family, including Mr. L were not observing any problems.

[267] Mr. L's sister observed Ms. W raised her voice when Dr. S2, pediatrician, indicated she would be sending a report to Dr. S, who had referred the children to her. Ms. W wanted the report sent to Dr. D. Dr. S2 indicated she would send the report to Dr. D. if he requested it.

[268] Mr. L's sister indicated that after obtaining information regarding Ms. W's observations of the children during her week and Mr. L's sisters' observations of the children during Mr. L's week, Dr. S2, pediatrician, advised Ms. W "because all the issues were occurring during the Applicant's weeks with the children, it was a behavioural issue with the Applicant rather than a medical issue.

[269] Mr. L's sister observed that Dr. S2, pediatrician, stated that Ms. W could go to the IWK Hospital with the children and be assessed for a possible referral to a specialist without the need for Mr. L's authorization. Ms. W indicated she had already tried but the IWK Hospital had indicated that the children's situation did not meet the criteria for referral. Ms. W went on to say she had already paid to see Dr. JD and that the children needed to see her as well.

[270] Ms. W indicated that after IWK central referral indicated her children's situation did not meet their criteria, they suggested she contact apns.ca to find a child psychologist and that was how she found Dr. JD. Ms. W did not accept Mr. L's concerns regarding a possible conflict of interest and continued to advocate that the children be seen by Dr. JD.

[271] Of particular concern are Mr. L's sisters' observations that while Dr. S2 was examining K, Ms. W was reprimanding V for allegedly not listening and for punching someone at the daycare. Ms. W reportedly told V **that he would be locked in his room the whole evening,** and that there would be no splash pad and no TV for him. Ms. W also asked V why he had smacked K on the bum. Mr. L's sister observed that V stood silently with his head down. I highlight the above noted as an example of age inappropriate discipline. I expect a consequence was put in place after the incident, and if it was not then locking a four-year old child in their room for the whole evening or threatening it, was not appropriate.

[272] In July 2016 Dr. S2, pediatrician, wrote to Dr. S in relation to both children indicating in part as follows:

> In summary, I believe that K is a health, perfectly normal young boy who has behavioural issues when he is spending time with mom. I recommended that mom contact the IWK Central Referral Service to see if she can get the necessary help.
>
> In summary, I think we are dealing with a healthy 4 year old preschooler with some concerns about behavior problems, mainly when he spends the week with mom, as well as prematurity. I would like to see V again in 1 year, and on a prn basis. I recommend that mom contact Central Referral Service for help with his behavior.

Ms. W was not satisfied after meeting with Dr. S2, pediatrician. Ms. W alleged Dr. S2 did not properly assess the children and reported her to her governing body.

[273] Ms. W was not pleased with Dr. S2's suggestion that she may need to examine her parenting of the children if the children's behavior was a problem during her weeks only.

Ms. W went on to criticize Mr. L for having his parents and sister live with him to assist with the care of the children.

[274] In her update provided in July 2016 Ms. W states about V: "**he has spent a lot of time in his room while he was grounded this week, and we have had a lot of serious talks about why he's been in trouble and how he needs to change his attitude and better behave himself.** He needs to understand that what he did was wrong and that violent behavior towards anyone is unacceptable and will not be rewarded". This appeared to be in reference to two incidents which occurred at daycare.

[275] I note that V. was merely four years old at that time and should not have been spending "a lot of time in his room while grounded", and should not have had to endure or sit through "a lot of serious talks" about anything at that time. It would not be developmentally appropriate at his age.

[276] At about that time Ms. W acknowledged the children were doing much better with toilet training.

[277] On August 19, 2016 WH, Assistant Centre Director at the Bedford Location of Kids & Company, swore an affidavit, which was filed in August 2016 and then again in July 2017. She observed the children to exhibit normal preschool age behavior and indicated they did not present as aggressive children. She acknowledged the children had

an occasional accident during nap time, had experienced some problems separating during morning drop off, but described them as “typical preschoolers”.

[278] On August 31, 2016 Ms. W made reference to K suffering 5 nosebleeds during her week, and that V had stated that K had nosebleeds during Mr. L’s week. Ms. W took K to a walk-in clinic and obtained a referred to an ear, nose and throat specialist in November 2016. Mr. L denied K had nose bleeds on his parenting time and preferred the children see Dr. S2 first before a referral was made to an ear, nose and throat specialist.

[279] In August 2016 a hearing was held in response to Ms. W’s motion for orders that she have final decision making in relation to medical issues, that either party have an independent right to seek medical attention for the children on notice to the other party, but without requiring the consent of the other party, and either party have the ability to follow the recommendations and/or any referrals that arise therefrom without the other party’s consent, that Ms. W would choose the family physician of the children and be able to accept a referral from the family physician chosen regarding the children receiving a pediatrician, if the referral was made. Ms. W’s requests were dismissed. Ms. W was opposed to the recommendation that Dr. S2, pediatrician, act as the children’s pediatrician.

[280] In September 2016 an oral decision was rendered. An Interim Order was granted acknowledging the parties had agreed to vaccinate the children. The court ordered that Dr. S2 would be the children’s pediatrician and primary care medical provider, and that if

there was a need for a family physician, that Dr. S would be consulted. The court maintained jurisdiction to deal with the issue of the children's medical needs should either Dr. S2, pediatrician, or Dr. S be unwilling to see the children or the parents.

POST INTERIM HEARING MOTION

[281] In the Fall of 2016 the children were participating in basketball and creative dance through HRM as requested by Ms. W and agreed to by Mr. L.

[282] Mr. L advised Ms. W that the children were scheduled to attend Greek school on Saturdays from 12:45 – 2:45, this would change to 9am to 12:30 pm in grades 1 - 6.

[283] In October 2016, a Consent Order to Disclose was granted in relation to business records held by the Telus Communications Company in relation to Mr. D's cellular telephone number.

[284] In November 2016 Ms. W and Mr. D moved to a three level, three-bedroom home in Bedford.

[285] In November 2016 Mr. L learned that Ms. W had taken the children to Dr. S instead of Dr. S2, pediatrician. Mr. L contacted the children's day care and confirmed K was indeed experiencing nosebleeds. Day care staff indicated K had been experiencing nosebleeds approximately once per week for about a minute at a time at his day care. The staff felt nosebleeds were normal at that time of year and were not concerned.

[286] The criminal charges against Mr. L proceeded to trial November 21, 22, 25, 28, and 29, 2016; and were adjourned to January 25, 26, 27 and March 21 and March 27, 2017. Mr. L was found not guilty in June 2017.

[287] Ms. W filed an affidavit and indicated she had taken time off work between September 2016 and December 2016, as the criminal trial was scheduled in November 2016. Mr. L later raised a concern that while Ms. W was off work both children were in preschool full-time**.**

[288] On November 30, 2016 Ms. W took the children to see Dr. S2, pediatrician, to begin their immunizations. Mr. L's sister also attended the appointment on his behalf. She reported that Dr. S2 gave the children some of their vaccinations and she examined the children's ears and noses. Mr. L's sister observed that when she arrived for the appointment Ms. W was aggressive and verbally abusive toward her while in the presence of the children. Mr. L's sister also observed Ms. W to respond to Dr. S2's questions about the continued shared care arrangement in an inappropriate manner while in the presence of the children.

[289] Mr. L's sister indicated that Ms. W advised Dr. S2, pediatrician, that Mr. L was preventing her from taking the children to an ear nose and throat Specialist (ENT). After examining both children Dr. S2, pediatrician, recommended the children apply Polysporin to the inside of their noses before the parties' resorted to seeing an ENT specialist. Ms. W also reportedly asked Dr. S2 for the children to be referred to a

therapist, and Dr. S2 reportedly maintained the same position she had taken at the appointment in July 2016.

[290] Mr. L's sister indicated Dr. S2, pediatrician, determined that a representative from both families would need to attend all appointments with the children to avoid any miscommunication and to allow her to obtain information about the children from each family. Recognizing that the children spend one week with Ms. W and the other with Mr. L and his family. Dr. S2 indicated she would not see the children unless a representative from both families was present for the appointments. Dr. S2 requested the children return for additional vaccinations in January 2017.

[291] Mr. L's sister indicated that Ms. W left the appointment in an emotional state and did not schedule a follow up appointment on her way out of the office. Mr. L's sister indicated she scheduled the next appointment, and perhaps realizing she'd forgotten to make the appointment, Ms. W returned to the office and became verbally abusive toward Mr. L's sister stating that Mr. L's sister had no right to schedule any appointments.

[292] In December 2016 Ms. W took the children to Dr. S to get a second opinion about the nosebleeds. Dr. S recommended they follow Dr. S2's, pediatrician, advice and see her again in January 2017.

[293] Ms. W suggested Dr. S2 was not able to make referrals to a Psychologist and that Dr. S2 had provided a letter confirming her inability to make a referral. Ms. W suggested

it was her understanding that Dr. S could make the referral. This information was inaccurate in that Dr. S2 could of course make the referral if she felt it was necessary.

[294] In December 2016 Mr. L filed an affidavit alleging Ms. W was not following through on their agreement to share holidays as outlined in their Separation agreement signed June 2014. The parties ultimately did come to an agreement with respect to the holidays in December 2016.

[295] In December 2016 Mr. L raised a concern about Ms. W taking the children to the Antiochian Orthodox Church of St. Antonios, and the Cornwallis Baptist Church, whereas the parties had agreed the children would always attend and attain communion in the Greek Orthodox Church of Saint George. In addition, Mr. L requested Ms. W abide by their agreement that the children attend Greek school.

[296] Mr. L noted that he had supported the children's involvement with the Arabic school and Arabic events on his weeks, even if Ms. W had signed them up "without my permission contrary to our Separation Agreement". Mr. L objected to Ms. W attempting to sign the children up for Sunday school at a non-Greek Orthodox church a full year after they separated, which he indicated "was clearly contrary to our Separation Agreement".

[297] Both Mr. L and Ms. W spoke to the priests involved. Ms. W indicated that neither priest wished to be involved in their dispute. She stated that given Mr. L's influence, the

priest at Saint Antonios church had asked that she not involve the church in the parties' legal dispute and that the parties' legal issues be resolved before she returns to the church. Ms. W later indicated "I feel the whole religious portion of that agreement should be removed, as it is in no way beneficial for our children".

[298] Ms. W took the position that the children's involvement with Greek and Lebanese schools were "extra-curricular activities…mainly to teach them about their heritage, culture and a bit of the language in order to communicate with family members".

[299] Mr. L also raised the issue of the children starting school in September 2017 and referenced the parties' prior plan to relocate to the Springvale Elementary, Saint Agnes and Citadel catchment area to allow the children to attend those schools. Ms. W responded by indicating she hoped the children would be registered in French immersion at St. Catherine's Elementary school and it was later determined she had contacted the Springvale school and voiced her objection to the children being registered at that school.

[300] Mr. L indicated he did not want to register the children in a French immersion class for various reasons including but the most significant objections being that he wanted the children to learn English, Greek and Arabic before attempting a fourth language, and he wanted the children to attend a school in the community where they had always resided and played soccer. Mr. L subsequently attempted to register the children at Springvale school but learned that Ms. W had already contacted the school to advise them of her objection to their enrollment there.

[301] Following the children's appointment with Dr. S2, pediatrician, on January 5, 2017, Dr. S2 reported that the children were doing well. Dr. S2 examined their noses and again offered the opinion that the children did not need to see an ear nose and throat specialist. Ms. W requested a referral for therapy for the children and to have Dr. S see the children as their primary doctor. Dr. S2 declined to refer the children for therapy or to ask Dr. S to assume primary care of the children. Dr. S2 directed the children to return for the next round of immunizations in March 2017.

[302] In January 2017 Ms. W contacted the IWK Hospital Central Referral service indicating she wanted to refer the children for mental health services and her pediatrician was unable to address any socio-emotional concerns.

[303] Mr. L scheduled another appointment for immunizations on March 16, 2017. This appointment was subsequently cancelled by Ms. W and re-scheduled to March 8, 2017. Mr. L's sister cancelled the appointment scheduled for March 8, 2017 and re-scheduled for March 15, 2017.

[304] The day before the children saw Dr. S2, pediatrician, Ms. W videotaped an outburst by V. The videotape was shown to Dr. S2 and submitted to the court. Ms. W indicated she felt most "objective people would find V's behavior as shown in the video concerning". Ms. W then went on to indicate she showed a copy of the video to Dr. S2 and it was Ms. W's belief that Dr. S2 indicated the children's behaviour needed to be assessed but she would not make a referral unless Mr. L agreed. Mr. L's sister had a very

different view of Dr. S2's response to viewing the video and she disagreed that Dr. S2 made any such recommendation. Mr. L's sister noted that Ms. W was visibly upset in the elevator following the appointment with Dr. S2. She stated that Ms. W "was hyperventilating in front of the children".

[305] Mr. L suggested that the changes Ms. W had introduced into the children's lives may have impacted on their behaviours. He noted as examples that Ms. W had introduced her new intimate partner and his daughter, had moved homes twice, and she had stopped taking the children to the Greek Orthodox Church.

[306] Ms. W has stated "I am not able to definitively say that what they are saying is either true or untrue; and that is why I took them to the doctor in January 2015 and informed you about what was happening."

[307] K attended to have two cavities filled and three other areas of concern were noted. The parties were encouraged to use proper brushing, flossing and the use of toothpaste containing fluoride. A further appointment was scheduled that same month, K attended with Mr. L and no further procedures were required.

[308] The issue of the children having their eyes examined arose in February 2017. Ms. W signed a consent form to allow the children to have their eyes examined at pre-school through a free program offered by the Nova Scotia Health Authority in late February 2017. The program was scheduled to take place on Mr. L's week and on a day the

children would not usually attend preschool. Mr. L subsequently advised of a scheduling difficulty that day and that he had arranged for the children to be seen by "an eye doctor" on February 11, 2017. He confirmed he had inquired and determined that the cost of the appointment would be covered by the parties' respective insurance plans.

[309] Ms. W subsequently advised Mr. L she had received a letter from the IWK Hospital regarding the children's eye exams. Ms. W indicated that because the children were "preemies" they were part of the NICU program and have been asked to have their eyes examined at the IWK Hospital. Mr. L advised that since he received notice of the appointment with the IWK on February 10, 2017, it was not sufficient notice to cancel the appointment he had arranged with the optometrist on February 11, 2017 and he would be taking the children to the appointment.

[310] Mr. L indicated that the optometrist determined the children's vision was "perfect", they did not require eye wear, and would not need to be seen for two years. Mr. L suggested Ms. W was free to take the children to the IWK Hospital if she wished. However, Mr. L noted that MSI may not cover two eye exams so close in time.

[311] Ms. W took the children to a walk-in clinic on February 22, 2017, as she indicated V was ill. Ms. W was unable to take the children to the eye appointment at the IWK on that same date, February 22, 2017, and the appointment was re-scheduled to March 21, 2017.

[312] Mr. L argued that taking the children to a walk-in clinic before contacting Dr. S2, pediatrician, or Dr. S was contrary to the court order and he had been advised Dr. S2 had stated that the children should be taken to the IWK Hospital rather than a walk-in clinic if there is an emergency and both she and Dr. S were not available. Mr. L indicated he was concerned about the possibility of misdiagnosis and unnecessary treatment or intervention if the professional assessing the children did not have the "full picture from both weeks at the same time". The issue was related to wax buildup in K's ear. Wax had been found and Dr. S later prescribed Fucidin cream.

[313] Mr. L advised Ms. W about purchasing new soccer shoes for the children and sneakers, indicating the children loved them. Ms. W wrote to Mr. L suggesting he had purchased the wrong soccer shoes for the children.

[314] On February 22, 2017 Mr. L requested time with the children on their birthday on March 23, 2017, as Ms. W had them with her in 2015 and in 2016. On March 10, 2017 Ms. W agreed.

[315] On March 8, 2017, the children saw Dr. S2, pediatrician, for further vaccinations. Mr. L's sister advised that Ms. W once again asked to have the children seen by a therapist. Dr. S2 indicated it was a parental issue and not a medical issue requiring any mandatory therapy or intervention for the children.

[316] In her weekly report in early March 2017 Ms. W noted that the children were almost “caught up with their vaccines”, and further vaccines were scheduled to be administered mid-April 2017.

[317] According to Ms. W, K experienced ear discomfort starting around March 18, 2017. Ms. W indicated Dr. S2, pediatrician, was unavailable and she obtained a referral from Dr. S to take K to an ear nose and throat specialist (ENT). Mr. L’s sister took K to see Dr. S who then determined it was not necessary for K to be referred to an ENT specialist immediately as an appointment was scheduled with Dr. S2 that month. Ms. W noted that K’s ear had improved by the time he saw Dr. S2 and she recommended continued application of oil in K’s ear for several weeks rather than an appointment with an ENT specialist.

[318] Ms. W did take the children to the eye specialist at the IWK and she noted there would be a follow up appointment for the children.

[319] Following the latest round of disagreements or confusion on how to address various medical concerns, Dr. S indicated he would insist that at all future appointments for the children, a representative from both sides of the family would be present in his office.

[320] In March 2017 Ms. W requested Mr. L start sending the children to preschool every day of the week and she asked him to bring the children's morning and bedtime schedules in line with hers.

[321] There was disagreement once again with to how to deal with "Canadian" Easter weekend and Greek Easter weekend.

[322] In April 2017 Mr. L filed a Request for Date Assignment Conference to move the matter forward. Ms. W moved to have the court refuse to schedule a Date Assignment conference, indicating she wanted the children assessed.

[323] On April 19 2017, the children saw Dr. S2, pediatrician, for further vaccinations and she checked their ears.

[324] In her affidavit sworn in May 2017 Ms. W indicates:

> I have been bringing up concerns regarding the twins and their behaviors, language and sleeping difficulties with Dr. S2, pediatrician, and she continually informs me that she does not want to get involved in any legal dispute and that I should take my concerns to the IWK Central Referral Department. I contacted the IWK Central Referral Department on many occasions, and they continually inform me that they need a request or referral from a doctor in order to set up an appointment with a child psychologist… Ms. W went onto say she was referred to the "Strongest Families Institute" and the "START" (Suspected Trauma and Abuse Response Team) located in the IWK.

[325] On May 17, 2017 Ms. W reported that the children had made statements including the following:

a. Mommy is a 'fucking bitch";
b. Mr. D and his daughter are "fucking idiots";
c. Their mother's parents are "fucking idiots"; and

d. That their father yells at them and calls them “fucking idiots” and “fucking stupid”.

[326] On May 25, 2017 Ms. W indicated she would be assisting with the children’s soccer team every week. At that time, Mr. L was still subject to a no contact order and Ms. W’s attendance at soccer would prevent Mr. L from being able to attend. Ms. W was present with Mr. D at the children’s soccer that week and when the children’s aunt was watching the children from the pitch, (arguably parents / guardians and others are encouraged to watch from above), Ms. W directed Mr. L’s sister to leave the immediate area during the practice. Obviously Ms. W made a choice to exclude Mr. L’s sister and did not have to do so regardless of the stated “rules”, especially not in the children’s presence.

[327] Mr. L was acquitted of all charges on June 16, 2017 and he indicated that he started assisting with the children’s soccer shortly thereafter. A letter was filed from Dunbrack Soccer suggesting Mr. L provided limited volunteer assistance through their program. Mr. L has indicated that Ms. W threatened legal action against Dunbrack Soccer in the early stages of the children’s involvement, and Ms. W then chose to volunteer with the organization she had initially objected the children participate in programs with. Whether or not Mr. L volunteered is not a key issue and if he chose not to then it would be understandable.

[328] On June 1, 2017 a child protection worker interviewed the children together. The children talked about their father calling people the “b” word, and indicated their father

didn't do that anymore. The social worker then spoke with Ms. W who indicated K had stated he was hitting his mother because he saw his father hitting his aunt. Ms. W also expressed concern that Mr. L may be pushing the children too hard, forcing them to learn both Greek and Arabic. Ms. W alleged Mr. L was a racist, he was homophobic, and he would not allow her to speak Arabic because his number one priority was Greek.

[329] In June 2017 a Consent Order was granted dealing with the children's enrolment at Springvale Elementary School and in the Excel Program at that school.

[330] On June 16, 2017 Justice Muise issued an oral decision and found Mr. L not guilty with respect to both charges.

[331] Orders for Production were granted directing Mr. D to disclose his cellular telephone number for the period March 1, 2014 through July 31, 2014; for the records of Dr. S2 pediatrician; for the updated records of the Minister of Community Services; for the counseling records of Dr. PF, Ms. W's therapist; for the medical records of Dr. D in relation to Ms. W; and for the records of the Minister of Community Services in relation to Mr. D.

[332] A further appointment was scheduled with Dr. S2, pediatrician, on July 5, 2017. Ms. W and Mr. L attended the appointment.

[333] Dr. PF's records indicate Ms. W was diagnosed with Adjustment Disorder and Ms. W was participating in psychotherapy to "moderate stress responses".

[334] On August 19, 2016 WH, Assistant Centre Director at the Bedford Location of Kids & Company, swore an affidavit, which was filed in August 2016 and in July 2017. She observed the children to exhibit normal preschool age behavior and indicated they did not present as aggressive children. She acknowledged the children have had an occasional accident during nap time, had experienced some problems separating during morning drop off, but described them as "typical preschoolers".

[335] In July 2017, an affidavit was also filed by DDM, Area Director of Kids & Company, and KR, Centre Director at Bedford Location of Kids & Company. They swore a joint affidavit indicating that K and V do act out on occasion but that this type of behaviour is rare for them. They described the children as well adjusted, happy young boys. They stated that "neither child is displaying what we would consider abnormal behavior for their age when not getting what they want". They also noted that the children had been having nosebleeds four to six time per month, they were not heavy, and did not last long. They noted the parents were advised this was not an area of concern, that nosebleeds due to dryness of the weather and coolness in the air were very common in the centres.

[336] Ms. W and Mr. D moved together with their children in August 2017.

[337] In August 2017 Ms. W indicated she enrolled in the Strongest Families Institute, "at the beginning of 2017". That she participated in sessions related to parenting the active child, and a number of workshops. In August 2017 Ms. W indicated that through

consistent use of strategies she had learned that the children's behavioural issues were improving, but she stated that the children continued to exhibit behavioural outbursts such as the one she had videotaped in February 2017, and they continued to exhibit "nighttime ones". It appears from the correspondence received from the Strongest Families Institute that Ms. W was focusing on V's behavior.

[338] The children did not continue with the Lebanese Heritage Arabic Language School in 2017, and Ms. W refused to contribute to the cost of Greek school.

[339] Ms. W refused to help pay for the children's soccer registrations in the Fall and winter of 2017 as she felt they missed too often in the spring and summer of 2017. Subsequently Ms. W requested the children move from the U6 program to the U8 program given that their soccer skills were advanced. This also allowed the children to practice at the same time as Ms. W's partner's daughter.

[340] In September 2017 Mr. L asked Ms. W if she would attend a 14 week program at the IWK Hospital for parents of children ages 3-6. Ms. W indicated she would be attending the program offered for parents of children 6-12 years. Mr. L provided a certificate of completion for the program in April 2018. The children were five years old at that time.

[341] On September 18, 2017 JD, principal of Springvale Elementary School, sent a note to both parents indicating that one of the boys had bruised the Excel teacher's arm.

He recommended "it might be best if your child were able to be better settled, before the parent departs…" but went on to say "It is also important for you to know that he did get settled and was successful in entering his classroom first thing this morning".

[342] In October 2017 Mr. L received a copy of the business records held by the Department of Community Services in relation to Mr. D. In that record there was mention of a person who drops by the home on a weekly basis and in January 2017 had indicated they had no child protection concerns in relation to K or V. This person was later determined to be Mr. D's mother. D's mother testified differently at trial. I have not placed significant weight on her testimony.

[343] In November 2017 the parties were considering seeing a counselor. Ms. W was reportedly contacting various service providers but not copying Mr. L on any correspondence to them. Dr. KP, MW, WG, AM, DB, and JD were suggested, discussed or considered by Ms. W. Ms. W booked an appointment for the parties and for the children with Dr. DB. Ms. W had not involved Mr. L in any discussions with Dr. DB.

[344] Mr. L contacted Dr. DB and provided information from his perspective. Dr. DB advised him that Ms. W had asked her to assess the boys with regard to "whether they were being exposed to two healthy environments". Ms. W asked Dr. DB "in your expert opinion, given that you already know about our situation, would our children not benefit from speaking to someone who is trained in this field? I know you have not met them, however, this is the question that is continually disagreed upon."

[345] Dr. DB responded "I don't have enough information to provide my expert opinion on the situation in order to make a recommendation. That's why I wanted to meet with you to gather additional information. Luckily the children are exposed to additional adults in their lives such as teachers, etc. that can be a second pair of eyes on the children's well-being. It's unfortunate that the parents are not on the same page in regard to the best interest of the children and this appears to be a case where the children are stuck in the middle of a difficult situation. Regardless, I can recommend that both you and E. attend mediation counseling, so you can parent the children in the future in an amicable way."

[346] In early December 2017 Ms. W started a new job. Ms. W indicated that during her week with the children she would drop the children off at school and her partner, Mr. D would pick the children up from school on certain days (Wednesday, Thursday and Friday). Ms. W also referred to the extracurricular programs the children were enrolled in including soccer, basketball and Greek school.

[347] In December 2017 the children's school principal requested a meeting with the children's parents and their teacher. In his correspondence the school principal noted "As mentioned at both our parent meetings this week, our school staff and administration are confident the concerns around toileting and aggressive behavior are well within the norm. these are good boys."

[348] Mr. L was concerned that Ms. W brought her intimate partner Mr. D and his mother MD to the meeting with her.

[349] The school officials confirmed the children's development and behaviors were within expected norms for children their age. Ms. W reportedly stated that she believed the children were witnessing violence while in the care of Mr. L and she was trying to make arrangements to have the children assessed to confirm that the children are not in a safe environment while in Mr. L's care. School staff recommended the parties attend counseling.

[350] After the meeting with school staff Ms. W wrote to the school asking if they would recommend the children be removed from Greek school. Ms. W advised Mr. L that the school staff had recommended the children focus on their English language studies. Mr. L confirmed with school staff that they had not made any such recommendation to Ms. W.

[351] Ms. W wrote to the Greek School indicating the children were struggling with English and their school had recommended they focus only on English.

[352] Mr. JD, principal Springvale Elementary later sent a letter dated January 15, 2018 indicating in part:

> …
> "Over the past four months the classroom teacher, Ms. LW and I have had multiple meetings, emails and text messages with both parents. My goal and our goal is to ensure that all conversations and efforts are targeted to being the best support possible for these

> twin boys. I have come to realize that both parents may misinterpret pieces of school conversations to best support their point of view. To that end, I ask that any school meetings be pre-arranged with a specific purpose. I will also request that informal "drop in" meetings and unnecessary / misdirected electronic contact with Mrs. LW *discontinue until the current situation improves*." These intense and unproductive communications take away from our full efforts to support all learners. Our classroom teacher and administration has identified that these boys would benefit academically and socially from a consistent message – from all key individuals involved in their development.
>
> It is clear that both parents require guidance to ensure consistency in supporting school efforts to develop their emotional, social and academic skills. This was my main recommendation during the contentious meeting held Mon. January 8th. Our school cannot be involved in supporting one partner or the other - with the outcome of any legal proceedings.
>
> Their first term report card indicated some needs and concerns for both boys. This should never be interpreted as a learning disability or severe struggles that will have a long-term impact on their development. These areas that can and will be strengthened with the proper support system in place. Appropriate parental involvement and support will facilitate a better result. Our open discussion during this meeting included concerns around basis toileting and aggression with other students. It is the position of the school that these concerns are not outside the norm – at this developmental age. Continued appropriate and focused supports by all key adults – will benefit all aspects of their development.
>
> Each parent has valuable skills and backgrounds to ensure the twin boys grow and develop, to become successful and happy. Celebrating their growth, individual family heritage and their school successes will help to build their sense of pride and confidence. A more respectful balance between these parents will allow each to give their best to their two children.

[353] He sent further correspondence on January 31, 2018 indicating in part "At no point had Ms. W or myself recommended that K and V be removed from Greek school".

[354] In March 2018 contact was made with MW. An initial meeting was scheduled in April 2018. Mr. L believed the sessions would be related to co-parenting counseling and was concerned Ms. W might still be trying to have Mr. MW provide a recommendation for the children to be assessed.

[355] Ms. W provided evidence that the condominium was sold in March 2018.

[356] In April 2018 Ms. W acknowledges the decision to move the children to the English language program was in the children's best interests. She also noted that the school staff had made note of a few instances when the children exhibited behavioural issues but that the school does not characterize the children's behaviours as extraordinary. Ms. W continued to express concern about the children's development and about their behavior. Ms. W noted that both she and Mr. L were attending programs offered through the IWK Hospital for parents.

[357] The parties continued their discussions about who they should meet to address the ongoing concerns raised by Ms. W. Ms. W indicated they were scheduled to meet with Mr. MW. Ms. W raised the issue of the children attending her partner's church to hear her partner's daughter sing, and raised the issue of "Catholic Easter" vs "Orthodox Easter" as being something that should be addressed when planning around the children's birth date if Mr. L is "adamant that the boys follow in the Greek Orthodox traditions and faith". She argued he should not have both weekends.

[358] In his affidavit sworn in April 2018 Mr. D indicated he first met Ms. W's children in the spring of 2015 and that he and Ms. W moved in together in the summer of 2016. He indicated that when he first moved into the home the children would typically wake up crying or screaming approximately 3 to 4 nights per week. He indicated he believed the children's behaviours were improving but described incidents of the children sometimes having trouble listening to instructions and acting out if they did not get what

they wanted. Indicating they would sometimes hit their mother or kick and scream frantically. Mr. D expressed concern that the children may be exposed to racial comments and other information which would not be age appropriate.

[359] Mr. D stated that the children made the following comments, which were not offered for the truth of what Mr. L (referred to as Baba by the children) may believe or may himself have said, but as evidence confirming the children made the statements:

> Baba hates Mr. D because he is Black
> That the children use the "N" word in both English and in Greek
> That Baba does not like Lebanese people
> Baba refers to Ms. W and Mr. D's daughter as bitches
> Baba has referred to Mr. D as a stupid bitch

[360] The children have used words such as "dick in the privates" while looking at Mr. D's daughter

[361] The children have indicated their Baba gets very mad when they ask to call Ms. W or Mr. D.

[362] K had stated that his Baba did not like Mr. D because he was a black bastard

[363] Mr. D further noted that the children, at 6 years old continued to have "bathroom accidents".

[364] MD swore an affidavit on April 20, 2018 indicating she had concerns with respect to the children. However, in previous interviews with child protection services she had indicated she did not have concerns about the children.

[365] SS swore an affidavit on **April 20, 2017** and observed the children are violent and aggressive only towards Ms. W when she tries to take them out of the car.

[366] In April 2018 DK, Vice Principal and Primary Teacher at the Halifax Greek School swore an affidavit indicating the children were doing "exceptionally well" in Greek school.

[367] In April 2018 Father PM, the Parish Priest of Saint George Greek Orthodox Church, swore an affidavit confirming both children have been Baptized in the Greek Orthodox Church and that under Greek Orthodox Church law, a Greek Orthodox Christian may not attend and attain communion outside the Greek Orthodox Church.

[368] He also confirmed the children's attendance at the Greek Orthodox Church of St George Sunday School since September 2015, and the Greek School at the Greek Orthodox Church of St. George since September 2016. He noted that the only Greek Orthodox Church in the Halifax Regional Municipality is St. George Greek Orthodox Church.

[369] In May 2018 Mr. L's sister indicated she was aware of the concerns raised by Ms. W regarding the children, including: sleep issues, night terrors, temper tantrums, violent

behavior, and use of inappropriate language, issues with potty training and nosebleeds. She indicated their family did not observe the same behaviors.

[370] On May 6, 2018 Mr. L's mother HL, his father CL, his aunt GL, and his cousin EL all swore affidavits in support of Mr. L.

[371] The trial commenced on June 11, continuing through June 12, 13, 14, 15, 18, 19, 20 and 21, and again in October 2018.

[372] In August Mr. L alerted the court that he would be filing a motion to enter additional evidence. Mr. L filed evidence as did Ms. W and the evidence was admitted at the motion hearing in October 2018. The evidence indicated Mr. D had moved out of the home he had shared with Ms. W.

[373] In the summer of 2018 Ms. W and Mr. D separated and Ms. W moved to B. Drive, in Halifax, Nova Scotia in a three-bedroom unit with the parties' children.

[374] Ms. W has argued that she struggles and wants help and is never acknowledged. Mr. L initially believed Ms. W was exaggerating her complaints but argues that if she is not exaggerating then he has concerns about her ability to manage the children.

[375] When he testified, the school principal commented about Ms. W's presentation when she visited the school. He indicated it was "less than standard", and that Ms. W seemed to have real anxiety about the school experience. He noted that he observed the "boys were in control", that he was concerned about her ability to direct the children and

he commented to her that to help children through school parents needed to make themselves as strong as they could to guide children through the school years. He stated that he made the comment because he was concerned about her parenting.

[376] He noted that when he first saw the children in May 2018 "red flags went up". He stated the children appeared unaware of appropriate boundaries and he thought it may be challenging for them to settle into a routine. He noted that they presented as active and unfocussed. He stated that ideally the school would need to set the right conditions to assist them and that the emotional drama would not serve them well. He stated the children would be well served if both parents had enhanced parenting skills.

[377] The school principal noted that when the children first entered school they had a level of anxiety which diminished over time. The children experienced more anxiety when Ms. W left them off, and particularly one day when only one child was dropped off while the other was taken to the hospital. He stated that the incidents at drop off were more pronounced when Ms. W was dropping them off, "the level of wailing, flopping on the floor, trying to get away and back to mom", the school observed that the children were hitting Ms. W and not anyone else. He noted that if the school did not intervene then the incident may have gone on for 15 – 20 minutes. He indicated that once the school day began there was no further issue. He explained that the children's behavior was so heightened at those times that everyone on the bottom floor could hear the children.

[378] He noted that by and large the children's behavioural issues were within the norm and they were moving in the right direction. He also noted there had been bathroom accidents but those issues were improving, it was a slightly heightened concern but children have a change of clothes to address the issue and it improved over the year.

[379] He described the children's behavior as "a little elevated but not excessive or out of the norm". He acknowledged there was an occasion when one child used the term "bitch" on the playground and this was addressed. He also indicated that the fundamental issue for the children was one of listening, their attentiveness.

[380] Without intervention, this pattern of conflict will continue.

[381] Ms. W testified that she had developed a working relationship with Dr. S2, pediatrician, and she was not proud of how she had approached the situation. Ms. W explained that she was upset at that time. She noted those were emotional times, there were miscommunications and misunderstandings.

[382] I do not accept that Ms. W will stop creating havoc unless the court intervenes.

SUMMARY

[383] Mr. L has a tremendous amount of emotional, practical and financial support from his family. I am confident they will follow through with any reasonable recommendation from a doctor or pediatrician for intervention which would more than likely benefit the

children. The evidence suggests Ms. W has very little support and is capable of fabricating evidence to achieve her goals.

[384] Ms. W has suggested Mr. L and his family are undermining her effort to parent the children as she sees fit. She has asked this Court to consider a parallel parenting regime.

[385] Ms. W wants to negotiate parenting strategies with Mr. L using a third party. She is not prepared to allow Mr. L and his family to raise the children how they see fit. She believes the children are being "overindulged" or "overprotected", and that a professional will tell Mr. L and his family that he and or they must parent differently.

[386] Ms. W has repeatedly criticized Mr. L's mother and sister for "overindulging" or "overprotecting" the children in their home. She has suggested the children are in charge in Mr. L's home and "are treated much younger than" their chronological age. I accept there are differences between the households.

[387] There are at least two, and at times up to four adults available to ensure Mr. L's house runs smoothly and the children are cared for (and entertained) during his weeks. Ms. W currently parents the children as a single parent. During her week, there is arguably often only one adult available to respond to the children's needs or to their demands. In addition, there is only one income to pay the bills in her household.

[388] Ms. W has observed that at times the children present as very attached to Mr. L's sister and his mother, and less attached to her and to Mr. L. She has expressed that she

has felt rejected when one or the other child has chosen to sit with his aunt or prefers to go or stay with his aunt. Ms. W has expressed concern about the attachment and at times she has attributed a perceived shortfall of affection in her direction to instances of the children being "overindulged" or "overprotected" by Mr. L's family or even alleged direct interference by Mr. L and his family.

[389] Ms. W suggests that the children's rejection of her in favour of members of his family, that any aggressive behaviour or non-compliance the children exhibit, that any sleep difficulties or anxiety they experience, and that any foul language they use or racist remarks they make, are likely attributable to something Mr. L or his family have done or said.

[390] There would be cause for greater concern and possibly professional intervention with the children if they continued to kick, scream, and not use age appropriate ways of communicating their thoughts and feelings across numerous situations. There will be cause for assessment if the children's attentional difficulties continue and I would expect Mr. L to follow up with the concerns. Even if that were the case, I find that based on the evidence (taking into account all the inconsistencies in the evidence to date), it would not be possible to determine any one reason or if any person or group of persons would be more or less responsible for any of the children's difficulties and determining who is to blame should not be the goal of any intervention. Determining the needs of the children should be paramount.

[391] There is a continuum of acceptable when it comes to ways of parenting children. I find there is no evidence to suggest Mr. L and his family are outside the norm when parenting the children in their multigenerational home. Although it is important that caregivers establish a balance between freedom and limits, no two families are exactly alike in how they approach the challenges presented when parenting their children. Families evolve and must be ready for change and be flexible in responding to the ever-changing needs and demands from their children. If the school or the children's pediatrician recommends a psycho-educational assessment for the children for instance, I would expect Mr. L to consent.

[392] Ms. W has been critical of Mr. L and his family's parenting choices. She has asked Mr. L to intervene with his mother and with his sister and he has been passively resistant to her requests and many of her questions. Failing to respond to questions such as those related to the children's bed time routine. Mr. L did not initially raise concerns about Ms. W's parenting. He has only raised concerns about Ms. W in the context of her efforts to change the shared custody arrangement in her own favour by challenging his and his family's ability to care for the children.

[393] I accept that the children may be frustrated and even confused about different expectations between households. However, I find that the conflict between the children's family members would be far more difficult and confusing for them to understand.

[394] Children can benefit from consistency between households and they can also adapt to differences between two households who consistently enforce their own rules and expectations. I am confident there is consistency of care in Mr. L's home. I am aware of many changes in Ms. W's home in terms of actual residential moves, introduction of new caregivers, and introduction to new communities but I am also confident that Ms. W appreciates the value of a consistent routine for the children and could have a routine in place if her work schedule allowed. I don't believe it does.

[395] Based on the evidence before me, I find the children are not likely to benefit by being referred to counseling or for an assessment at this time. I do find it would be of benefit to their children if Mr. L and Ms. W attended individual counseling. I also find it would be of benefit to their children if Mr. L and Ms. W were to communicate through a third party about the rules and expectations which exist in their respective homes. Should either party choose to attend counseling they should provide their counselor with a copy of this decision.

[396] The expectation would be for them to share information without any expectation that the other would adopt their approach or views and without any intent to evaluate or critique the other or have anyone else do so. The expectation would be for them to be aware of and able to acknowledge the differences between the homes and thereby communicate to the children their acceptance and respect for the others' choices. Different does not mean wrong. I am not confident there is anything to be gained by

having Mr. L and Ms. W sit in a room together to discuss any issues related to the children.

[397] Given Mr. L's distrust of Ms. W's motives, I do not believe the parties can work together as co-parents making decisions together for the benefit of the children. I have concluded that one parent should make decisions about the children's health, education and religion but that both may make some decisions about the children's extracurricular activities, their own travel with the children, and decisions about who will be introduced as caregivers for the children during each parents' parenting time.

DECISION

[398] Based on the evidence, the above noted reasons, and the requests made by the parties I would grant an order as follows:

a. Primary care and custody of the children to Mr. L.

    i. Final decision making in relation to the children including in the areas of health, education and religion to Mr. L.

    ii. Responsibility for advising Ms. W of all appointments, soliciting her written information (one page maximum) detailing any concerns she has which are to be provided to the doctor at the time of the appointment, and responsibility to

advise of the outcome as soon as possible but not more than two weeks after any appointment.

iii. Provide a copy of this decision to the doctor.

iv. Confirm Dr. S2's and Dr. S's involvement if they consent.

v. Specify Mr. L must follow Dr. S2's and / or Dr. S's advice based on the new parenting arrangement.

vi. Ms. W must report any medical concerns she has or any symptoms the children experience to Mr. L immediately. Ms. W must not discuss medical issues with the children and she cannot take the children to doctor's appointments. In the event of an emergency she must attempt to contact Mr. L first, then his parents and then his sister and allow them to take the child to the children's designated health provider or if she determines she cannot wait, she must take the children to the emergency department at the hospital and not a walk-in clinic, and she must attempt to reach and have one of the above noted persons on speaker phone when in discussion with any medical person regarding the children's health. If she is travelling with the children and an emergency arises

she must attempt to contact one of the above noted persons and have them on speaker phone while in discussion with any medical person regarding the children's health.

b. Mr. L or Ms. W must not make negative comments about each other or each other's family or acquaintance while in the children's presence.

c. Parenting time for Ms. W per the attached schedule A. However, this parenting schedule would change if the children were not attending Greek School (after grade 6, to a more common routine of every second Friday – Monday for Ms. W), or would need to change if her work schedule interfered with having the children on Mondays. Regardless, Ms. W is obligated to ensure the children attend Greek School and attend church at the Greek Orthodox Church of St. George.

d. No telephone or other electronic communication is ordered.

e. Day to day decision making to Ms. W when the children are in her care. Please note special allowance for cutting the children's hair or arranging extra-curricular activities and paying for those activities on her time.

f. The holiday schedule outlined in the parties Separation Agreement continues, with clarification that the parties will alternate the school Easter holiday and not the Greek Orthodox Easter weekend.

g. In addition, all other statutory holidays (in addition to the two included in the Separation Agreement) will be alternated by the parties. Care should be taken by Mr. L to compensate Ms. W every time a statutory holiday falls on her regular weekend and it is his turn to have the children for that holiday. He can either forgo his turn or make up the time.

h. In the summer-months the parties shall alternate care of the children on a week on week off basis.

i. Both parties may travel outside of Nova Scotia and outside of Canada with the children upon reasonable notice to the other party and upon providing an itinerary and contact information. Mr. L is entitled to apply for or renew the children's passports without the consent of Ms. W.

j. In addition, both parties are entitled to a block ten-day period of holiday time with the children every year. Ms. W must advise Mr. L by May 1 on even years and Ms. W must advise by June 1 on even years and alternate on odd years. Both parties will complete consents to travel as necessary.

k. Ms. W shall not unreasonably withhold or restrict the children from attending any Greek holiday events, usually a period of 3 – 4 hours should be used as a guideline and Mr. L shall ensure Ms. W is compensated for any loss of her parenting time to attend Greek holiday events. Mr. L must give Ms. W at least one week's notice of a request to

have the children attend an additional Greek holiday event. For the Greek Easter weekend Mr. L must compensate Ms. W for any loss of her parenting time if this weekend happens to fall on her weekend.

l. The parties may adjust schedule A, or any other parenting time by agreement of both parties in writing.

m. Incorporating the Consent Order regarding schooling for ease of reference. The children continue in their current school placement (and in future attend the feeder schools), and continue to attend their current Excel program.

n. All terms and conditions related to the children attending Greek school and communion in the Greek Orthodox Church continue.

o. The children will continue to attend Kids & Company Daycare on any PD days or in the summer as necessary.

p. The children will continue attending extracurricular activities as identified by Mr. L and he shall be solely responsible for payment of the costs of those activities he identifies, including soccer. Ms. W is entitled to provide input, receive notice of and attend the activities.

q. Ms. W may register the children in extracurricular activities on her parenting time alone and shall pay the costs.

r. An order that either party may attend and participate in the children's extracurricular activities.

s. The costs related to soccer and basketball in the 2017/2018 season will be waived.

[399] Other terms from the Separation Agreement which shall be continued:

t. Smoke free environments

u. Affections

v. Travel

w. Passports

x. Mobility

y. Right to information

z. Cultural and religious studies

aa. New partners, with a slight change indicating they shall disclose when a new intimate partner is introduced and generally let the other parent know how involved that person is regardless of whether they are "living" with them.

bb. Child support shall be the table amount based on Ms. W's income.

cc. I specially find that education expenses and clothing expenses as contemplated in the Separation Agreement are not special expenses.

dd. Each to pay their own extracurricular activity expenses.

ee. Medical plan continued.

ff. Mr. L shall be entitled to the Canada Tax Benefit if applicable for both children.

gg. Post-secondary would be considered in relation to the means of the children and parents, and any shortfall shared proportionately after full disclosure from the children of all financial resources.

[400] Mr. Shepherd will draft the Order.

[401] Submissions on costs are due by February 15, 2019.

Cormier, J.

Schedule A – September 1 through to the end of June the children will reside primarily with Mr. L, except holidays or as agreed in writing. In July and August, the parties shall share care on a week on week off rotation, or as agreed in writing. It is in the children's best interests to be with alternate caregivers they are most familiar with if their parents are working (their paternal grandparents, their paternal aunt, and the staff and children at Kids & Company). Consistent caregivers, the opportunity to consistently attend Greek school, and the Greek Orthodox Church in the community they have a substantial connection with, is determined to be in the children's best interests. The schedule starts on the Sunday following the release of this decision, and shall coordinate with Ms. W's work schedule.

Day of week	Week 1	Week 2	Week 3	Week 4
Saturday **(Greek school)** **9:00 am–** **12:30pm**	**K & V with Dad all day and overnight** Mr. L – Off work Ms. W - 8:30-5:00	**K & V with Dad all day and overnight** Mr. L – off work Ms. W – 8:30– 5:00	**K & V with Dad all day and overnight** Mr. L – off work Ms. W – 8:30– 5:00	**K & V with <u>Mom</u> all day, Greek school overnight** Mr. L – off work Ms. W – off work
Sunday Greek Orthodox Church (church) 10:30am – 12:30pm	**Dad take K & V to church, <u>Mom</u> pick up at church approx. 12:30pm** L – off work W – off work	**Dad take K & V to church, <u>Mom</u> pick up at church approx. 12:30pm** L – off work W – off work	**Dad take K & V to church, <u>Mom</u> pick up at church approx. 12:30pm** L –off work W – off work	**<u>Mom</u> drops K & V 15 minutes in advance of church - Dad** L – off work W – off work
Monday	**<u>Mom</u> has care of K & V all day and overnight** L – 8:30 – 5:00 W - off	**<u>Mom</u> has care of K & V all day and overnight** L – 8:30 – 5:00 W – off	**<u>Mom</u> has care of K & V all day and overnight** L – 8:30 to 5:00 W- off	**K & V with dad** L – 8:30 – 5:00 W – 8:30 – 5:00
Tuesday	**<u>Mom</u> drops K & V to school Dad's care and pick up** L – 8:30 – 5:00 W – 12:00 - 8:00	**<u>Mom</u> drops K & V to school Dad's care and pick up** L – 8:30 – 5:00 W – 12:00 -8:00	**<u>Mom</u> drop K & V to school, Dad's care and pick up** L – 8:30 – 5:00 W – 12:00 – 8:00	**K & V with Dad** L – 8:30 – 5:00 W – 12:00 – 8:00
Wednesday	**K & V with Dad** L – 8:30 – 5:00 W – 8:30 – 5:00	**K & V with Dad** L – 8:30 – 5:00 W – 8:30 – 5:00	**K & V with Dad** L – 8:30 – 5:00 W – 8:30 – 5:00	**K & V with Dad** L - 8:30 – 5:00 W – 8:30 – 5:00
Thursday	**K & V with Dad** L – 8:30 – 5:00 W – 1:00 – 9:00	**K & V with Dad** L – 8:30 – 5:00 W – 1:00 – 9:00	**K & V with Dad** L – 8:30 – 5:00 W – 1:00 – 9:00 pm	**K & V with Dad** L – 8:30 – 5:00 W – 1:00 – 9:00
Friday	**K & V with Dad** L – 8:30 – 5:00 W – 8:30 – 5:00 or 9:30 – 6:00	**K & V with Dad** L- 8:30 – 5:00 W – 8:30 – 5 or 9:30 – 6:00	**K & V with Dad** L – 8:30 – 5:00 W – 8:30 – 5 or 9:30 – 6:00	**Dad's care all day. <u>Mom</u>'s care after 7:00 pm** L – 8:30 – 5:00 W – 8:30 – 5:00 or 9:30 – 6:00