IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Paquet v. Clarke*, 2004 NSSF 94

Date: 20040916
Docket: SFHMCA026553
Registry: Halifax

Between:

Danielle Paquet

Applicant

v.

David Clarke

Respondent

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: September 14, 2004 and September 16, 2004 in Halifax, Nova Scotia

Written Decision: October 27, 2004

Counsel: Sandra L. Barss, for the Applicant
Philip Whitehead, for the Respondent

By the Court:

[1] Danielle Paquet applied pursuant to Section 37 of the *Maintenance and Custody Act of Nova Scotia* to vary the custody, access and child maintenance provisions of a Consent Order of this Court dated November 6, 2003.

[2] More particularly, she seeks the permission of the Court to relocate, with the parties' two young children, from her current home in Dartmouth, Nova Scotia

to Sherbrooke, Quebec. Counsel have agreed to defer the hearing of the child maintenance issue to another hearing date.

BACKGROUND

[3] Danielle Paquet and David Clarke lived in a common-law relationship from March 10, 1994 to May 15, 2003. During that time they had two children, namely Amelia Jane Paquet Clarke born […], 1995 (now 8) and William David Paquet Clarke born […], 2001 (now 3).

[4] Shortly after their separation Ms. Paquet applied to this Court for an order for custody of the children with provisions for access by Mr. Clarke. She also sought child maintenance including a contribution by Mr. Clarke to her child care costs incurred while she was at work. That application was eventually resolved by agreement and the Court issued a Consent Order. That Order included the following provisions regarding custody and access;

1 The parties shall share parenting of the following children namely: Amelia Jane Paquet Clarke born […], 1995 and William David Clarke born […], 2001;

2 Danielle Paquet shall have primary responsibility of the children.

3 David Clarke shall enjoy parenting time with the children according to the following schedule:

   (a) Every other weekend from Friday at 6:00 pm until Sunday at 5:00 pm commencing Friday, September 26, 2003;

   (b) Weekday access will be flexible and by agreement by the parties. Access shall not be unreasonably denied.

   (c) Unrestricted telephone access at reasonable times;

(d) Such other times as the parties may agree to.

[5] Mr. Clarke also consented to child maintenance of $600.00 per month which represented the table amount of $553.00 per month based on his income of $39,900.00 as well as $47.00 per month being a contribution to Ms. Paquet's child care expense, albeit an amount far below his proportionate share based on their respective incomes.

[6] Mr. Clarke has paid the child maintenance as and when due.

[7] Ms. Paquet was born and raised in Quebec. She came to Nova Scotia in 1987 to attend Dalhousie University and has lived in the Halifax Regional Municipality ever since.

[8] At the time of their separation, the parties owned a home which was subsequently sold. Ms. Paquet now lives in a two bedroom apartment in Dartmouth which she shares with the two children. Mr. Clarke lives in a one bedroom apartment in Halifax.

[9] Ms. Paquet is employed as a cytogenetic technician at the Izaak Walton Killam Hospital for Children where she earns an income of approximately $39,360.00 per year. Mr. Clarke is a pipefitter employed at Dalhousie University earning approximately $39,900.00 per year. He has been employed at Dalhousie University for approximately 17 years.

[10] The parties' daughter attends Ecole Bois-Joli, a French Acadian school in Dartmouth. Their son attends a French speaking day care attached to the school.

The children are being raised in both English and French so as to be bilingual. Apparently Amelia is bilingual and reads, writes and speaks both English and French. This plan is supported by both parties.

[11] While the parties were able to agree on the care arrangements for the children, they both have their complaints. Ms. Paquet says that Mr. Clarke has not consistently exercised access to the children, sometimes missing many of his weekends with the children without notice or explanation to her and rarely exercising weekday access.

[12] She also complains he rarely phones the children and cannot be relied upon to assist her with the children such as when something arises during the day which may require Ms. Paquet to leave work to tend to one of the children. She says too that he takes little interest in Amelia's extracurricular activities and refused to take part in his daughter's counselling sessions.

[13] Mr. Clarke has a different story. He says he has been more or less consistent with his access. He admits that weekday access is problematic because by the time he gets off work and cleans up there is too little time to pick up the children do anything with them because of Ms. Paquet's insistence that William be home by 7:00 p.m. to prepare for bed. He says he phones the children frequently but his calls are not always answered or returned. He also says that Ms. Paquet has not asked him to assist her with the children and on the one occasion he was asked to help, he did. He says he is, and has shown an interest in, Amelia's activities and was not asked to attend any of her counselling sessions. Both had many more complaints regarding the other.

CURRENT APPLICATION

[14] Ms. Paquet, in her affidavit, says that when the parties separated in May, 2003, while they were discussing the children's care arrangements, she raised the possibility of her moving back to her home province of Quebec. She says that Mr. Clarke said he would not stop her from moving. Presumably because she had no immediate plans to relocate no further discussions ensued.

[15] Mr. Clarke says that in May, 2003 when Ms. Paquet indicated she may want to return to Quebec he told her that while he could not stop her from moving, he was opposed to the children moving away.

[16] This year, while in Quebec on vacation, Ms. Paquet applied for a position with the Department of Obstetrics and Gynecological Research at the Faculty of Medicine at the University of Sherbrooke. She was interviewed and was offered the position. If permitted to relocate to Sherbrooke with the children her new job would commence September 20, 2004. When she advised Mr. Clarke of the possible move, he indicated he opposed the children's relocation. He did not insist on a provision in the Consent Order restricting Ms. Paquet's ability to relocate the children because he did not think it was going to be an issue because Ms. Paquet was aware of how he felt.

POSITIONS

[17] Ms. Paquet believes there are many benefits to a move to Quebec. For example, for her it would mean an opportunity for a greater utilization of her professional skills than is the case in her present position. Also, while her gross

income would be reduced by approximately $5,000.00 per year, certain expenses like child care and car insurance would be less so that financially she would be no worse off and with raises in the future, better off.

[18] She would also live, she believes, closer to work and also would be able to spend more time with the children in the morning and less time in her car. Also, while she has not yet secured an apartment her research leads her to believe that a three bedroom apartment could be obtained in Sherbrooke for approximately what she currently pays for a two bedroom apartment in Dartmouth.

[19] Benefits to the children include being raised in a bilingual community with similar extra-curricular activities as are available in Dartmouth.

[20] She says her new job would allow her more flexibility to attend to the children's needs without a loss of pay. She also argues that a move to Sherbrooke will bring the children closer to her extended family including her two sisters and their children as well as her parents.

[21] While she acknowledges the move will take the children farther for Mr. Clarke and his family members in Nova Scotia, she contends that given the infrequency and inconsistence of Mr. Clarke's access with the children, block access periods during the summer and other times during the year may in fact enhance the children's relationship with their father. In between such access periods the Respondent and the children could maintain contact by way of phone access and email.

[22] Mr. Clarke believes such a move would not be in the children's best

interest. He argues the children's access to him will be seriously reduced thus diminishing his role in their lives. Similarly, the children would not get to spend much time with his family including their paternal grandparents, aunt, uncle and cousin. He argues that whereas Ms. Paquet's child care and living arrangements have not yet been finalized, there is no way to be certain if she will live as close to work as she believes will be the case and no way to be certain what her expenses will be.

[23] He points out that although she has family in Quebec, no family members reside in Sherbrooke. She will have no family or other support systems in Sherbrooke and therefore will be very much a single parent having to get by completely on her own.

[24] He also doubts that her new job will offer more flexibility to care for the children. He is concerned it will entail more responsibility and more hours on the job and that the children will spend more time in day care rather than in the care of family members.

[25] He believes too that in Sherbrooke the children will be raised not in a bilingual environment but rather one that is predominantly Francophone. Although Ms. Paquet said she would speak English to the children at home, he does not believe that will happen. As a result, the children's first language will become French. William is only three years of age. That may complicate his relationship with William since Mr. Clarke speaks only English. Mr. Clarke does not want the children removed from him, his family, their community, their school, friends and activities.

[26] Mr. Clarke has asked to be granted custody of the children if Ms. Paquet moves to Quebec, with access to Ms. Paquet similar to that which she proposes for him. He says he would be willing to move to Dartmouth so that the children can continue to go to the same school and daycare. He is prepared, however, to consent to the continuation of the current order if Ms. Paquet remains living in Dartmouth. Ms. Paquet volunteered that she is not going to move to Sherbrooke if she is not permitted to take the children with her.

THE LAW

[27] Subsection 37(1) of the *Maintenance and Custody Act*, reads:

> The court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a maintenance order or an order respecting custody and access where there has been a change in circumstances since the making of the order or the last variation order.

Sub-section 18(5) of the Act states:

> In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration.

[28] The leading case on parental mobility rights remains the Supreme Court of Canada decision in *Gordon v. Goertz***,** [1996] S.C.J. No. 522. Although the current application is pursuant to the *Maintenance and Custody Act* and not the *Divorce Act*, the principles contained in *Gordon v. Goertz*, *supra*, still apply. (See *Handspiker v. Rafuse*, [2001] N.S.J. No. 1 and *Mahoney v. Doiron*, [2000] No. 12.) The Supreme Court in paragraph 49 summarized the law as follows:

1 The parent applying for a change in the custody or access order must meet the threshold

requirement of demonstrating a material change in the circumstances affecting the child.

2 If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.

3 This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.

4 The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.

5 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.

6 The focus is on the best interests of the child, not the interests and rights of the parents.

7 More particularly the judge should consider, *inter alia*:

a) the existing custody arrangement and relationship between the child and the custodial parent;
b) the existing access arrangement and the relationship between the child and the access parent;
c) the desirability of maximizing contact between the child and both parents;
d) the views of the child;
e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
f) disruption to the child of a change in custody;
g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

50. In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

ANALYSIS

[29] In their briefs, counsel for both parties conceded that Ms. Paquet's planned relocation to Sherbrooke constitutes a material change in circumstance. I agree. The Supreme Court in *Gordon v. Goertz***,** *supra,* stated the following at paras. 12 - 16:

[12] What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have been altered the child's needs or the ability of the parents to meet those needs in a fundamental way. ... The question is whether the previous order might have been different had the circumstances now existing prevailed earlier: ... Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order.

[13] It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[14] These are the principles which determine whether a move by the custodial parent is a material change in the "condition, means, needs or other circumstances of the child". Relocation will always be a "change". Often, but not always, it will amount to a change which materially affects the circumstances of the child and the ability of the parent to meet them. A move to a neighbouring town might not affect the child or the parents' ability to meets its needs in any significant way. Similarly, if the child lacks a positive relationship with the access parent or extended family in the area, a move might not affect the child sufficiently to constitute a material change in its situation. Where, as here, the child enjoyed frequent and meaningful contact with the access parent, a move that would seriously curtail that contact suffices to establish the necessary connection between the change and the needs and circumstances of the child.

[15] The third branch of the threshold requirement of material change requires that the relocation of the custodial parent not have been within the reasonable contemplation of the judge who issued the previous order: *Messier v. Delage*, [1983] 2 S.C.R. 401. If a future move by the custodial parent was considered and not disallowed by the order sought to be varied, the access parent may be barred from bringing an application for variation on that ground alone. The same reasoning applies to a court-sanctioned separation agreement which contemplates a future move. In such cases, the application for variation amounts to an appeal of the original order.

[16] Conversely, an order which specifies precise terms of access may lead to an inference that a move would "effectively destroy that right of access" constitutes a material change in circumstances justifying a variation application. ... Where, as here, the custody order stipulates terms of access on the assumption that the child's principal residence will remain near the access parent, the third branch of the threshold requirement of a material change in circumstances is met.

[30] Ms. Paquet's planned move to Sherbrooke satisfies the first two branches of the threshold requirement. As for the third, both parties gave evidence that shortly after their separation in May 2003 and before the consent order was issued, they discussed in general terms the possibility of Ms. Paquet returning to Quebec. Ms. Paquet says no provision was included in the consent order restricting her ability to relocate because she understood that Mr. Clarke would not oppose such a move. Mr. Clarke's evidence was that he told Ms. Paquet that he opposed the relocation of the children to Quebec and he assumed that because his position was clear no provision regarding relocation was placed in the order. The order does, however,

contain provisions for access that are only possible if the parties live in close proximity to each other. I am satisfied that although relocation was discussed in general terms by the parties before the order was issued, no specific plan was put forward by Ms. Paquet at that time and therefore her current proposed move to Sherbrooke cannot be considered as having been foreseen by the parties or reasonably contemplated at the time the consent order was issued.

[31] Having been satisfied that a material change in circumstance has occurred, the court must "embark on a fresh inquiry into what is in the best interests of the [children], having regard to all the relevant circumstances relating to the [children's] needs and the ability of the respective parents to satisfy them."

[32] Each case turns on its own facts. There is no presumption in favour of either party although the Supreme Court has directed that the custodial parent's views are entitled "to great respect". As stated in paragraph 48:

> While a legal presumption in favour of the custodial parent must be rejected, the views of the custodial parent, who lives with the child and is charged with making decisions in its interest on a day-to-day basis, are entitled to great respect and the most serious consideration. The decision of the custodial parent to live and work where he or she chooses is likewise entitled to respect, barring an improper motive reflecting adversely on the custodial parent's parenting ability.

[33] According to the consent order issued in November 2003, the parties share the parenting of the children. Nowhere in the order does it state that either Ms. Paquet or Mr. Clarke has custody of the children. Rather, it states that they "shall share parenting" and that Ms. Paquet "shall have primary responsibility of the children" and that Mr. Clarke "shall enjoy parenting time with the children" at times specified in the order. It appears care was taken to avoid affixing labels such

as “custody” or “joint custody” to the parenting arrangements.

[34] The order was issued just a little over eight months prior to the filing of Ms. Paquet’s application to vary the order. During that time the children lived the majority of each week with their mother. Mr. Clarke, for the most part, saw the children only on alternate weekends. While he had the right under the order to exercise weekday access, both parties agree that rarely happened. The main barriers to that occurring appears to have been Mr. Clarke’s work schedule, the time it would take him to clean up after work and drive to pick up the children and William’s bedtime. Ms. Paquet was responsible for the majority of the day to day decisions that affected the children. Notwithstanding the careful wording of the consent order, I conclude that Ms. Paquet was the primary caregiver to the children and therefore her views as to what is in the children’s best interests and regarding her decision to relocate are entitled to “great respect”. Having said that, the views of Mr. Clarke are not to be ignored, particularly in a case such as this where the parties agreed to share the parenting of the children. Further, while the views and wishes of the parties are important, the focus of this inquiry is on the best interests of the children.

[35] In many, if not most, mobility cases the court is asked to choose between two options. The first is to leave the children in the care of the primary parent and allow the children to be relocated. The second option, based on the assumption that the primary parent is relocating in any event, is to vary custody by placing the children in the primary care of what was the access parent. In this case, the parties have made it clear that the court has a third option and that is to leave the children in the primary care of Ms. Paquet on the condition that she remain living in Dartmouth, if the court considers that in the children’s best interest.

[36] *Gordon v. Goertz*, *supra*, lists seven considerations to be taken into account when assessing what is in the best interests of the children. The list is not exhaustive. Each is discussed below.

(a) The existing custody arrangement and the relationship between the child and the custodial parent;

(b) The existing access arrangement and the relationship between the children and the access parent;

[37] As previously stated, the existing order provides that the parties share the parenting of the children, with Ms. Paquet to have primary responsibility and Mr. Clarke having parenting time with the children at certain specified times, which, as it has turned out, has for the most part been on alternate weekends from Friday at 6:00 p.m. to the following Sunday at 5:00 p.m.. In addition to that, he has had telephone access with the children. Both parties claim to enjoy a good relationship with the children. Ms. Paquet stated in her affidavit that in the fall of 2003, after the parties separated, but before the order was issued, their daughter began exhibiting symptoms of emotional distress and, after receiving a suggestion from Amelia's school teacher, she began taking Amelia to a psychologist. No report was provided by the psychologist. Ms. Paquet did, however, testify that one of the reasons that she felt that Amelia needed counselling was because of the distress she felt over seeing less of her father subsequent to the parties' separation. On behalf of Mr. Clarke, it was argued out that if Amelia suffered emotionally from that degree of separation from her father, then there is a risk of greater harm to the child if she is relocated to Sherbrooke and sees even less of him than she does now.

[38] Mr. Clarke claims to have a strong bond with both children. He would like to spend more time with them and suggested that if Ms. Paquet does not move to Quebec he would like to see more of the children on weekends if more time cannot be accommodated through the week.

[39] In an affidavit sworn by Ms. Paquet on July 30, 2003 in support of her original application and which affidavit was introduced as part of the record for the present application, she stated at paragraph (24):

> David is not an uncaring parent, but he was an uninvolved parent for most of the children's day-to-day life. I know he loves his children, just as they love him. I want David to remain actively involved in their lives, but believe this will be achieved best by him seeing the children regularly during the week and spending weekend time with them.

[40] To put this paragraph into context, Ms. Paquet was suggesting weekend and week day access for Mr. Clarke, as opposed to a more equal shared parenting arrangement. She has testified that her experience over the past year leads her to believe that if she were to move to Sherbrooke, block access by Mr. Clarke with the children might in fact enhance their relationship. She feels that it would probably compel Mr. Clarke to commit to long periods of time with the children. She complains that he has been inconsistent with the current access arrangements and too often disappoints the children by not showing up or by returning them early.

[41] Mr. Clarke admits having missed a few of his access weekends, but for the most part has regularly exercised weekend access to the children.

(c) The desirability of maximizing contact between the children and both parents;

[42] Both parties seem to agree that the children should have as much contact with the other as is possible. However, as previously stated, Ms. Paquet no longer believes that regular weekly access between the children and Mr. Clarke is necessary or even in their interests. This statement is difficult to reconcile with her evidence that Amelia required counselling from a psychologist because, in part, of her separation from Mr. Clarke.

[43] Both parties in their own way seem to be caring, loving parents. They both have a genuine desire to be with their children. Ms. Paquet volunteered that she would be prepared to forego this opportunity to move to Sherbrooke if it meant losing the care of the children. Mr. Clarke's offer to withdraw his request for custody provided Ms. Paquet and the children remain living in Dartmouth may be seen as an acknowledgement that the children's interests are served well by remaining in the primary care of Ms. Paquet.

(d) The views of the children;

[44] No evidence has been given with respect to the views of the children. William, in any event, is only three.

(e) The custodial parent's reason for moving, <u>only</u> in the exceptional case where it is relevant to that parent's ability to meet the needs of the children;

[45] According to the evidence, Ms. Paquet has two main reasons for wanting to

relocate to Sherbrooke. The first is for greater personal satisfaction at her place of work. She believes that the position that she has been offered at the University of Sherbrooke will provide her with the opportunity to use more of her professional skills than is the case at the I.W.K.. She also believes that the terms of her employment at the university will allow her more flexibility in her personal life and in particular, when dealing with any emergencies or other matters of importance relating to the children on a day to day basis. Her second reason, which only came out during her cross-examination, was that she sees this as an opportunity to go home. Ms. Paquet was born and raised in the Province of Quebec, but she did not live in Sherbrooke. She has no relatives or friends living in Sherbrooke. She has two sisters who live approximately an hour's drive from Sherbrooke and her parents live at least two hour's drive from Sherbrooke. Her reasons for moving do not appear to be relevant to her ability to meet the needs of the children.

(f) Disruption to the children of a change in custody;

[46] The parties have been separated for only 16 months. During that time the children have been in the primary care of Ms. Paquet. It is an arrangement that appears to be working well. While Mr. Clarke has convinced me that he loves his children, he has not been overly aggressive in seeking additional access to them. The order permits access at "such other times as the parties may agree to". Mr. Clarke has not taken advantage of that paragraph. Instead he has fallen into a routine of seeing the children only on alternative weekends.

[47] Both before and after the parties' separation, Ms. Paquet assumed the majority of the responsibility for the children. That is not to say that Mr. Clarke has

not had input.

[48] While one can never tell how the children might react to a change in custody, there is little doubt that a change in custody would require an adjustment on their part. Similarly, it would require a very significant adjustment by Mr. Clarke since he has never had to assume the role of primary parent for more than a few days at a time.

(g) Disruption to the children consequent on removal from family, schools, and the community he or she has come to know.

[49] There is also no way of knowing how the children would react to relocating to Sherbrooke. What is certain is that they have lived all of their lives in the Halifax Regional Municipality. Both parents have been very satisfied with the daycare and school arrangements for the children. Amelia is doing very well in school and, as the parties had hoped, both children are becoming proficient in English and French. Little evidence has been offered with respect to Amelia's social relationships, but presumably at her age she has friends with whom she associates both at home and at school. There is a cousin who resides in the same building as Mr. Clarke with whom both children apparently have a good relationship. Ms. Paquet's family resides in the Province of Quebec and Mr. Clarke's family lives in Halifax. His family includes his parents, as well as aunts, uncles and the young cousin. Affidavits were offered by Mr. Clarke's mother and aunt who spoke of the children's relationship with their father and other family members.

[50] If the children were to relocate to Quebec they will see less of their father.

Their school schedules and his work schedule would limit the amount of block access Mr. Clarke could have with the children. Further, their contact with their extended family on their father's side would likely be limited to a portion of the time the children are with him. On the other hand, they will have a greater ability to get to know and spend time with extended family members on their mother's side of the family. However, Ms. Paquet's family do not live in Sherbrooke, so even their contact with those relatives will be somewhat limited.

[51] Amelia is involved in a number of recreational activities, including dance and basketball. Moving her from Dartmouth to Sherbrooke will, by necessity, mean leaving those activities in Dartmouth and any friendships linked to those activities. Presumably, however, similar activities are available in Sherbrooke.

[52] Currently, the children are being raised to be bilingual. They go to a daycare and school where, for the most part, they speak French. At home and among friends, they speak English. This arrangement has worked well so far. Ms. Paquet says that in Sherbrooke a similar arrangement will take place. Living in a predominantly Francophone community, the children will again speak French at school and at daycare during the day and Ms. Paquet will make a point of speaking to them in English at home. If she follows through with this plan, this is a neutral

factor. If she does not, it is possible that William will fail to become fluent in English. That could result in an added degree of alienation from his father.

OTHER CONSIDERATIONS

[53] As I indicated to counsel during summations, there are a number of

unknown factors which limit the court's ability to make a fully informed decision. For example, Ms. Paquet believes that she will be happier working at the University of Sherbrooke than is the case at her present position. At the I.W.K. she works in a unionized environment where, although there may be many benefits, there are also restrictions. She is expected to be at work at certain times and she is limited in her ability to take time off work for personal matters or to leave work during the day to, for example, pick up the children early or to attend a function relating to the children's care, education or recreational activities. She will not really know if she will enjoy the Sherbrooke position more than her present employment until she gets to Sherbrooke and is in that position for a period of time.

[54] In terms of accommodation, while Ms. Paquet has done some research into what sort of accommodation is available in Sherbrooke, she does not know where exactly she is going to live, how far her residence will be from the children's school or her place of employment and what her accommodation costs will be. Similarly, no evidence has been presented with respect to what school or day care the children will be attending. I therefore have no way of comparing her proposed living arrangements, daycare or school in Sherbrooke with her current arrangements.

[55] Financially, she will be no better but possibly no worse off in the new position. Her gross income would be approximately $5,000 less than it is now, but I am satisfied that some of her expenses are likely to be less. Net of tax, her evidence seems to indicate that financially she is secure in both positions. To that extent, finances is a neutral factor.

[56] There is no indication in the evidence that Ms. Paquet is unhappy in her current circumstances. Whether she will be happier in Sherbrooke is impossible to predict. While returning to her home province is an understandable desire, I was not left with the impression that this was of utmost importance to Ms. Paquet.

CONCLUSION

[57] We live in a mobile society. Moving from city to city, province to province and even from one country to another is often desirable and in some cases necessary in order for one to obtain the education that one wants to have, to further one's career, to be with family or to pursue new relationships.

[58] Living in an age of free trade, downsizing and the like, the need for individuals and families to relocate happens with increasing frequency. When a so-called traditional family of two parents with children are faced with a decision of whether to move from one locale to the other, they weigh all of the benefits against any disadvantages and make a decision based on what they think is best for the family, including their children. When parents are separated and one of those parents is faced with that decision, they go through a similar decision making process, but that process is further complicated by the reality that one parent is likely staying behind and the children will be living predominately with one parent and spending relatively little time with the other. It is understandable in such cases for the non-custodial parent to want to block the move rather than lose contact with their children. This often necessitates the court's intervention.

[59] While the court considers all factors, including the effect of the move on old and new relationships, financial considerations and the like, the court's guiding

principle is the best interests of the children that are affected.

[60] In most cases the custodial parent has thought through in advance the proposed move including its effect on the needs of the children, before making or responding to a Court application. Because they are "expected to have the most intimate and perceptive knowledge of what is in the child's interest" (*Gordon*, *supra*, at paragraph 36), the court is to give their views "great respect". Whether the court agrees with the custodial parent's decision to relocate the children depends a great deal on whether their decision reflects the best interest of the child.

[61] In the present case I am not convinced that the children's relocation to Sherbrooke would be in their best interest.

[62] I have considered the financial consequences to Ms. Paquet and the children of their relocation. Ignoring the additional access costs, the financial consequences are at best a neutral factor.

[63] I have considered the children's relationship with their extended family members and again consider that to be a neutral factor. By remaining in Halifax they will remain closer to their father's side of the family and their experience over the past 18 months suggests that various members of their mother's family will remain in touch. If they move to Sherbrooke, they may form a closer relationship with their mother's side of the family, but they will have less contact with their father's family.

[64] I fully expect that Ms. Paquet will move to a suitable accommodation and have the children enrolled in an appropriate daycare and school. Therefore, they

are not deciding factors.

[65] By relocating to Sherbrooke the children will have much less contact with their father. While he could be a more involved father, I accept his evidence that one of the reasons he is not more involved is the resistance he faces from Ms. Paquet. Her evidence leads me to believe that she does not encourage the children to have more contact with their father or he with them. There is a distinct possibility, if not probability, that if she is in Sherbrooke and he remains in Halifax, he will become little more than another relative that they see occasionally.

[66] The evidence discloses that Amelia, in particular, has had difficulty dealing with her separation with her father. So much so that Ms. Paquet felt it appropriate to send her to a psychologist for counselling. That causes the court to believe that it would be in Amelia's best interests to increase her contact with her father, not reduce it.

[67] On balance, I do not believe that in forming her decision to relocate to Sherbrooke, Ms. Paquet has given adequate weight to the children's interests. Her decision to relocate to Sherbrooke has been made without sufficient thought, particularly to the impact this move will have on the children, including, but not limited to, their relationship with their father.

[68] Therefore, Ms. Paquet is not to relocate to Sherbrooke with the children at this time.

[69] Mr. Clarke has already indicated that if this was the court's conclusion he would not seek custody. I find the best arrangement for their children is for them to

continue to be in the primary care of Ms. Paquet, provided she remains in the Halifax Regional Municipality. I therefore order that custody and access as specified in the November 6, 2003 order shall continue without change, but I encourage the parties to consider specifying additional access by the children to Mr. Clarke, rather than leaving it to chance.

[70] As I indicated to counsel, unless they are able to agree, I would be prepared to hear them on the issue of costs. I direct that Ms. Paquet's counsel prepare the order.

J.