

SUPREME COURT OF NOVA SCOTIA

(FAMILY DIVISION)

Citation : *MacDonnell v. MacDonnell*, 2021 NSSC 256

Date: August 24, 2021

Docket: 1217-001106

Registry: Port Hawkesbury

Between:

Jerome MacDonnell

Petitioner

v.

Camille Denys MacDonnell

Respondent

Judge: The Honourable Justice Moira C. Legere Sers

Heard: June 14, 2021

Counsel: Kerri-Ann Robson, Counsel for Jerome MacDonnell
Jeanne Sumbu, Counsel for Camille MacDonnell

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Introduction

I have released the parenting portion of this decision now given the difficulty encountered completing the financial aspects and waiting for late filings.

The child and spousal support issues as well as the Division of Property issues will be released as soon as possible

[1] The length of this decision was required to address specific findings of fact relating to the historic conduct of the parties in the marriage, and the need to fully analyze the allegations of domestic abuse made by the mother, against the father.

[2] The Court is compelled to consider if domestic violence is a factor when designing a safe and appropriate parenting plan.

[3] Neither counsel submitted domestic violence literature for consideration, nor were there any “independent experts” who gave evidence on the subject.

[4] That is not a criticism of counsel. I say this to explain why I will not refer to social justice literature in the analysis of this case.

[5] The paramount consideration for the Court must be the best interests of the children.

Petition for Divorce

[6] The Petition for Divorce, filed September 9th, 2020, arises out of the marriage that took place in Calgary, Alberta, on February 7th, 2004.

[7] The mother was born in Alberta, and the father was born in Nova Scotia.

[8] There was a brief common law period of co-habitation that began in April 2002.

[9] The Petitioner returned to Nova Scotia in December 2002; the Respondent in June 2003.

[10] This is somewhat at odds with the Respondent’s testimony that they began their common law relationship in April 2002. I have no evidence to sort out this relatively insignificant discrepancy.

[11] The parties appear to agree they separated on February 5th, 2020, while living in their home in Nova Scotia.

[12] For child support purposes, this date is somewhat of a retrospective construct. The parties continued to use the joint account to pay household bills and provide for the children with the joint monies derived from the child tax credit and the father's income after their agreed upon separation date. The Respondent closed the account in December 2020.

[13] There were approximately 18 years of cohabitation.

[14] Both parties have been residing in Nova Scotia since at least 2017. They have lived exclusively in Cape Breton since the twins' birth in 2017.

[15] When they began their life together, the Petitioner was 27 years old, the Respondent was 21.

[16] When they separated, the Petitioner was 45 years old and the Respondent 39.

[17] During their marriage, they had four children together:

MM (14 years old)

AM (13 years old)

OM (4 years old)

NM (4 years old)

[18] Approximately six weeks after the second child was born, the couple moved to Calgary, Alberta, to find work for the father. They moved back and forth between Calgary and Nova Scotia between 2008 and 2010.

Grounds

[19] The Petitioner seeks a divorce on the grounds of a one-year separation.

[20] During the Court proceeding, the Respondent asked for a divorce on the grounds of mental cruelty. The mother alleged she was a victim of domestic violence and was afraid of the father.

[21] Her allegations of abuse relate specifically to emotional abuse. She testified there was never any physical abuse.

[22] Her counsel's brief indicates they seek a divorce based on one-year separation.

[23] Both parties agree there is no possibility of reconciliation.

Jurisdiction

[24] While the children now live in Dartmouth, Nova Scotia, the parties agreed the matter should be heard in the Nova Scotia Supreme Court Family Division, in Port Hawkesbury, Nova Scotia. This was the district serving the historic habitual residence of the parties and their children.

[25] Without prior notice or the father's consent, the mother moved the children and herself to Dartmouth Nova Scotia in early September of 2020.

[26] Considering the de facto separation in the final year of their cohabitation, their roles during the marriage, and the cost of a mobility and custody hearing, the Petitioner reluctantly agreed that the children remain in the Respondent's Day to day care.

[27] The father sought counselling, after the separation, to deal with his grief at the breakdown of the relationship and the loss of contact with his children.

[28] His counsellor has spent considerable time assisting the father in accepting the dissolution of the marriage and the loss of his children.

[29] The father's focus and financial efforts are now on re-establishing the relationship with his children.

Divorce

I adjourn the granting of the divorce until the remaining financial matters are completed

Relief Sought

[30] The issues to be resolved include the following:

1. The appropriate parenting plan and decision-making authority.
2. Retroactive and prospective child support.
3. Section 7 expenses and extracurricular expenses.
4. Spousal support
5. Division of assets. The parties agree on the division of debts.

6. The Respondent seeks a return of some personal items as well as the remaining children's items.

Witnesses

<u>Petitioner:</u>	Mr. Jerome MacDonnell
Lay witnesses for the Petitioner:	Ms. Erin MacLean, Rankin MacEachern
Professional witness	Mr. Adam Matthews Mental Health and Addictions social worker
<u>Respondent</u>	Ms. Camille MacDonnell
Lay witness	Ms. Sarah Hill
Professional Witness	Dr. Keri Gibson-Grant
Voice of the child Report	Ms. Carol E MacLellan, R.S.W

History of Marriage - Roles of the Parties

[31] The Petitioner/father and the Respondent/mother accepted and lived by traditional roles during their cohabitation and marriage.

[32] The Petitioner was the principal income earner, working five and a half days per week, inclusive of a half day on Saturday. He describes himself as a blue-collar worker.

[33] The Respondent worked part time (hours unknown) for her father at various times before and during the marriage (she stated for 25 years,). Her father was then a successful businessman with a well-known national retail operation.

[34] The Respondent was in full and sole control of the family finances.

[35] The Respondent's parents lived in proximity to the parties for a period during their marriage. They own a cottage close to the couples' matrimonial home. They have since moved back to Alberta.

[36] For approximately seven years, and more particularly following the birth of the youngest children, the mother stayed home to care for the children. She provided periodic childcare for several local children.

[37] The couple lived in the matrimonial home the Petitioner inherited from his parents. The property includes the family home with 45 acres of property in rural Nova Scotia. It was the principal home the parties lived in together.

[38] The Petitioner was put on the deed to the matrimonial home before his father

died in November 2004.

[39] The Respondent's name was put on the deed to this property on November 21st, 2007.

[40] There was no mortgage on the home during their co-habitation.

Southeast Asia Vacation

[41] During the marriage, thanks to the generous financial support of her parents, the Respondent has had the opportunity to travel extensively with and without the children,

[42] There were the traditional March break trips funded by her parents. The Respondent would like the right to continue this in future.

[43] The Respondent's parents paid for their daughter to travel alone, without the four children, to Southeast Asia, in October and November 2019. The mother was absent from the home for a four-and-a-half-week vacation. She toured four countries in South Asia and returned home in **November 2019**. It was during this trip she decided to separate from the Petitioner.

[44] Although the father was not happy about this trip, he did not prevent it from occurring.

[45] The mother's parents informed the father they insisted she get away for a trip without children. He said he had no say in the matter.

[46] To arrange for daytime childcare in her absence in October/November 2019, the Respondent's mother come from Alberta to assist with childcare for the first three weeks of her vacation. Her mother was joined by her father for a week.

[47] When the Respondent's mother returned to her work in Alberta, the Respondent's aunt arrived from Alberta to care for the children for the remaining two and a half weeks.

[48] The Respondent offered to drive the mother to the airport. She declined his offer. She took the family van to the airport and left it in Halifax, Nova Scotia, leaving the Petitioner with no means of transportation during her four-and-a-half-week absence. The four children remained in his care.

[49] The mother suggested to the father that he use his four-wheeler to get himself to work in her absence, or to carpool to work.

[50] During the mother's absence, the father continued to work and deposit his income into their joint account.

[51] It is reasonable to assume that the mother concluded the children would be well looked after with her parents as care givers, her family, and the father, during her vacation.

[52] There are few details from either parent about much of the four and a half weeks at home during the mother's absence. None of the Respondent's three caretakers during that period of vacation (the maternal grandparents and aunt) testified.

[53] Upon her return in November 2019, the mother said she quietly began planning the separation from her husband.

[54] She spent December 2019 and January 2020 planning "her escape". She said:

"I ...would sneak off to (the transition home) to see my ...lawyer. I don't know what I would have done without this cover story". I would collect documents and pack them and hide them. I did everything I could to make this transition as smooth as possible.

[55] During the pre-Christmas and Christmas period in 2020, the parties were living in prolonged conflict.

[56] The children were present during these heated discussions.

[57] The night before the actual separation in February 2020, the parents argued all night. As described later, the father began to cry and begged the mother to stay.

[58] The mother put the children to bed. They all endured a difficult night. The father went into his daughter's bedroom, and he lay down with his child and cried, seeking to cuddled with his then 12-to-13-year-old daughter.

[59] The mother told him to leave the room and sent the child to her own room.

[60] Both parents openly talked about divorce and at one point, the father told the children they were getting a divorce not knowing that the mother had been planning a separation since her return from Southeast Asia in November 2019.

[61] The trauma and drama lasted most of the night with the children squarely in the middle.

[62] Both parents acted inappropriately and against all wisdom that demands children be kept squarely out of the conflict if one wants to minimize the damage that separation and divorce may cause children.

[63] The mother planned the departure as if she were fearful of what the father might do.

[64] She sought advice from the transition home well in advance and was told it would be advisable to leave when the father was at work.

[65] She ignored that advice and on **February 5th, 2020**, she decided to tell the father that she was leaving. The children were present.

[66] During the morning, while their father was having a bath, the mother told the children to pack their bags and hide them in their closets *quietly and quickly*.

[67] The children did as they were instructed. From a child's view, this invited them to be part of the plan to assist them and their mother in "getting away".

[68] I am not clear why the children had to pack their own bags and participate in the secrecy.

[69] It is regrettable the mother involved them in this subterfuge. What fearful images they must have had of their final day in their own home and of their father.

[70] One of the children informed the assessor she was not happy with how abrupt the separation was and what they had to do.

[71] While the older children were at school, the mother and father continued to argue in the home.

[72] The mother dressed the twins, left the home and the father followed, partially dressed, outside the home, crying, and begging the mother not to leave.

[73] Although the mother indicated she was terrified, and she believed her husband was unravelling, she continued to go in and out of the house to retrieve articles she wanted.

[74] He continued to follow her in and out.

[75] The mother managed, while doing this, to call the school and tell the principal not to put the children on the bus.

[76] She went into the house, grabbed some more items, put the twins in the van and drove away from the house.

[77] The mother went to the school, picked up the older children and left for the transition home in accordance with her advance plan.

[78] At no time did the father act aggressively or stop the mother from removing things from the home or interfere with her going in and out of the home, putting the children in the car or getting the older children from school.

[79] The emotional displays of desperation and crying did not deter the mother from her plan to leave.

[80] The father continued throughout to plead with her to reconcile.

[81] The way they both conducted themselves during the separation calls into question their insight into their collective behavior, their lack of emotional maturity, and lack of insight as to how they have traumatized their children as they proceeded to separate their lives.

[82] I have considered the degree of confusion that surrounds the termination of a long-term relationship and the ties that bind (including the sorting out of parenting arrangements).

[83] I have also considered that triggering events may have precipitated a separation.

[84] I am aware that plans made to separate are not always logical or child centered.

[85] It appears that February 5th, 2020, was a workday for the father. He would have been away all day and the mother would be home with the younger children.

[86] The mother had other resources and avenues. She had just returned from a significant vacation, had another place to live down the road and parents who had financed her trips away.

[87] The transition home provided some anonymity. While there, the Respondent could remain with the children and avoid any direct contact with the Petitioner.

[88] Keeping the children in a transition home for a month would have been unsettling for them; clearly out of their ordinary experience.

[89] Mobility out of the province would have been legally problematic without a court order.

[90] After separation, the father agreed to permit the mother and children to remain in the home to ensure he remained in contact with his children. She declined.

[91] Both parties could have had access to the Court in February 2020.

[92] This action was not started by the mother. It was commenced by the father's emergency application to see his children.

Post Separation – Paternal Parenting Time

[93] There is no Court decision requiring supervision of the father while the children are in his presence.

[94] Since separation, the mother initiated and controlled the frequency and duration of the father's parenting time. With few exceptions, she has demanded supervised parenting time since February 2020 as a precondition to allowing him to have contact with his children.

[95] The father continues to be subject to her direction regarding when he can see these children.

February 2020 to March 15th, 2020

[96] The Respondent remained in the transition home for approximately one month.

[97] She did not approach the Court for a solution, nor did she look at options available to her in the local area.

[98] In domestic abuse situations, staying in a transition home permits a person the safety afforded by the anonymity of the home. Experienced community supports allow for a separation in a safer environment.

[99] I assume this permitted the mother to establish some boundaries between herself and her husband. It also imposed strict limitations on father and child contact.

[100] Despite her allegations during this period, she permitted the father unsupervised overnight parenting time with the older children and daytime parenting time with the twins.

[101] On February 27th, 2020, during a winter storm, the father willingly removed himself from the matrimonial home and permitted the mother to stay in the home with the children.

[102] In March 2020, the mother permitted two overnight visits with the father.

[103] During some of these parenting times, while the mother was in the transition home, she would drop the children off at the park and leave.

[104] On one occasion, she left to get a massage during the father's parenting time.

March 15th to June 20th, 2020

[105] There was no parenting time for the father during this period.

[106] During the March 2020 break the mother asked the father to agree that she could take the children on a vacation to Arizona with her parents,

[107] Initially, he consented believing this would be an enriching experience for the children.

[108] Before they left, it became clear to the father that COVID-19 was raising alarms internationally. He voiced his concerns that there was an active travel advisory asking Canadians to return home.

[109] He urged the mother not to take the children. Undeterred by his concerns, she left with the children for Arizona.

[110] The father deferred to her wishes. He offered to drive her to the airport. She declined his offer.

[111] He repeated his request to reconsider her trip while she was in Arizona. Given the pending border closures, he asked her to return with the children. She refused.

[112] When permitted to return to Canada, the mother advised the father that her mother was seriously ill, and she needed to go to Calgary.

[113] The father deferred to her wishes allowing her to attend to her mother.

[114] The mother flew to Calgary, Alberta and then to Saskatchewan where she and the children stayed with her mother for three months. She advises her mother was seriously ill and she wanted to stay with her during her illness. It is not clear to me where the mother's parents live or whether they live together.

[115] The father agreed, after she was there, that she should stay in Western Canada until she was permitted to travel.

[116] The mother refused to update the Petitioner on her mother's illness.

[117] During her absence, the Petitioner continued to work. He was depressed and suffered from the separation with his children. He began to attend counselling.

June 20th to September 2020

[118] The mother and children returned to Nova Scotia on Saturday, **June 20th, 2020**. She quarantined with the children at her parents' cottage, approximately 12 kilometers from the matrimonial home. This is where she stayed until her September move.

[119] She permitted the children to have a limited visit between the father on the weekend of her return.

[120] The father continued to ask to see the children through the cottage window. She refused saying *it was too difficult to see their father and not be able to be with him*.

[121] He visited the cottage on **three occasions during a three-month period**. He asked to see the children and was denied.

[122] He did not enter the cottage. He did not force his way into the cottage to see the children. He waited and was denied permission and access to his children.

[123] The mother informed her neighbors that she was afraid of the father and what he might do.

[124] Each time he came to try to see the children, the neighbor stepped out of their adjoining cottage and became visible to ensure the mother and children were safe.

[125] Despite the father's repeated requests, the mother did not permit him to speak with his children. She would not speak with him or return his messages.

[126] In her testimony, the mother alleges that the father continually harassed her about returning to the marriage and seeing the children.

[127] This constant messaging, pleading, asking, and the anger he expressed at her failure to permit him to see his children is considered by the mother to be harassment. She classifies it as emotional abuse.

[128] The father asked the maternal grandfather to intervene, on his behalf, to speak to his daughter and obtain permission to see his children.

[129] On Father's Day, June 2020, a visit was arranged in the garage of the matrimonial home. The twins ran to him. He held them on his lap and cried.

[130] The mother asked the father if, during this visit, she could pack her belongings while he was visiting with the twins. Despite the allegations she has made about his abusive behavior, she was apparently not afraid to ask or to proceed to pack her personal belongings with him present.

[131] The parents argued about their property while the mother continued to remove her personal belongings, with the father standing by, emotionally distraught and arguing with her.

[132] This did not deter the mother from removing her belongings.

[133] Her actions and his response sabotaged the visit. It diverted the father's attention from his visit with the children.

[134] The children were in the middle of this conflict and the visit derailed.

[135] While the mother initiated this intrusion, she blamed the father for not being child focused.

[136] Notwithstanding her concerns and her expression of fear, she looked around, noted the lack of food in the fridge, the house unattended, observed that he was depressed and then left the older children to make him a Father's Day meal.

[137] The mother admits the older girls wanted to end the visit while the younger twins wanted to stay and play.

[138] They argued, yet she left her older daughter in charge of making lunch. The older daughter did not want her to leave and called her to come back. She did not do so.

[139] The incidents described as abusive by the mother to Children and Family Services in August 2020 and to her counselor, and ultimately conveyed to Choices, occurred before she left her daughters (including the twins) with their father, unsupervised, on Father's Day 2020.

[140] I can only conclude she thought it was safe to leave the children with their father, unsupervised.

[141] The father was distraught and refused to eat what was prepared.

[142] The focus of this first visit for both parents should have been the children.

[143] The mother decided to use this as the moment to collect some things she left behind in the matrimonial home.

[144] This was already a highly charged and important opportunity for reconnecting.

[145] Had the focus been on the children, this would not and should not have happened.

[146] This behavior runs contrary to all written and unwritten rules of interaction between parents during visits with children of separation and divorce.

Electronic Visits

[147] At some point, the mother permitted regular short videotaped electronic visits.

[148] I have no evidence that allows me to conclude the completeness of the recordings or whether they were selected events.

[149] The mother and her friend recorded these visits and offered the recording to the Court and to her therapist, a few days before her therapist testified.

[150] The mother called upon the older children and unfortunately, her friend and confidante, Ms. Sarah Hill, to supervise the electronic visits. They controlled the length of the visit and gave the father instructions on how he was to behave.

[151] He used these short electronic visits to appeal to the mother to tell him where the children were.

[152] Listening to the recordings of these supervised visits is a painful experience. They did not go well for many reasons.:

- The duration of the arbitrary restrictions placed on the father and his limited contact with the children.

- When he failed to take instructions, and the mother and her friend deemed his behavior less than child focused, they terminated the electronic connection.

- The father's response and his frustration with the limits arising out of electronic visits, contributed to the failure to build relationships during these visits. Watching the father try to engage was difficult. He had no insight into his behavior or how he mismanaged the only opportunity provided to him by the mother to focus solely on the children.
- The age of the children and their attention span is a major factor. Talking to three and four-year-old children, via electronics, is challenging at the best of time.
- The friend became a lightning rod for conflict, further sabotaging the father's parenting times.
- The hostility between the father, Ms. Hill and the mother detracted from the focus of the visit which should have been the children. This offered the parents the opportunity to sidetrack visits with discussion of matrimonial legal matters.
- The mothers' admonitions to the father as to how he was to behave during the electronic visits, spoken in front of the children, permitted the older children to act with authority over the father. This role was unhelpful to the parent child relationship. The older children became more distant.
- The father's apparent lack of knowledge regarding the attention span of young children and their differing ages and stages of development interfered with his ability to connect.

[153] The father was unable to put aside his own trauma and allow his children simply to see him, tell him their stories, and keep him in their memory as a father figure.

[154] The father refused to participate in some of the more limiting parenting time as he found it difficult to handle the emotional impact of seeing his children in limited circumstances.

[155] Both parents kept the children squarely in the middle as their conflict played out in their private lives and before the Court.

June 20th, 2020, to July 12th, 2020

[156] The mother refused contact between the Petitioner and his children between June 20th and July 12th.

[157] The Petitioner made repeated requests to visit the children. His requests and messages were ignored.

[158] The Respondent advised the Petitioner she would not speak to him directly, and preferred matters be dealt with through lawyer.

[159] She advised the Petitioner he was to stop contacting her.

[160] The Respondent considered the Petitioner's repeated attempts to phone her and speak with her as harassment and emotional abuse.

[161] She found his constant requests to see the children intimidating. She said it was bullying behavior.

[162] On **July 12th, 2020**, the mother took the twins to see their father. She supervised and recorded the parenting time without his knowledge.

[163] Only the two younger children (the twins) attended the first visit with their father. She admits the twins were delighted to see their father.

[164] After this, there was another gap in the father's ability to see the children. The mother refused to answer his messages.

July 23rd to August 4th, 2020

[165] On **July 23rd**, the Respondent's lawyer advised the Petitioner that he would not be seeing the older children as they did not want to have contact with him. He was advised he would only see the youngest children in the presence of the mother's friend or another supervisor.

[166] On **July 26th**, the mother agreed to drop off the twins at the father's house if there was a supervisor. If he did not agree to her choice of Ms. Hill being present, she would not bring the twins.

[167] The father ultimately agreed to have a supervisor present beginning in early **August 2020**.

[168] The first such visit occurred on **August 4th, 2020**. The mother remained in possession of the family van and remained in the van at the local park while the younger children spent time with their father.

[169] The mother suggested if the father wanted transportation to pick up the children, he was to use his work van. When he advised her that it was not a safe

vehicle to transport the children, she accused him of failing to make reasonable efforts to contact the children.

[170] During the August visit, the father walked three kilometers to get to the park.

[171] The father was concerned about COVID-19. He noted there were people in the park who had a car with Ontario license plates.

[172] He went back to the mother's vehicle to speak of his concern. The father stated that until the visitors left the park, he did not feel it was safe for the children to be there.

[173] His concerns were reasonable given the stage of the pandemic, the public fear and knowledge, or lack thereof, as to how the COVID-19 virus may spread,

[174] The mother's take on this was to accuse him of being overwhelmed. She suggested he was unable to look after the children.

[175] Eventually, the mother's parents provided her another car. The mother then contracted to have the family van fixed and gave it back to the father. He told her he could not afford the cost.

[176] The Respondent is seeking full reimbursement for this expenditure.

Visit - August 11th, 2020

[177] To promote more contact, the Petitioner said he would provide the names of some of their mutual friends and neighbors as supervisors. He felt that may protect him from the many accusations coming his way.

[178] The Respondent knew all three of his suggested supervisors. She was a childcare provider for at least one of the persons while she lived in Mabou, Nova Scotia.

[179] It was at this time as well the Respondent contacted Children and Family Services to allege that the children were not safe with the Petitioner.

[180] She told Children and Family Services about the phone call she received from her daughter on November 11th, 2019, during the time she was on vacation in Southeast Asia.

[181] She reported that one of the children called her to report that their father came home intoxicated after he participated in laying a wreath for his father at the

November 11th, 2019, Remembrance Day ceremony.

[182] Despite the order to produce the Children and Family Services Protection file, there is no child protection file before me and no evidence from any other care givers in November 2019 or from agency workers as to any risk to the children.

[183] On **August 20th, 2020**, the Respondent agreed to another supervised visit. All four children were dropped off at the playground.

[184] This was the first time the Petitioner had seen all four children together since Father's Day.

[185] By this time, the older children had been living away from their father since February 2020.

[186] Ms. Hill, the Respondent's close friend and appointed supervisor, attended with her and remained in the Respondent's vehicle.

[187] She observed the two older children giving their father a hard time. She called it teenage "angst."

[188] On **August 25th, 2020**, the father had another supervised visit with the children for **one hour**.

[189] Ms. Erin Maclean was one of his supervisors. Ms. MacLean agreed to supervise this visit between the children and their father in the park. She sat in her vehicle at a distance so as not to interrupt them.

[190] Ms. MacLean believes the Petitioner to be a good father. She testified she had no reason to be concerned about him. She used the Petitioner and Respondent's household and had the Respondent as a childcare provider for her children.

[191] She was not concerned about the Petitioner in any way and knew of no incidents of abuse or neglect.

[192] The Respondent came over to confront Ms. MacLean and was visibly angry that she was present.

[193] In her later testimony, the mother confirmed she is satisfied with Ms. MacLean as an interim supervisor.

[194] On **August 30th, 2020**, the twins were dropped off to the father for a visit. It was short notice for the Petitioner, and he was unable to have a supervisor present.

[195] The Respondent noted in her testimony that *the twins were so looking forward to the visit with their father that she permitted it to go forward without a supervisor*. She did not stay to supervise.

The Mother's Move

[196] The mother remained at her parents' cottage, close to the matrimonial home for the summer of 2020, until September 2020. She then unilaterally, without advance notice, moved the children and herself to a home in Dartmouth Nova Scotia, purchased by her parents for her. Her parents are paying the mortgage and expenses associated with the home.

[197] The evidence suggests preparations for the move must have been in advance.

[198] There was no mention of her plans to relocate, to discuss this move with the father or bring the matter to the Court for resolution during the August 30th, 2020, visit.

[199] The Respondent did not tell the Petitioner where she and the children would reside.

[200] Neither the provincial, nor the federal relocation protocol was followed.

[201] The father received a letter from the mother's lawyer on **September 3rd, 2020**, advising that the mother had relocated herself and the children, on that day, to Dartmouth, Nova Scotia.

[202] He was informed of the terms of supervised contact she would permit, should he wish to be in contact with his children.

[203] The mother subsequently acknowledges her error in judgement in not following the prescribed relocation procedure.

[204] She asserts she is a victim of domestic violence; the father is an abuser, and this is the reason she surreptitiously removed the children from her parents' cottage and relocated to Dartmouth. She said she was afraid of what the father might do.

[205] Despite the previous knowledge of the services of the local transition home, and the financial support that has been hers to access from her parents, no interim steps were made to remain in the Cape Breton area until permission was given to relocate.

[206] No evidence was given by the mother to explain why she did not make an

application to the Court.

[207] This relocation also meant a change in the historic location of schools the children would attend.

[208] The evidence discloses the mother continued, post separation, to use the children's visits with their father to access the home and her belongings.

[209] The mother had no problem asking the father to permit her into the house. She did not appear to be fearful of engaging in what most would consider emotionally provocative behavior, nor was she deterred by his emotional pleas to stop.

[210] She evidenced no insight regarding how using visits to gain her possessions might sabotage the children's parenting time with their father and divert the attention from the children to the parents.

[211] It is more likely that the mother was afraid that if the father had advance notice, he would try to prevent the removal of the children from their home base.

[212] The mother chose to move to Dartmouth. She advised the Court she has only one close friend in Dartmouth, Ms. Hill.

[213] There is no extended family in Dartmouth for the children. The Respondent confirmed that her friendship with Ms. Hill was the driving reason she relocated to Dartmouth.

[214] The father has no friends or relatives in the Halifax Regional Municipality. He remains almost exclusively on Cape Breton Island and rarely travels out of Cape Breton except for the odd excursion to the mainland.

[215] The mother has become employed in the same national chain as her father managed. She has tendered a letter from her employer indicating their willingness to offer her stable long-term employment.

[216] However, there are many other similar branches of the same chain between Cape Breton and the Halifax Regional Municipality that would not prove as problematic to maintaining appropriate father and child contact.

[217] Given the fathers work schedule, the financial consequences of the party's separation, the divorce and the effects of winter travel, this move has made parenting time for the father extremely difficult.

[218] On the evidence before me, the mother would have had difficulty providing a

plan that met the children's best interests had such a hearing taken place.

[219] Admittedly, there was no mobility hearing, and this is now not the issue before me.

[220] On **September 12th, 2020**, after the move, the Respondent agreed to another visit between the father and the twins.

[221] Even though this supervision was unilaterally imposed on the father, he agreed to it to have the opportunity to see his children.

[222] To accommodate the Respondent's demands that the visits be supervised, the Petitioner arranged to have several of their friends present to supervise.

[223] The father was content to have their friends present to avoid any allegations that might arise from the visit.

[224] The mother asked Ms. Hill, her close friend, to bring the children and to supervise as well.

[225] The mother and Ms. Hill met in Alberta in high school in 1995 and have been close friends ever since.

[226] Ms. Hill's affidavit testified she knew both the mother and the father during their relationship.

[227] In Ms. Hill's court testimony, she confirmed she rarely had contact with the father before this role and knew little about him. She had little opportunity to observe him or be around him.

[228] Her friendship was principally with the mother.

[229] There is no indication she has any experience or formal training about supervision in custody matters.

[230] Ms. Hill understood it was her task to be a neutral third-party supervisor during the father's parenting time, and understood theoretically, that her role as a supervisor of the father and children was one of listening, observing, and not interfering.

[231] The Petitioner had been previously told his two older daughters did not want to visit their father. He did not anticipate they would attend.

[232] However, Ms. Hill transported all four children to the September 12th, 2020, visit at the matrimonial home.

[233] The visit was to last from 2:00 pm – 6:00 pm.

[234] After considering all the evidence regarding what transpired during this visit, I have concluded that it was unreasonable to expect Ms. Hill to be objective, given her close relationship with the mother and her lack of direct knowledge of the family circumstances.

[235] She did admit that the two older girls were giving their father a hard time. Again, she determined it was teenage angst.

[236] During the September 12th, 2020, visit, the other observers, Ms. Erin MacLean, Mr. Rankin MacEachern, and the father noted that Ms. Hill assumed authority over the visit, the children, the father, and all other persons in attendance.

[237] Mr. MacEachern testified that he and the father's other supervisors simply observed the visit and generally took a back seat. They facilitated the visit because the mother required the father to be supervised during the children's visit.

[238] Ms. Hill said it was her duty to record the visit "given the family history" and the "unstable and volatile behavior" of the Petitioner.

[239] Ms. Hill concluded in her affidavit: "I experienced unstable and volatile behavior directed at me in front of his friends and the children ..." I felt I was the target of his abuse in the absence of Camille" (i.e. *the mother*).

[240] She advised she arrived at 2:05 pm. And ... "given Jerome's history and out of concern for the girls" she *tried* to record the four-and-a-half-hour visit. She managed to record three and a half hours.

[241] She began by taking the names of all those in attendance. She came upon one person whose name was not on the list and commented on that.

[242] She spent her time writing and recording while the children were visiting.

[243] While videoing and recording, she then criticized the father for *taunting her* to come and take pictures of what they were doing.

[244] The father was angry that she assumed this role and authority over he and his children, in their family home, and attempted to restrict her from moving throughout his home.

[245] A conflict developed between Ms. Hill and the father, who was irate at the supervisor's behavior.

[246] Ms. Hill's behavior and his response took the focus off the visit with the two younger children and created a display of conflict between the father and the supervisor in his own home.

[247] The testimony from the two other lay witnesses present at the visit contradicts Ms. Hill's depiction of the father's behavior.

[248] Another observer, Mr. MacEachern, began the visit, he thought, in a friendly manner. He introduced himself to Ms. Hill.

[249] As the visit progressed, Mr. MacEachern watched Ms. Hill take pictures of the older girls on a low roof attached to the deck, the broken glass she found, and he observed her whispering to the older two children.

[250] Ms. Hill attached a picture of the roof in her affidavit.

[251] Under cross examination, Ms. Hill advised that while she took pictures of the roof the children climbed up on, it was not meant to suggest there was any risk to the children. She admitted the roof was attached to the patio and was low to the ground.

[252] Ms. Hill noticed there was some broken glass outside the father's home. She took a picture of it and attached it to her affidavit.

[253] She notes that the twins were not wearing shoes when they went out to play and asked the father to put shoes on them. She admitted there was no risk to the children cutting their feet and that her affidavit was not intended to suggest there was.

[254] Mr. MacEachern concluded early on that Ms. Hill was trying to set up the father. Her obvious goal, in his view, was to take pictures that could be used against the father rather than to ensure the visit went well for the children.

[255] Her behavior clearly disturbed him.

[256] Ms. Hill noted the father tried to engage the older girls, but they refused to talk to him. She said he was combative.

[257] No one disputed that the two older daughters were arguing with their father.

[258] In her affidavit, Ms. Hill suggested that the father ignored the older children and while he tried to engage them, they refused to respond, played outside, and watched television.

[259] The two older children had the run of the house and freely went back and forth from the vehicle, in which they arrived in, and through the home and surroundings.

[260] Most egregious, Ms. Hill invited the two older daughters to use the visit to take some boxes out of the car, go upstairs in their home and collect their belongings.

[261] Ms. Hill came prepared for this with boxes and bags.

[262] This occurred without notice or the father's permission.

[263] She attempted to follow the father upstairs to tape him with the girls and he refused to allow her access to his upstairs.

[264] Despite the raised voices between the Petitioner and Ms. Hill, there is no evidence that the children were deterred by any obvious fear of their father. They packed their boxes and returned to Ms. Hill's vehicle.

[265] Mr. MacEachern reported on his observations of Ms. Hill's behavior and the visit.

[266] He was familiar with the two older girls and spoke of them fondly.

[267] He advised they used to babysit his children in the past and had always presented as loving, polite, and responsible young girls.

[268] The father's witnesses noted the interaction between the older girls and their father was combative. From the moment they alighted from Ms. Hill's car, they were upset with their father.

[269] Mr. MacEachern described the two older children as rude and demanding; complaining they could not access the internet, wanting specific food (pizza) and generally presented as oppositional to their father.

[270] One of the father's attendees went to get them pizza to respond to the older two girls demands.

[271] He noted the vast difference in the behavior of the girls then and from the behavior he was familiar with prior to their removal from the family home in February 2020.

[272] The other witness indicated that the older children immediately complained and berated the father when the Wi-Fi was not working.

[273] The older children clearly were not afraid of their father and were clearly feeling able to interact with him and make demands of him.

[274] **On the other hand**, the twins were delighted with the visit and engaged with their father all afternoon. They were very upset when, at 6:00 pm, Ms. Hill shut the visit down and indicated to the father and the children it was time to go home.

[275] Ms. Hill attempted to extract the twins from their father arms. They cried and clung to him. Ms. Hill criticized the father for not assisting her in putting them in her car.

[276] She filmed the Petitioner and accused him, at the end of the visit, of preventing the children from leaving.

[277] Mr. MacEachern concluded “I believe Jerome did an admirable job of caring for his children and maintaining his calm in the face of Ms. Hills outrageous behavior”.

[278] Citing his lengthy friendship with the Petitioner, Mr. MacEachern indicated he would not hesitate to leave his children with him although he admitted, he never had the occasion to do so.

[279] There is no dispute in the evidence that the father and the twins interact well. The twins are always very happy to see their father and are reluctant to leave the visits.

[280] In conclusion and in pretrial discussions, I gave directions that the mother’s friend was prohibited from supervising or assisting in any transfers for parenting time.

[281] That was interpreted by the mother as applying only to in person transfers. The friend continued to supervise electronic connections.

[282] To be clear, Ms. Hill is prohibited, in any manner, from supervising the transition of the visits, and the fathers in person and electronic visits. That prohibition will continue.

[283] Thus, with few exceptions during the period from June 2020 to date, the father’s contact had been restricted to short, badly conducted electronic visits and other one to two-hour visits.

Gunshot/Pellet Gun Incident

[284] During her in-court testimony in April 2021, the Respondent testified, for the first time, regarding an incident that occurred in Dartmouth, Nova Scotia as she was driving on a busy highway, well after her move.

[285] Someone shot at her window from a wooded area. The police were called. She said they concluded it was a pellet gun.

[286] The Respondent testified that it was her belief that the Petitioner did this or he paid someone to do it.

[287] She suggested he could have hidden in the woods in Dartmouth and waited for her to come by, or he paid someone to hide in the woods and shoot at the car.

[288] No doubt this was a frightening incident for the Respondent.

[289] This was the first time the Petitioner heard of this incident.

[290] There is no evidence the Petitioner had anything to do or even knew of this incident before the Respondent disclosed it in court.

[291] The Respondent has conveyed this fear to her counselor; suggesting the father is essentially stalking her and waiting in the shadows to hurt her.

[292] The father confirmed that on the day of the incident, he was at work in Cape Breton. He denied hiring someone to do this.

[293] It is hard to imagine how one could reasonably accuse the Petitioner of this in the absence of any evidence. In the 18 years of their cohabitation, and the 18 months since separation, the Petitioner has not acted violently against either the Respondent or their children.

[294] There is no indication before me that the Respondent suffers from any delusions or mental illness that would feed her fear to arrive at what seems to be a far-fetched conclusion.

[295] That the Respondent believes the Petitioner is responsible is an indication of how her subjective fears have fed into her belief that the father is an abuser and a stalker who would plan and execute such an act.

[296] Her fear that he is following them has been conveyed to the children. This creates and feeds a fear of their father, as expressed to the assessor.

[297] The youngest expressed fear that he (her father) would show up unexpectedly in Dartmouth.

[298] That is a fear that this child had to have gleaned from either the mother or her associates.

Chronology of Legal Proceedings

Court record - the running files

[299] I will refer to the Courts '**running file**' to address possible future proceedings, given the high conflict and inability of the parties to arrive at a consensus without a court order.

[300] The running file is the record of all formal legal efforts to have the parties' legal issues determined by court intervention.

[301] In Supreme Court Family Division proceedings, this running file is essential to an understanding of what eventually happens should a hearing be necessary. They are a must read.

[302] The running file is not meant to be a legal and fulsome document. It is, however, an important road map for anyone responsible for reviewing the file to alert them to the existence of "on the record" discussions between counsel and the Judge.

[303] During each appearance, issues are raised, and judicial directions given. Some issues are recorded as resolved or managed.

[304] Requests for disclosure and Court directions to counsel are an important part of the record. They create expectations as to how the hearing is to be conducted and identify what, if any, issues remain outstanding.

[305] The only unrecorded proceedings (and there were none in this case) would be if the parties entered confidential settlement discussions. In that case, there would be no record of their discussion unless counsel specifically requested a restricted recording.

[306] Otherwise, all Court processes are "**on the record**" discussions.

[307] Remembering the parties separated in February 2020, the running file discloses the following information:

[308] *On September 11th, 2020*, to obtain legal relief, the father filed his **Petition for Divorce** with a **Notice of Motion for Interim Relief** to gain access to his children with the Court. An emergency hearing scheduled for September 28th was cancelled due to a storm.

[309] *On September 28th, 2020*, the parties and their counsel appeared before the Court. No agreement was reached. The matter was set down for a contested hearing on **October 9th, 2020**.

[310] The matter was adjourned in an effort to settle.

[311] A future date was assigned to the parties, before me, on **January 13th, 2021**. The parties and their current counsel appeared.

[312] The offer of a Judicial Settlement Conference was declined and dates of **April 8th, 9th and 12th, 2021** were set for hearing.

[313] *On January 13th, 2021*, a Consent Order was granted releasing the Children and Family Services files to counsel. Both parties had access to the file materials.

[314] Nothing further was heard on this issue from either counsel. No witnesses were called from Children and Family Services.

[315] On January 13th, 2021, the mother, without motion, requested a Parental Capacity Assessment.

[316] The father could not afford a Parental Capacity Assessment. Without sufficient evidence to conclude this report was necessary, the Court declined the motion.

[317] Through counsel, the father indicated he could not afford a contested custody hearing, was concerned about delays, and wished to get on with the business of reinstating his parental contact.

[318] Hearing dates were set for April 8th, 9th and 12th, 2021.

[319] *On January 28th, 2021*, a formal motion was put before the Court, by the mother's counsel, for the Voice of the Child Report pertaining only to the eldest children.

[320] The order was granted to facilitate a potential agreement between the parties on this issue rather than escalate the costs of this proceeding.

[321] On *March 31st, 2021*, shortly before the hearing, the mother's counsel advised the Court the Voice of the Child Report would be late.

[322] The matter was adjourned to **April 23rd, 2021, for a half day hearing and on April 29th, 2021 for a full day hearing.**

[323] The first day of the Contested Hearing took place **April 23rd, 2021.**

[324] Before resuming the in-person hearing, two events occurred. Some of the participants required testing for COVID-19 due to possible exposure. At a further pretrial on **May 31st, 2021**, some participants were required to quarantine.

[325] The Court matter adjourned to **June 14th and 15th, 2021**, to finalize the in-person hearing. All persons who testified did so in person.

[326] In the interim on May 31st, 2021, the Court noted as problematic the lack of agreed upon interim contact between the father and the younger children.

[327] Due to the nature of the allegations of abuse and the inability to conclude the in-person hearing, the Court strongly encouraged the mother to consent to interim parenting arrangements on a consensual basis.

[328] The Court indicated that there was insufficient evidence, at this point, to draw conclusions. The Court encouraged the parties, along with their counsel, to ensure contact was reinstated, both electronically and in person with overnight access Saturday to Sunday, to accord with the fathers off time.

Interim parenting order

[329] On *June 7th, 2021*, the parties entered an Interim consent order.

[330] The order permitted supervised parenting time for the father on the two intervening occasions before the hearing resumed. The supervision could have been by one of three people in the father's community, all of whom were willing to supervise.

[331] Parenting time was overnight on May 8th to 9th and 15th to 16th, 2021.

[332] The father agreed to these interim terms without prejudice to his right to contest the need for supervision.

[333] The terms of the order included the parties, or another adult appointed by them, were to meet in Stellarton, Nova Scotia, at the agreed time.

[334] Ms. Hill, the friend of the mother, was directed not to participate in the exchange.

[335] Health directives were to be followed.

[336] Despite agreeing to a transfer at the RCMP station in Stellarton, the mother refused to take the children. She had engaged the services of a supervised program in Stellarton to ensure her safety in the transfer of the children to the father.

[337] This was not contemplated by the order.

[338] The paperwork this required had not been completed in time to permit the transfer. The father arrived in Stellarton, the children did not.

[339] The matter returned to the Court for completion on the *June 14th, 2021*, some **17 months since the separation**.

[340] At this time, the father had not seen his children on a consistent and unsupervised basis since February 2020, other than as mentioned in the body of this decision.

Delay

[341] Aside from the usual delays in divorce proceedings, the resolution of this family's important parenting issues was delayed by the shutdown of court proceedings and in person hearings, necessitated by the pandemic.

[342] This delay advantaged the mother's position and caused serious prejudice to the father's position. This has resulted in long lasting consequences to the father/child relationship.

[343] In cases where no parenting time exists, whether from institutional delay or otherwise, the absence of visits between parents and children becomes another obstacle to overcome.

[344] Despite the best efforts of their counsel, the parents were unable to find consensus as to how to design an appropriate parenting plan.

[345] This failure will be a consideration in the final parenting plan.

[346] The delay and lack of out-of-court consensus prejudiced the promotion of ongoing contact between the father and the children.

[347] It created an additional barrier to the facilitation of parental contact. It aggravated the estrangement between the older children and their father.

Allegations of Harassment and Emotional Abuse

[348] I have carefully reviewed the evidence, pre and post separation, to assess the allegations and the respective parenting plans.

[349] There are three principal complaints of abuse (broadly categorized): one dated incident, one during the mother's trip away in Oct-Nov 2019, and one that spans the marriage.

[350] These complaints are documented in the mother's evidence, as told to the mother's counsellor and to Children and Family Services well after the fact, and to the children's Choices intake worker after the move to Dartmouth, Nova Scotia in 2020.

[351] The balance of the complaints about harassment relate to the constant text messaging and email attempts made by the father to connect with the mother to obtain knowledge about his children, to connect with his children and attempt to spend time with them. This, she believes, was harassment and bullying.

Allegations of Self-Harm

[352] This is a dated allegation. It is difficult to pinpoint the approximate date.

[353] The Respondent testified that she tried, at one point, to end the marriage at least six years prior to the birth of the twins in 2017.

[354] She testified that when she threatened to leave, the Petitioner suggested he would self-harm if she left. She says he made her watch him hang a rope and tie a noose in the garage.

[355] He described the event differently. If this happened, as she said (without children present), I would consider this immature and emotional manipulation, not necessarily abuse.

October to November 2019

[356] One of the principal allegations arises from an incident on November 10th, 2019.

[357] The mother reported this to her therapist sometime in October 2020 when she

initiated her service, to the children's Choices interviewer in late October 2020, and to Children and Family Services possibly in August 2020, nine months after she left the matrimonial home,

[358] The mother reported to Children and Family Services that while she was away on her vacation trip in Cambodia October 2019, the eldest daughter called her on November 10th, 2019, to complain about her father.

[359] The child complained to the mother during this call that their father came home late and intoxicated leaving the oldest child to babysit the twins on Remembrance Day.

[360] She also reported that during the same trip in 2019, the father came home from work and found that his older daughters had not cleaned up the children's mess as directed.

[361] The father became angry and while cleaning the mess himself, he is said to have thrown a toy chair across the room.

[362] The eldest informed her mother that her father yelled at her for not cleaning up the house and the toys. She reported he threw a child's chair across the room breaking the chair. She reported he missed hitting one of the twins but could have.

[363] The father admits to throwing the chair in frustration while he cleaned up the toys, however, denies the chair came close to the younger child's head.

[364] The father recognizes that his behavior was ill advised.

[365] While the father may have been frustrated at the state of their family circumstances, there is no justification for losing his temper in this way.

[366] The mother received this call while in Cambodia, preparing to leave for Bangkok.

[367] She admitted she did not think it necessary, at the time, to call friends or family to check on the kids. There is no evidence her trip was cut short.

[368] There was no evidence from the aunt, who was staying with the children during the day, as to where she was at the time given there is some evidence she was staying with the children during the day.

Sleeping Arrangements in the Mother's Absence

[369] The other principal complaint seems to suggest some impropriety, on the father's part, arising from the sleeping arrangements during the weeks of October and November 2019, and the night before the separation in February 2020.

[370] The Petitioner said that the mother's aunt stayed and slept in one of the other children's bedroom.

[371] The father apparently remained in his own bedroom and occasionally the eldest moved into her parents' bed to avoid sleeping with her sister.

[372] There is no evidence from anyone else, including the mother's three care givers and family members, to suggest this was a problem.

[373] In retrospect, at this age and stage of his daughter's development, this was likely not the best solution.

[374] Subsequently, the eldest said she was uncomfortable sleeping in her parents' bed and went to sleep with her sister.

[375] I am reminded that during the marriage, the satellite television was in the parents' bedroom. The children were in and out of that room on a regular basis.

[376] Well after the separation, during the September 12th, 2020, visit, the older girls accessed this bedroom on their own without fear or reprimand.

[377] On another occasion, amidst an evening of domestic arguments and conflict about divorce discussions, the father went into the eldest child's bedroom to cuddle with the eldest daughter on the night prior to separation.

General allegations

[378] There are also the generic allegations regarding the father's pre-separation behavior. The mother alleges the father was emotionally abusive, controlling, erratic, yelled and threw things, and isolated her from her friends.

[379] She testified she was fearful of him and had to flee without notice.

Post separation –

The mother accused the father of harassing her, bullying her, stalking her and suggests he is possibly an alcoholic.

[380] Late in her testimony, she also suggests the father shot at her car while he was

hiding in the woods in Dartmouth, Nova Scotia.

[381] While there is no detailed direct testimony on point, the mother suggestions to her counsellor, as repeated to the authors of the Voice of the Child Report and Choices notes that the father is possibly addicted to pornography, and he was sexually abusive. This contrasts with the assertion that there was no physical abuse.

[382] I have reviewed all the evidence to reach conclusions about the mother's allegations.

Report Cards of two Oldest Children

[383] The children have resided in Mabou, Nova Scotia for the bulk of their lives.

[384] The only report cards I have in evidence are the report cards for the two oldest children from the school they transferred to in Dartmouth, Nova Scotia in September 2020.

[385] Both children have excellent results as reported in their Grade 7 and 8, March 2021, respective report cards.

[386] The children appear to be well grounded.

[387] The school report cards are suggestive of conduct and performance that is consistent with the description of the children by the father's witness before the separation.

Mother's evidence

[388] The mother described the 18-year relationship as tumultuous.

[389] She denies any physical abuse occurred. There is no evidence of physical abuse.

[390] The mother testified that her husband tried to isolate her from her friends. There is no supporting evidence other than her assertions that this occurred.

[391] The evidence supports a finding that with her parents' support, she was able to finance vacations away from the home and her periodic and now permanent mobility.

[392] The Respondent alleges her husband made disparaging remarks about her parents. I also have no details on this evidence other than her allegations on this point.

[393] She testified she tried to leave the home in **January 2008**, when she was seven months pregnant with their second child and the oldest was 10 months old. To get a break from the situation, she travelled to British Columbia. When she returned, she decided to stay in the marriage.

Witnesses

[394] *Mr. Rankin MacEachern and Ms. Erin MacLean* were the two lay witnesses present on behalf of the father.

[395] As witnesses, they had a history and knowledge of both parties to this divorce.

[396] Each were asked to supervise visits. Each has known the parents for more than 10 years.

[397] Each indicate that they were surprised at the separation as the parents seemed to work well together and had a normal relationship.

[398] I am aware that this alone does not mean one can discount allegations of domestic abuse. Secrecy and silence are not uncommon in domestic abuse situations.

[399] Mr. MacEachern has known the father since childhood. They have been good friends for about 10 years. While he has never had the occasion to leave his children in the Petitioner's care he would not hesitate to do so.

[400] Mr. MacEachern indicates that throughout his relationship with the Petitioner, he has observed him to be a good father. He testified he is extremely intelligent, well read and hard working.

[401] *Ms. MacLean* is a witness that has known the Petitioner for more than 20 years and the Respondent for 10 years. Their children are of the same age as the parties' children and Ms. MacLean, her husband and the Petitioner are good friends.

[402] She observed that the Petitioner was a good father and observed him to be loving and attentive towards all four daughters.

[403] Ms. MacLean had the benefit of the Respondents' childcare services for three years.

[404] She noted that the two younger children were very loving with their dad.

[405] She had no concerns about sending her children into the party's home for childcare during their marriage.

[406] *Mr. Adam Matthews* is a Mental Health worker with Mental Health and Addiction Services since 2017.

[407] As with the mother's counsellor, most of what each counsellor knows is based on the self-reporting of their clients. Neither assumed an investigative role in their analysis.

[408] The Petitioner reached out to Mr. Matthews early on and has been accessing his services for counselling to assist him in accepting the breakdown of the marital relationship and the loss of his children. He has had approximately 25 sessions to assist Mr. MacDonnell manage his distress and regulate his emotional responses.

[409] Mr. Matthews believes his client has made excellent progress and is prepared to continue to work with him.

[410] Upon hearing of the concern's raised by the Respondent regarding the Petitioner's possible addiction to alcohol and pornography. Mr. Matthews discussed these issues with his client.

[411] He concluded that addictions to either alcohol or pornography were not issues required to be addressed with Mr. MacDonnell.

[412] Mr. Matthews believes his client was focused on reconciliation and establishing a relationship with his children.

[413] He believes his client quit alcohol before he came to see him.

[414] He concluded that his client does not have an addictive personality. He noted that Mr. MacDonnell was able to stop drinking during a most stressful time in his life, a time when most might use alcohol to reduce stress.

[415] Mr. Matthews also advises that he sees nothing that would indicate a need for a referral to a psychiatrist.

Choices Progress Notes, The Voice of the Child Report, Therapist Report of the mother

[416] None of the authors of these reports assumed an investigative role, undertook

a complete analysis, or conducted approved testing.

[417] Each accepted their client's version of facts without question. Their role was to record what they heard from their source and in the therapist's, case assist their client in addressing their issues arising from their experience.

[418] They could not be considered independent witnesses having a fulsome knowledge of the family situation.

[419] The authors of the Choices notes and the Voice of the Child report were not present to give an objective assessment, to make recommendations to the Court on the broader issues, or to provide to the Court expertise on a subject that was outside the Court's expertise.

[420] As in the Petitioner's therapist report, her version is of necessity limited, one sided and valuable only as so far as to the facts supporting their conclusions based on their knowledge of their clients' reporting.

[421] I place little to no weight on unsupported conclusions that arise from hearsay and speculation.

Choices Progress Notes

[422] The mother took the two children to the IWK Health Centre, Choices program where they were interviewed in October 2020, nine months after the separation

[423] The notes from the interviews were filed by the mother to support her position that the two oldest were refusing to visit their father.

[424] The notes were used by the author of the Voice of the Child Report and the mother's therapist as background information.

[425] While the father's counsel did not object to them being filed, I was asked to be cautious about attributing weight to them beyond the scope of their ability to assess the broader family history.

[426] The Choices progress notes, the therapists report, and the Voice of the Child Report all commence their involvement with the mother and children late in the separation history and some in contemplation of impending litigation.

[427] After attending most of their elementary school in Mabou, Nova Scotia, a small rural community, the eldest two children were enrolled in a Dartmouth school in September 2020.

[428] The eldest was isolating herself from the family in the new school.

[429] The mother testified that the Guidance Counselor noted that the two oldest had frequently visited her office since the start of the school year in September 2020.

[430] The mother suggested this need for assistance was related to stress and anxiety related to the family's past and present situation.

[431] The Choices interviewer formed some impressions after talking to the children and the mother.

[432] The child reported to the intake social worker that her father had always yelled a lot, demonstrated a lot of uncontrolled anger, and was an inattentive parent in that he expected her and her sister to look after the twins.

[433] The children complained that they were left to care for the twins and left on their own, in their mother's absence, in October and November 2019.

[434] The notes states that the father expected them to clean up even when the mess was made by the twins

[435] The totality of the evidence does not support this.

[436] The chronological description in the case formulation did not indicate any history, recent or past, regarding their care at home or where they have been for the past year.

[437] What I learned through the evidence that helps complete the picture, that perhaps the Choices intake worker and the assessor did not know, is that while the mother was home, she was the principal care giver. The father worked outside the home 5 and ½ days a week.

[438] While the mother was away, particularly in October and November 2019, they had four care givers: their grandparents, an aunt, and their father

[439] There are other frailties in the written account. For example, the author of the summary said as follows:

“In speaking with MM, she shared the history, noted above (not including Dad's alcohol misuse, pornography addiction, or sexual abuse of Mom)”.

[440] The interviewer obviously had other information supplied by the mother relating to *Dad's alleged alcohol misuse, pornography addiction, or sexual abuse of*

Mom.

[441] The facts may support that on Saturdays after work, the father periodically drank (according to the mother only, misused) alcohol with his friends and neighbors.

[442] The evidence does not allow me to conclude he had an addiction in the past.

[443] The mental health and addictions worker did not support a finding that the father had an addiction problem to either alcohol or pornography.

[444] The Children and Family Services files, as told to me in the evidence, indicated there was no substantiation of alcohol addiction.

[445] The father has wisely confirmed with his social worker he no longer drinks or uses alcohol and is prepared to abstain before and during any parenting time.

[446] I do not have evidence that would allow me to draw a conclusion that the father is now engaged in alcohol abuse or has a pornography addiction.

[447] The therapist noted that while the mother reported that in the past the father made the eldest sleep in his bed at times, she is not aware of any sexual abuse however, remains “concerned about it occurring in the future”.

[448] I have no historical complaint that the father required the child to sleep with him other than when she came into his bed in her mother’s absence and when he lays down in her bed on the evening before the separation.

[449] I have information that suggests that the parents’ sleeping quarters also contained the satellite television and children frequently accessed the television from their room.

[450] The therapist, however, reported the mother’s concerns to Children and Family Services, as did the Choices interviewer. There was no testimony provided by child protection.

[451] There are several other conclusions/suggestions in the Choices report that are not supported on the evidence.

[452] It is of note, and it does not appear in the Choices notes nor in the report of the therapist, that the primary care giver of these children was absent for four and a half weeks in late 2019; the children were then taken from a rural community in February 2020 and spent four or more weeks in a transition home in Port

Hawkesbury; they travelled to Arizona during the pandemic; travelled to Alberta and Saskatchewan; and thereafter returned to a cottage close to their home in rural Nova Scotia until they were moved to Dartmouth Nova Scotia, to commence school in September 2020.

[453] They, as many Canadian children, have been out of school for a considerable period.

[454] They have been transient in the mother's care for a considerable period.

[455] What part does this, and other considerations, play in the children's behavior? Was it considered at all and what did the counsellors know of the preceding year and a half of the children's lives?

[456] These issues were apparently not canvassed. The conclusions and assumptions reached are therefore highly suspect. They are incomplete.

[457] The use to which I can put these Choices notes is limited.

[458] The father did not agree to the children's allegations set out therein.

[459] They largely appear to be a regurgitation of the original complaint of the mother and allegations of the mother through the children.

[460] They appear to be a summary of an interview with the two oldest as well as the mother.

[461] They form conclusions not always supported by the facts. The discussions with the Choices social worker are not based on investigative action.

[462] The children now operate under the assumption that their father has been abusive.

[463] What I can conclude is that the older two children do not want a schedule of contact with their father at this time. He does not like their decision but will accept it.

[464] There is not an identified need for further counseling for the older girls.

[465] Considering all the frailties of this report, the discrepancy between the background information provided by the interview, and given the broader evidence, I cannot use this material to conclude the picture of life within this family is as stated.

[466] I do conclude the children have been away from their father for a considerable period due to the time they have been in the mother's care.

[467] The children's exposure to the mother and her friend, discussions regarding domestic violence fueled by the mother, and her conduct over the intervening months cannot have escaped their notice.

Voice of the Child Report

[468] Early on, the older children were expressing their wishes through the mother.

[469] The father contested the requirement for a report and wanted parenting time with his older children.

[470] On January 28th, 2021, a formal motion was put before the Court, by the mother's counsel, for the Voice of the Child Report pertaining only to the eldest children.

[471] The order was granted. The filing of the report was not contested although, the weight to be given was in dispute.

[472] The issue of the fathers contact with the older children was no longer an issue in the contested hearing.

[473] The father reluctantly accepted the children's position, as stated to the assessor, knowing it would be a losing battle given their ages and stages of development.

[474] Because the report articulates reports from the children about the father's behavior, I will address the report in more depth than I would otherwise.

The Report

[475] The assessor first spoke to the mother to provide context to the assessor. The assessor started with the comment that the mother left her marriage in February after a series of *concerning reports of their father's behaviors by her two older daughters*.

[476] The suggestion is troublesome in that it provokes uncertainty and raises, but does not address in a fulsome manner, the issues it insinuates; that the father may have acted inappropriately towards his two daughters. It raises the spectra of *possibilities including that the father may have been sexually inappropriate*.

[477] Having included the suggestions about the father's behavior, the assessor

limited her assessment to confirmation that the older children did not wish to have ongoing visits with their father at this time.

[478] In the conclusions and recommendations section of the brief report, the assessor noted as follows:

The primary purpose of the Voice of the Child Report is to present the wishes of the children in respect to their parenting situation before the Court. Supporting information from parents or collaterals is included to provide collaboration or context. **The children's therapeutic needs or conclusions of child welfare authorities are beyond the scope of this report.**

[479] I accept and agree with her stated limitations.

[480] The assessor reiterated what the girls told her; they did not want to be forced to see their father on a regular basis.

[481] Based on the following evidence, I conclude the weight of the assessment is significantly diminished beyond the children's stated wishes.

[482] Much of the rest of the report is oath helping. It is a reiteration of what the mother told the assessor, through the children, and as told to child protection. It is one side of the story and I regard it as such.

[483] The assessor contacted Children and Family Services for information and collaboration.

[484] Doing this to verify the information may well have sent the assessor on a broader, but incomplete investigative role that was not her task; well beyond establishing what were the wishes of these children and whether have they been coached.

[485] As the assessor noted above, the conclusions of child welfare were beyond the scope of her report.

[486] The children were interviewed in April 2021, more than one year after the separation.

[487] They were living in Dartmouth, Nova Scotia, and had few in-person visits with their father largely due to the mother's travel arrangements and control of their whereabouts.

[488] The absence between the father and his children was lengthy. Memories are

notoriously unreliable.

[489] The assessor described the oldest as chatty and outspoken, while the second born was more quiet, anxious yet comfortable in letting her views known.

[490] The oldest said she was shocked by her parents' separation and upset at how abruptly it happened.

[491] They had to stealthily pack their bags to *escape* to a transition home. She admitted her parents had been fighting for years. (What that means to a child of 13 is unknown).

[492] From an outsider's perspective, this was the way the mother decided to leave despite advice to the contrary. The separation had been planned for months.

[493] It unnecessarily created a very troubling experience for her children.

[494] Despite his mental state of devastation and depression at the termination of the relationship, and the loss of his children, there is no objective evidence that the father has ever had the ability to physically stop the mother from doing what she wanted regarding the children, the family finances, her travelling and her leaving.

[495] The father did not stop the mother or his two oldest children from removing their possessions in a highly charged supervised visit.

[496] Despite the mother's expression of fear, her actions with the father during the year following the separation indicate neither she, nor the children, exhibited a fear of the father **or** what he might do.

[497] The second oldest child told the assessor the father was watching them all the time while they were at the cottage, and she is afraid he continues to watch them. This feeds into her anxiety which is more likely than not, fed by the older sister and mother's alleged fear and discussions in front of her.

[498] The evidence disclosed, despite 18 years of marriage and knowledge about each other's parenting skills and roles in the marriage, the mother and her parents arranged a trip for her to travel alone to Southeast Asia, leaving three members of her family to travel to Nova Scotia to rotate childcare responsibilities and assist the father in a care taking role while he was at work.

[499] At night, the father returned from work each day to the family home.

[500] Even after her daughter called her about her father losing his temper and

throwing the toy stool, the mother was not deterred from her tour of Southeast Asia. She did not contact anyone to check in on the family.

[501] This troubling situation did not initiate the plan for divorce. Planning was already taking place.

[502] The other troubling events (the father's threat to self-harm in 2008 if she left him) did not cause her to seek separation. They remained together until 2019, having two more children.

[503] Much drama occurred the evening before the separation when the mother, while in the presence of the children, informed the father of her intent to leave and began packing her possessions. This was but one of many arguments between the couple with children present.

[504] The mother was not at all deterred from her plans, even as they argued all night.

[505] The mother continued to pack and plan, undeterred by the father's emotional display. She told him to get out of the child's bedroom and he did so.

[506] Reading the assessment report without further context might raise warning flags that perhaps the father has sexually inappropriate ideas.

[507] The assessor noted that MM said her father insisted on sleeping with her and "snuggling with her" even though this made her uncomfortable.

[508] It did not say when this was, how often it happened or whether it stemmed from this one night of fighting prior to the separation.

[509] In the context of all the testimony, there is no support or evidence to suggest the children have ever been in danger, nor has the father acted in a manner that might suggest he was sexually inappropriate.

[510] He certainly was inappropriate to seek comfort from his children on the night before the separation, but that is a far cry from the flavored suggestion of potentially sexually inappropriate behavior.

[511] The oldest child was entering her teenage years. She did not want or feel comfortable with her father treating her like a child or cuddling with her or hugging her.

[512] It is notable that there were other people tending to the children in October

and November 2019, while the mother was away. There is no evidence from them on these allegations.

[513] No efforts were made by the mother to come home immediately from Southeast Asia, nor were there any reports, **at that time**, to Children and Family Services.

[514] The totality of the evidence before the Court does not support a concern that the father has been sexually inappropriate with any of the children.

[515] The oldest child expressed discomfort with the father's attempt to cuddle her. This may have been heart breaking for the father, but his response was immature, even pathetic.

[516] In the report, the second oldest child indicated her discomfort that came from her discussions with the older child. Her anxiety relates to "what if Dad does that to me or to the twins."

[517] There are few neat and tidy separation scenes that keep the focus on removing the children from the conflict.

[518] What was inappropriate was playing out their separation in front of the children, seeking comfort from the oldest child instead of seeking to reduce the wounds inflicted by the manner of their separation.

[519] Both parents participated in this display and both bear responsibility for whatever damage has been caused their children individually.

[520] The twins have run to their father each time they have been permitted contact.

[521] The evidence from multiple witnesses, including the mother's witness, is that they must be pulled off him to take them home when it's time to leave.

[522] They are inconsolable when they leave him. They exhibit no fear or reluctance to be with him.

[523] They can be seen, during the recorded electronic visits, smiling at the camera and sympathetically at him as they see he is expressing his angst.

[524] The older children reported to the assessor that their father did not do anything for them and made them clean up the house when their mother was away, even when the twins made the mess.

[525] The comment that MM was forced to look after the twins as her father “couldn’t be bothered with looking after them” may refer to the October and November 2019 trip when the father was alone with them, or it may be a general generic comment during their lives together.

[526] There is evidence from Ms. MacLean that the oldest child was a babysitter for her children and other children in the evenings and had taken courses in babysitting.

[527] The children’s view that “he never really paid attention to us”, “he was never there with us”, “he was obsessed with video games”, “he was mostly drunk or out with friends”, does not sound like a child’s conclusion.

[528] It is to be noted that the assessor spoke to the social worker with Children and Family Services who indicated that the allegation that he was drinking all the time was unsubstantiated.

[529] Put in context, the father worked outside the home five and a half days a week.

[530] The children stayed with the mother who, for the most part, was a homemaker. The oldest was expected to babysit and did so for the twins and for the neighbors.

[531] The father admits that on Saturday afternoons, after work, he would drink with his friends and occasionally too much.

[532] He did not travel, did not go outside Cape Breton much, was known as a part of a small community, and played video games at home. The evidence does not disclose he neglected his duties.

[533] In this family, he was the principle financial provider, and his work met their basic needs. That was the role each of the parties adopted for him. The children and mother have profited from his work ethic.

[534] The financial provision for the family came largely from the father and grandparents. That is a significant contribution to their wellbeing.

[535] The father’s provision of a home unencumbered by mortgage, is not mentioned by the mother.

[536] The children are too young to understand the benefits of solid financial and residential support.

[537] The mother has also been privileged to have her parents support her lifestyle in a manner she is unable to do so on her own or one she and her husband were

unable to do by themselves.

[538] Neither the mother nor the teenage children fully appreciated or understood the value of the father's work-related income.

[539] Their lifestyle met their basic needs even though it was an outdated perspective on child rearing and marital roles.

[540] The father may have failed, to his detriment, in participating in the childcare role, attending school fairs and extracurricular activities.

[541] His behavior, together with the drama they endured from their parents, only pushed the older children further away.

[542] The intake worker reported that the teens were *super annoyed when the father texted them and emailed them wanting to see them and said weird things like I forgive you*".

[543] It was unwise and unproductive to keep texting the mother and children to try to get through to them. It was, however, entirely understandable.

[544] That does not equal abuse or neglect.

[545] Unless the mother was careless or neglectful, she must have believed, before taking a four-and-a-half-week vacation from the four children, that the father was up to the task to come home from work, relieve the childcare provider, provide, feed, clothe and put the children to bed.

[546] The mother and her friend continued to talk about the father's failure to act in a child focused manner.

[547] The friend admitted that she and the mother discussed what kind of supervised contact *they would permit* between the father and the children and how frequent it should be.

[548] I have no doubt the children have absorbed some of their concerns as discussed between them for the since separation.

[549] Children and Family Services were called by the mother sometime in **August 2020**. The three incidences reported related to the **November 2019** call she received while in Cambodia, the allegation about inadequate supervision when the older child reported having to babysit well into the evening arising again out of the October/November trip in 2019, and the incident in **2007** (the threat to self-harm).

[550] In the Voice of the Child Report, the allegations about the “threat of self-harm incident **appears** recent. It was in fact, after the birth of the second child and well before the birth of the twins in 2017.

[551] The mother informed the assessor that her husband was a “drinker...” probably an alcoholic “with a bad temper”.

[552] His social worker did not support this conclusion.

[553] The mother justified keeping all four children from the father because he kept calling her, and “harassing her” 40 times a day sometimes.

[554] I have reviewed the emails from the father to the mother, submitted by the mother to support her allegations of harassment.

[555] They are certainly numerous and repeated pleas mostly unsuccessfully. to allow him to see his children.

[556] She had exclusive control over his parenting, and he was unable to make any reasonable arrangements for visits with his children.

[557] On three occasions over three months, he went to the cottage and parked at the cottage hoping to see them. This is what constitutes “watching us all the time”.

[558] I conclude that the assessment was a one-sided perspective. On the totality of the evidence, there is a preference for the mother’s position without adequate analysis of the father’s position or the best interests of the children. (*Miglin v Miglin* (2001) Carswell Ont. 1404; 198 D.L.R.(4th) 385 (Ont C. A) *Haider v. Malach*)

[559] The assessor did not have all the facts on the history of this relationship.

[560] The maker of the report was not present or subject to cross examination.

[561] This diminishes the reliance on the report for anything other than confirmation that the two older children who were interviewed have articulated their wishes and the father accepted their wishes as final to this point in time.

[562] The only collaterals I see referred to, beside the parties, are the collaterals suggested by persons with whom the mother has already spoken. The assessor did not verify the information. No contact was made to any of the neighbors or any of the community members well known to both father and mother.

[563] At least two of these collaterals testified in Court and their testimony directly

contradicts the mother's as to the father propensity for violence.

[564] No one from the community, who has observed the children in their community in Cape Breton or observed the parents in their family community, had input.

[565] The bulk of the evidence from both parties suggests that the father has acquiesced to the mother's decisions and wishes, without undertaking any aggressive action.

[566] To rely on any assumptions in the report, outside of the specific statements from the children regarding their wishes, would be risky.

[567] The two oldest children have voiced their wish not to have scheduled contact with their father. The father is very unhappy with their decision. With the help of a social worker, he has reluctantly agreed to respect their wishes. He remains open to any contact they wish to initiate.

[568] The two youngest children have demonstrated a strong attachment to their father, cling to him and are reluctant to leave him when their time with him is over.

[569] Otherwise, the report and the counsellors report took on an appearance of oath helping and was largely, and almost solely fed from statements originating from the mother to others and to her.

[570] I accept that the two oldest have been involved in the conflict. I conclude that they have been exposed to a one-sided rendition of the past, exclusive of any balancing in favor of their other parent and have lived, almost exclusively, with the mother since February 2020. They have clearly expressed their wish to refrain, at this point, from seeing their father.

[571] Were the allegations to be proven as risk factors, then the younger children would be subject to the same risk.

[572] However, the proposal from the mother at the hearing involved supervised visits to continue followed by block week vacation parenting time and including weekend visits.

[573] This is a contraindication that the mother believes the father is a risk to the children.

[574] *Dr Keri Gibson Grant* is a registered psychologist with the Nova Scotia Health

Authority, Child and Adolescent Services and has an individual private practice.

[575] She was qualified as an expert capable of giving evidence on the mental health status experienced by her client, Ms. MacDonnell.

[576] The mother began accessing her services in October 2020, after her move to Dartmouth. She reports having seen the mother for eight sessions in October 2020.

[577] Counsel agreed to her expertise as it relates to her client's perspective only by way of self-reporting and thereby limited in scope.

[578] None of the counselling efforts for the mother or children have challenged the mother's account or perspective.

[579] The bulk of their focus in counselling was on stress management regarding the separation and what the assessors determined as the father's "problematic behaviors."

[580] The mother reported to her counsellor that the abuse she felt she suffered was emotional and verbal. She advised she was terrified.

[581] The mother told her therapist her concerns were around psychological mind games (referring to the 2007 rope incident where she said he would self-harm if she left him).

[582] She said he called her names (she advises often, he admits once and never again), his attempts to drive by her parents' cottage (the three times, he took the truck to the cottage in June 2020 to see his children); and constant messaging (I assume including all the messages where he attempted to obtain contact with the children)

[583] The suggestion of possible pornography uses and sexual abuse, appears in a comment in Dr Gibson Grant's report.

[584] The Respondent reported her concern that in some way, he (the Petitioner) might hurt the children to hurt her.

[585] This description of the father, if true, would be frightening. If true, it is the description of a very disturbed person.

[586] The behavior, if true, would indeed be cause for serious concern about her safety and that of the children.

[587] Neither the Choices intake worker, nor the mother's counsellor, had access to interview or assess the father.

[588] While a Court hearing is limited in scope, the Court has had more opportunity to see and assess the father's evidence within the totality of the evidence.

[589] The description of the father, as conveyed by the mother in her testimony, restated by her therapist, her children, and ultimately the intake worker at Choices, does not match the Petitioner before me.

[590] A contrary description of the father is supported by the evidence of his three witnesses; one of whom is a skilled counselor.

[591] I am aware that their appearances in Court are but snapshots of the past. I am also aware that in situations of domestic violence, others in the community may not know of what has transpired behind closed doors.

[592] I am aware that each party to this marriage has individual perspectives driven by their own personal needs and experiences.

[593] The children have their own perspective. The older children have very different reactions to their father than the younger less sophisticated children.

[594] The older children clearly echo the mother's perspective.

[595] The younger children are not burdened by adult influences and their behavior speaks loudly and clearly of their attachment to their father and their unconditional affection.

[596] The weight of the evidence arising from witnesses who knew about their lives together, comes from the father's two lay witness familiar with both parties.

[597] The mother's lay witness was familiar only with the mother, and counsellors were largely fed by self-reporting.

[598] Much of the alleged "harassment" (the calls, the emails, and texts) come as a direct result of the unilateral and arbitrary removal of the children from their father, and the very restricted conditions of his access to his children.

[599] The electronic visits are significant failures by the father to rise above his trauma and use the opportunity to strategically re-establish a loving, mature, parental connection with his children.

[600] What is clear to me about the father's behavior is that he simply and totally fell apart at the dissolution of his marriage and the loss of his children.

[601] Hailing from a small community and operating from a very traditional role in his marriage, he reached out to a counsellor to help navigate himself through this tragedy in his life.

[602] This speaks to his willingness to attend to his own frailties to be a part of his children's lives. It is a hopeful sign of humility.

[603] If I were to disagree with his counsellor, I would do so on one point only.

[604] Before he can effectively distance himself from his own loss to fully take on the role of father to his children, the father may need some medical help, in addition to his current therapy, to deal with his overwhelming feelings of loss.

[605] I say this to recommend a medical assessment to the father that explores whether there is now a need for additional medical therapy in addition to the one he has willingly engaged in to date.

[606] I do not state this observation as permission for the mother to create further preconditions before parental access can be reinstated.

[607] The mother's counsel raised the minor displays of emotion displayed by the father throughout the testimony when faced with the multitude of allegations raised by the mother. He was emotional (consistent with the evidence) and overwhelmed by the wave of allegations and was unable to refrain from quiet displays of emotion.

[608] While it is useful to maintain a quiet courtroom to avoid distractions, I do not expect parents to remain visibly and physically detached when facing the loss of their children.

[609] Nor do I expect parents to be as professionally detached as counsel when their reputations and personal lives are being dissected in public settings.

[610] His behavior did not distract me.

The Case Law and Statutory Directives

- Weighing Assessments, Expert Reports and Voice of the Children Reports

[611] In weighing this evidence, I have reviewed the authorities.

[612] I accept the weight of authority that courts may not delegate their responsibility to an assessor to decide what role parents, in a particular case before it, ought to have in their children's lives. It is for the Court alone to decide whether, when and how access should be permitted.

[613] I have also reviewed and refer to those authorities summarized in:

A Parenting Law and Practice in Canada the Impact of Assessment on The Courts Decisions. 61 5(4) — CCLPRAC 5(4) Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved (*Van Delft v. Colosimo* 1996, CarswellOnt 3595, (*sub nom J.V-D. v. E.C.* (14Ont.Gen.Div.),)and *Myketiak v Myketiak* 2001 SKCA 17,2001 CarswellSask 84, 13 R.F.L. (5th) 431 (Sask C.A)

[614] In his annotation to this judgement (*excerpted below*), James McLeod explained the Saskatchewan Court of Appeal judgement regarding the difference between reliance on and delegation to an assessor:

Tallis J.A. ...tried to clarify the distinction between a judge's reliance on an assessor's recommendation in reaching his or her decision in a custody/access case and abdication of responsibility to decide a case to an assessor. A judge must decide custody and access and cannot delegate her or his discretion on these issues to an assessor. *Stronbridge v Stronbridge* (1994), R.F.L. (4th) 169 (Ont. C.A.) An assessor provides expert opinion evidence that a judge can accept or reject in whole or in part in reaching his or her conclusion on custody and /or access. A judge does not err simply by agreeing with an assessors' conclusion after reviewing all the evidence in a case. A judge errs only by not bothering or consider all the evidence to decide what is in the child's best interests and instead simply adopts an assessor's recommendation without further analysis

[615] Of relevance is the summary of subsection (b)

Weight Given to Assessment

[616] Once an assessment is deemed necessary, the Courts will typically accord a substantial amount of weight to an assessor's report. Not so, however, in circumstances where it is unilaterally requested and has been conducted over a short period of time without full and comprehensive interviews.

[617] In this situation, the report may be entitled to less respect.⁵⁷ In *Gauci v. Gauci*,⁵⁸ Lacourciere J. stated:

The Court will, of course, treat the opinion of a highly respected child psychiatrist with great respect; however, its delicate function in matters of this kind, as well as in other areas, cannot be surrendered or delegated to any expert, however qualified. In the decision-making process, such an opinion is considered as a helpful factor, to be weighted and assessed along with all other relevant evidence. After a lengthy trial and a thorough evaluation of the issues, the decision of the Court on the child's welfare will be based on more complete and reliable information than that available to [the assessor] after an hour-long interview with the plaintiff, her son, and her common law partner.

A similar sentiment was expressed by Granger J. in *Weaver v. Tate*⁵⁹ approximately 20 years later. In that case, the Court stated that an assessment report is only one piece of evidence to be weighed with all other evidence and should be subject to cross-examination. It is for the trial judge to determine the weight that should be accorded to an assessment. If the findings of the trial judge are different than the facts assumed by the assessor on a critical matter, the assessment may be flawed and therefore will be given little weight⁶⁰.

If one of the following occur, it is likely that the influence of an assessment will be diminished:

- the assessment was unilateral or one-sided, or the assessor has demonstrated bias or partiality for or against one party⁶¹.
- the assessor has shown a preconceived bias or point of view⁶².
- the assessor failed to follow proper guidelines or procedures⁶³.

- the assessor is not qualified or makes observations or conclusions clearly outside his or her area of expertise⁶⁴.
 - the assessor applied incorrect assumptions or incorrect legal principles⁶⁵.
 - the assessor relied upon limited or incorrect facts⁶⁶.
 - the assessor used poor methodology⁶⁷.
 - the assessment is incomplete or deficient⁶⁸.
 - the assessment is out-of-date⁶⁹.

On the other hand, where the assessor has appropriate qualifications, and where the information in the assessment report is consistent with the facts as found at trial, the assessment report will generally be given significant weight⁷⁰.

It has been noted that “the test of a good assessment is whether it was thoroughly conducted, whether other professionals were consulted, and whether the observations of the assessor match the findings and opinions of other professionals”⁷¹.

The Court may find the insights into the family dynamics set out in the report useful, even where the recommendations of the assessor are not followed⁷².

As noted above, the weight given to an assessment is at the discretion of the Court. It

is best practice for a trial judge to explain why he or she has discounted the assessor's evidence. A court should not refuse to consider the evidence of an assessor without explanation⁷³.

Statute Law

[618] For the benefit of the parties, the Court is directed, in Section 16 of the *Divorce Act*, to review the following factors when considering the best interests of the children.

[619] The law articulates specific considerations under Section 16(4) of the *Divorce Act* when domestic violence is to be addressed.

Best Interests of child

- **16** (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.
- Marginal note: Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability.
- (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life.
- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.
- (d) the history of care of the child.
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained.
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage.
- (g) any plans for the child's care.
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child.
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child.

- (j) any family violence and its impact on, among other things,
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security, and well-being of the child.

Factors relating to family violence

(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

- (a) the nature, seriousness, and frequency of the family violence and when it occurred.
- (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member.
- (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence.
- (d) the physical, emotional, and psychological harm or risk of harm to the child.
- (e) any compromise to the safety of the child or other family member.
- (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person.
- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- (h) any other relevant factor.

Past Conduct

(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

Parenting time consistent with best interests of child

(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

Conclusions

[620] These parties are no longer compatible. Further, the history indicates there is not likely to be any degree of resolution or consensus without court intervention.

[621] I take it as a given that children not only need, but also have a right to have meaningful, safe contact and access to both parents for healthy development.

[622] There are many ways that parents can escalate and de-escalate the conflict between themselves in a separation and divorce.

[623] There are many books written on the long-term damage marital conflict has on child development, and many resources available should parents wish to separate themselves in a manner that will minimize the potential damage to children in separation and divorce and maximize their recovery.

[624] Children need to be able to remain out of the conflict between parents. They are the ones entitled to be comforted by their parents and other adults.

[625] These parties are independently resourceful, intelligent, and able to access resources, be it online or through referral.

[626] The mother seeks sole custody and decision-making authority. The mother seeks supervised parenting time initially. Her proposal suggests the plan could evolve to unsupervised weekends and other unsupervised block holiday parenting times for the father.

[627] The father seeks joint and shared decision-making authority inclusive of unsupervised parenting time.

[628] This issue has occupied almost all the in-person testimony.

[629] The mother removed the children from the matrimonial home in February 2020.

[630] Since that time, she has engaged many different strategies to keep the children distant from the father. COVID-19 played a part.

[631] Her efforts began with a month stay at a local transition home.

[632] She then asked and initially received the Petitioner's consent to permit her to remove the children for a vacation with her parents in Arizona.

[633] Given the Canadian government advisory guidelines to Canadians returning home during the pandemic, both before they left and after they arrived, the father asked the mother to return to Cape Breton with the children. She refused.

[634] During the pandemic, instead of returning to Nova Scotia with the children, she asked the father to consent to her taking the children to visit her parents in Alberta and Saskatchewan to assist her mother during her illness. Her return was delayed due to border closures.

[635] The mother returned to Cape Breton, Nova Scotia, in June 2021 and lived close to the former matrimonial home. She severely restricted the father's access to his children.

[636] At first it was under the guise of a quarantine restriction and thereafter, it was because she arbitrarily imposed severe restrictions on him requiring supervision at most visits.

[637] In September 2020, the mother removed the children from their ordinary residence in Cape Breton without notice and kept their location hidden from the father.

[638] Since separation, the mother continues to severely restrict the father's contact with the children.

[639] There have been long-term consequences to the lengthy disruption in the father-child relationship.

[640] For the two oldest (early teens) it has, for now, effectively terminated his relationship.

[641] For the youngest children (twins), the absence of the children in their father's life and he in theirs, has significantly interfered with his ability to bond and develop attachments with them and they with him.

[642] The youngest two children are always excited to see him and evidence significant angst when they are required to leave him.

[643] The evidence of witnesses from both parties causes me to conclude the children exhibit no fear of their father. They enjoy their time together.

[644] While there is evidence that the father may, on occasion, have had too much to drink when out with his friends, there is no evidence to substantiate an ongoing, unmanaged addiction problem. His social worker concluded as much, and Children

and Family Services could not substantiate a problem.

[645] It is inappropriate to seek comfort from your young children or involve them in the conflict when you are separating.

[646] The father's behavior was misguided and self-centered. He was focused on his own emotional need for comfort.

[647] The mother said she felt like a prisoner in her home.

[648] The evidence strongly confirms she was not trapped such that she could not leave. She had family resources that continued, and the means and resources to travel and get away.

[649] Perhaps she felt trapped in a marriage that no longer suited her.

[650] There are allegations of domestic abuse.

[651] Specifically, the mother counsel's brief alleges that the petitioner has "*anger, mental health and alcohol and other addiction issues*" (*para.6 pg.2*). She felt the father separated her from her friends, controlled her and verbally abused her.

[652] There is insufficient evidence to sustain a finding in favor of the Respondent's allegations on all but the expression of anger and frustration at the actions and results of being separated from his children as effected by the Respondent.

[653] There is no evidence that the father isolated the mother or removed her from her friends.

[654] Historically, the father had acquiesced totally to the mother in financial and family matters relating to the home and childcare, at all stages of their history as described.

[655] The mother had complete control of the finances to the point that the father did not know of their financial arrangements. He worked, deposited his cheque, and she made all the financial decisions.

[656] The Respondent planned and executed the removal of the children from their father.

[657] Removing children from a parent without recourse to immediate resolution, is likely the most effective way to ensure a highly contentious, prolonged, and costly battle. There are no winners in this battle.

[658] The only reason one removes children from a parent permanently is if there are substantial risks to the children that cannot be solved in any other way other than termination of the parent-child relationship.

[659] The case law, as cited by the Respondent in her brief, are examples of cases where there were significant examples of abuse. The facts of this case do not fit into the precedents cited.

[660] Even in Children and Family Services proceedings (*and this is not such a case*), a parent who loses contact with their children does so only in the most serious cases where there is substantial risk to the children.

[661] Even in that situation, a parent would have at least 18 months of services and therapeutic interventions to assist to rehabilitate the relationship before a court would take the least likely route of terminating the relationship between parent and child.

[662] There is no factual basis before me for such a finding that would justify removal or restricted contact between the father and his children in this case.

[663] Both counsels had access to the Children and Family Services records by way of a consent order to produce.

[664] There are no Children and Family Services agency witnesses here, and no police reports.

[665] There are reports based on the mother's self-reporting, and they are repeated in the subsequent reports without challenge or verification.

[666] The mother has been believed without question. While I do not take issue with the therapeutic approach, there is an absence of a process that assists the mother in gaining insight into her behavior as it relates to the best interests of the children.

[667] She spoke to many people about her concern: the school; her neighbors; his friends; her friend; transition house staff; her therapist; the child protection agency; the IWK Choices program; and the school guidance counsellor.

[668] The mother has had access to a large body of support and advice.

[669] She has not been financially strapped given the injection of financial aid from her parents. Nor is there evidence that she was controlled by the father.

[670] In civil proceedings allegations of domestic violence and abuse must be

verified on the totality of the evidence on the balance of probabilities. This is a standard of proof that is less than the criminal burden of proof.

[671] The nature and extent of the mothers' allegations do not bear out under scrutiny.

[672] I am not satisfied that the mother was fearful of the abuse she might receive from the father or that he would prevent her from leaving or taking the children by other than legal means.

[673] Nor do the allegations support a finding that the father would deliberately harm or abuse the children either because of his nature and history, or because he wants to harm the mother.

[674] In saying this, I do not wish to imply that I think the mother is pathological.

[675] I conclude that she wanted to get out of a relationship she entered at 21 years of age.

[676] The Respondent has done everything within her, and her parents means, to separate not only herself, but her children from the father so she can start a life independently; to be free of the burden of involving the father in the day to day and long-term major decision relating to the children.

[677] The Petitioner's involvement in their lives may restrict her mobility.

[678] From my observation the parties are very different personalities.

[679] After four children, and 18 years of cohabitation with the father, the mother decided she no longer wanted to be a party to the marriage. There is nothing inherently wrong with that.

[680] The Respondent did not want or intend to be constrained. She did not want to stay in Cape Breton. After almost 18 years in this community, she claimed no friends.

[681] She hails from Alberta. Her parents, or at least her mother, lives in Western Canada and she has, as she noted in evidence, no ties or friends in Cape Breton or Dartmouth, Nova Scotia, except for her one friend, Ms. Hill.

[682] She alleges the father separated her from her friends. Separating a victim from their support network is one of the many red flags one looks for in situations of domestic violence.

[683] The mother could travel, and the father did not stop her. Nothing in the father's behavior suggests that he would have been able to stop her.

[684] To suggest the father isolated the mother is not support by the evidence.

[685] The father had no input or control over the mother, her trips, her vacations, the care of the children or her decisions to move.

[686] The Respondent came to Nova Scotia after the Petitioner had returned to the rural community. They lived here for 18 years. Their friends were mutual friends.

[687] There are no witnesses in the community called to support her perspective that the mother was constrained by the father. She was most certainly constrained by her income and their financial circumstances (except for the generosity of her parents), and the needs and wants of four children.

[688] She does not consult the father on major decisions. She did not advise him when his daughter was undergoing surgery in Dartmouth. She did not advise him when she brought the children to an orthodontist in Cape Breton to commit to a series of treatments for two of the children.

[689] When she returned to Cape Breton to visit the children's orthodontist, she did not make any arrangements for contact between the father and the children while in the area. She did not advise him of their registration in school or any significant developments in their lives.

[690] The Respondent behaves as if the Petitioner is not entitled to know or participate in any fashion in the children's lives. She shows no insight regarding the developmental value of having the father as parent in the childrens' lives.

[691] Her desire to separate and establish a clean break has been her primary focus over these past months. This independence required significant financial support from her parents.

[692] I conclude she wants sufficient independence to permit her to extract herself from the Cape Breton area perhaps even the province if she can.

[693] The mother could have chosen to immediately apply to the Court for permission to move from the area or even to return to Alberta.

[694] Facing a mobility hearing in these circumstances posed certain risks.

[695] The mother took a self-help process that did not permit and significantly

delayed due process.

[696] The father suffers from having lived in a relationship where the roles were firmly defined and each of them played out their roles exclusive to the other.

[697] The mother controlled the children at each aspect of their lives as well as the family finances.

[698] The father now needs to learn how to be a childcare provider. To establish himself as a caretaker as well as a financial provider, the father must learn how to separate out his own loss from that of his children's and focus on them in an informed manner.

[699] His traditional method of leaving childcare issues to the mother while he works is outdated. He is said to be very intelligent. He can do better than he has.

[700] The mother has deliberately, and without lawful excuse, removed his children from their father.

[701] When possible, she obtained his consent, and when he did not consent, forged ahead with her plan to separate herself and the children from their father.

[702] The mother hid the children from their father, travelled against his wishes during the pandemic and moved about restricted only by provincial and federal closures.

[703] Allowing the father to have only controlled short glimpses of his children when he has been traumatized by their loss and quite literally bereft at their absence, was unconscionable.

[704] Expecting the father to rise above this trauma without significant therapeutic assistance is not entirely a reasonable or attainable goal unless, and until, there is some normalization in his connection with his children

[705] While the father's behavior arises out of the trauma and his obvious depression, the mother's behavior is calculated and equally fails to prioritize the children's best interests, *in an informed manner*.

[706] Both these parents leaned on their children for their emotional and practical support. They argued in front of the children and involved them in conflict and drama they each created during their separation and divorce.

[707] As it happens, there is now a very serious split between the father and the

older children.

[708] The father's calls and comments to his older children have not helped to encourage them in wanting to maintain a connection with their father. Their participation in the recording of their father was ill advised.

[709] The lengthy separation and having the two oldest distance themselves from their father, helped the mother establish her desired independence.

[710] The twins, however, are still engaged with and attached to the father during their visits. This is an obstacle that potentially restricts her mobility.

[711] Dartmouth, Nova Scotia, is far enough away from the father and their home that, given his parenting time, there will be geographical limitations to his contact.

[712] The Respondent has connections to her workplace through her father and her employment history.

[713] There were other options closer to the father that would have better addressed the children's right to be connected to their other parent.

[714] The mother believes she ought to be afraid. She has certainly communicated this to the children.

[715] The children's fear as to what their father might do has aggravated their estrangement and the second eldest's anxiety.

[716] Given the nature and extent of the mother's beliefs, the older children may need a therapist/coach who is skilled in addressing and distinguishing between a troubled marriage and abuse.

[717] If the therapist were brave enough to involve the father, the father would need to be educated about how his behavior feeds into this fear.

[718] The father would need to be scripted to establish his reluctant acceptance of the children's wishes and his wish to keep the door open to them in the future.

[719] The father is known to be intelligent. He needs education regarding ages and stages of development of children and in this case, toddlers, and teenagers.

[720] In addition to his current counselling, I suggest he connect with a social worker or psychologist that can assist him with co-parenting strategies.

[721] He needs to be educated on how to avoid placing blame or guilt on the children (the eldest child does not appear to be susceptible to accepting blame at this stage) and how to give them permission to contact him in future in a manner that enhances, and gradually re-establishes, a new and improved relationship with him.

[722] I cannot conclude that anything the father did or promised to do in his emails would have stopped the mother from leaving, but it would have enhanced the father's ability to address his children's needs.

[723] The extent of the fathers' behavior, as described and some of which he admits, would not cause a Court to terminate his contact or require his contact to be supervised.

Conclusions on September 12th Visit

[724] As to the September 2020 visit recorded by Ms. Sarah Hill, what the older children's behavior suggest to me is they were not afraid of their father, nor were they afraid of moving about the house including being in the master bedroom.

[725] Generally, none of the witnesses were comfortable or spoke positively about the behavior of Ms. Hill in the father's home.

[726] She assumed a greater authoritative role than she was entitled to assume, one that invalidated any notion of neutrality.

[727] It was clear her presence on these visits was not helpful.

[728] Ms. Hill was too immersed in the mother's perspective and had very definite opinions about the father, which came largely from the mother and not from her own knowledge.

[729] The Court must focus on the best interests of the children as a priority. This includes ensuring the least damage to the children during the separation and divorce. If possible, preserving for these children, the best that both parents have to offer is my goal.

Court ordered parenting plan

[730] For all the above reasons, I decline to grant the sole decision-making authority to the mother.

[731] I am convinced the mother will not willingly participate in a parenting plan that facilitates the father's contact with his children unless she is required to by a

court order.

Supervised Contact

[732] Supervision of children and their parents is a short-term solution, not a long-term solution unless there is no possible remediation of the parent's relationship with the child.

[733] In this case, the evidence does not support the necessity of supervision other than because there has been such a long delay, and the father has never been the primary caretaker.

[734] In the past, he has relied on the mother to manage the household and the children. He has the same steep learning curve before him, as every other parent has, and it is made more imperative because there are two young children.

It is Ordered

[735] Both parents shall equally retain their rights and responsibilities regarding the children. These rights shall not be diminished simply because they reside with the mother day to day.

[736] The children will remain in the Mother's Day-to-day care.

Communication

[737] The parents shall purchase the Family Wizard program and use this to convey information about all four children, to ensure the father is fully informed on all development issues resecting the children

[738] The mother shall also use this program to keep the father informed of the children's school and extracurricular activities as well as medical issues.

[739] The Family Wizard program will be the principal method for communication between the parties and contain any discussion regarding the scheduled pick up or drop offs or weather-related issues.

[740] It will be accessed by both parents at least twice a day; once in the morning and once in the evening.

[741] Should there be any urgency, immediate notification shall take place by telephone, and the parent who has the children will act on the emergency and as soon as practicable thereafter, give notice to the other party by the quickest method possible.

[742] Neither party shall use the Family Wizard program to communicate personal issues regarding their separation, divorce, property, or support matters. It shall solely be used to communicate regarding the children.

Major Decision Making

[743] All major decisions relating to the educational, medical, spiritual, and emotional welfare shall reside with the mother and father equally.

[744] There shall be meaningful consultation in advance, and consent on all major non urgent issues.

[745] Each parent is obligated to engage in meaningful discussions in advance of any major decisions, and seek input from any involved medical, educational or health care provider depending on the nature of the decision.

[746] If they do not reach agreement, they shall either refer themselves to arbitration, mediation or to court application.

[747] Due to the mother's intention to keep the father out of the children's lives, it may be necessary to have Court involvement to ensure the father has input.

[748] The school documents and the records from doctors shall contain the name of both parents, and the mother shall immediately add the fathers name to each of the service providers be it medical, educational, or extracurricular.

Third Party Disclosure Order

[749] There shall be a third-party consent to parental access to all service providers for the children to ensure the smooth and effective flow of information regarding the children to either parent.

[750] The mother is reminded, and it is ordered, that the following section of the *Divorce Act* applies:

Entitlement to information:

16.4 Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.

Section 16.2(2) of the *Divorce Act* reads as follows:

Day to Day Decisions:

16.2(2) Day to day decisions shall be made by the parent in whose care the children remain. 2019, c. 16, s. 12

[751] I add that the mother has a positive duty to keep the father informed.

Mobility

[752] The parties are obliged to abide by Section 16(7) of the *Divorce Act*.

[753] A further restriction shall apply.

[754] The children's residence shall not be moved from the province of Nova Scotia or Dartmouth, Nova Scotia, without the father's written consent or court order.

[755] The children's home in Dartmouth must not change without the father's written consent.

[756] As a minimum requirement, the mother must abide by the notice provision in the *Divorce Act* regarding relocation of homes within the same geographical area. The father is to be provided notice and given an opportunity to have his parenting time confirmed and agreed upon, is given the information required by law to and including the intended location of the new residence, and the contact information etc.

[757] The children shall not be removed from their current school district without advance consultation and written agreement by the father.

Medical Emergencies

[758] In the event there is a medical emergency while the children are with either parent, that parent shall immediately address the emergency and as soon as practicable thereafter, fully inform the other parent by any means possible of the emergency, the location and status of the child.

March Break

[759] Each parent shall have the right to have the children with them during half of March break starting from Friday after school to Wednesday at noon, and

Wednesday at noon to Sunday evening.

[760] Should the mother wish to take the children on a vacation for the March break, she shall first provide one month's written notice to the father. If he agrees, they shall ensure, in writing, that the next March break is available for him to have the children for the March break week.

[761] If a parent wishes to take the children out of Canada for their vacation during their parenting time, they shall comply with travel advisories. They shall give the other parent advance notice and provide full and complete details of the itinerary, and the location and contact information where they are vacationing.

[762] Neither parent shall alter or plan vacation time during the other parent's parenting time unless by their written consent.

Summer

[763] Each summer, in accordance with the age and stage of development of the twins, each parent shall be entitled to two weeks parenting time, not consecutive.

[764] In all even numbered years, the father shall advise the mother, by May 1st starting in 2022, of his intention to take the children, and the weeks he wishes to have the children with him.

[765] The mother then must respond, in writing, to the father within one week as to the two weeks of uninterrupted parenting time she wishes to have.

[766] On all odd numbered years, the mother shall be entitled to first option as to her two weeks uninterrupted parenting time, not consecutive, unless other advance arrangements are agreed upon in writing between the parents. The father then must respond, in writing, to the mother within one week as to the two weeks of uninterrupted parenting time she wishes to have.

[767] The restriction on consecutive weeks shall be subject to change by agreement or court order as the twins age and stage of development changes and they mature.

[768] I am not ordering the two-week block access this summer due to the significant period during which the children have been separated from their father. However, I expect block contact to begin at Christmas.

[769] I am not permitting two consecutive weeks for the mother due to the missed time experienced by the father and the need to re-establish the father in the children's lives on a regular and frequent basis.

[770] If the parties are unable to agree on when this should change, they may apply to the Court.

Regular Weekly Parenting Time

[771] I am aware that the father is going to be on a restricted budget.

[772] Frequent trips to the Halifax Regional Municipality area may not be financially possible. Distance is a factor.

[773] The consequence of the mother's move will result in these children travelling for approximately six hours on Saturday and Sundays.

[774] In this location, and during winter and spring, this may be very difficult.

[775] I am also respecting the older children's wishes and have not included them in this schedule.

[776] However, should the older children wish to see, talk, and visit with their father, every effort shall be made by both parents to make this possible.

[777] The parents shall meet and exchange the children at a point equally distant from each parent's current residence, either in Stellarton or New Glasgow, Nova Scotia, as they agree upon in advance.

[778] If they do not agree on these locations, they shall pick an exact midway point, in a public place off highway, to exchange the children at this halfway point agreeable to both parties.

[779] **When the parents are exchanging the children, there shall be no discussion between them.** They may choose to have someone in their vehicles that can assist with the exchange, subject to the restrictions previously mentioned.

Conditions

[780] The father has agreed, and I direct that there be no alcohol consumption 48 hours before and at any time during his parenting time, including travel time.

[781] Given his absence, albeit imposed, in the lives of the twins, I recommend the father make available to him, back up assistance (his friends and neighbors), to assist in his transitioning.

[782] This will help him, and the children, adjust and will provide third party evidence in the event of a future dispute.

[783] The father shall also access parenting online courses and any available course in his local area to better inform himself.

[784] If they return to Court, he will be called upon to inform the Court of his efforts.

[785] The mother shall not impose reporting conditions on him as a condition precedent to exercising his parenting time. Neither parent will denigrate the other with the children in hearing distance.

Summer 2021- Transition

[786] On a regular basis, with his current work schedule and until school starts, if the father can arrange vacation time, he may have the children three days per week during the remaining summer vacation time.

[787] Unless they can agree on the three days, I will assign the Friday at noon to Monday return at noon, each week, **beginning Friday the 27th August 2021, and the 3rd of September .**

[788] Thereafter if he can adjust his work schedule to allow him consistently every second weekend with the children the father shall advise the mother, in writing, and he shall thereafter have regular parenting time every second weekend from Friday, meeting halfway at 4pm in either Stellerton or New Glasgow to Sunday night, return at the same spot or as agreed at 7:00 pm or as arranged and agreed upon in writing in advance by the parents.

[789] If he cannot rearrange his work schedule when school starts, the father shall have every Saturday evening to Sunday, during which time the twins can be with him, unsupervised, in his home. They shall meet at the halfway point off highway at noon and return to that same spot at 6 pm Sunday.

[790] If a storm interferes with his parenting time, alternate parenting time shall be permitted within the same month.

[791] If he is attending Dartmouth for any reason, the children shall be made available to him for a four-hour period if he is not staying overnight, or for an overnight period if he is able to accommodate them, based on two weeks advance notice to the mother.

[792] To permit weekly contact should he choose to travel to Dartmouth he shall have the option of taking the children to supper each week as well.

[793] In the event the father decides to relocate to be closer to the children he shall

have every second weekend and two evenings per week. The two evenings per week he shall exercise in the Dartmouth area during school time from after school to 7 pm.

[794] It is understood that a move by the father to live closer to the children may necessitate a review of the parenting plan to incorporate his presence in their lives on a more frequent basis.

Christmas

[795] This Christmas, the children shall be with the father, if he is able to take his vacation, and be with them as their primary care giver.

[796] Considering the distance between them, the father may have from after school ends in December to December 27th, 2021.

[797] In deciding this, I have considered the effect of separating the older children and younger children at Christmas and balanced that with this family's circumstances, the need to establish normality and the need to give the younger children ample opportunity, at their young age, to experience traditions with their father.

[798] If the older children wish to go with their father, the mother shall give the father one month's advance notice and shall make that possible.

[799] Since this is the father's first Christmas preparing, he should begin modest preparations in advance so as not to be overwhelmed.

[800] If the parents can agree in writing, in advance of an alternate plan, they shall do so on or before December 1st and shall reduce that plan in writing.

[801] Unless there is some reason not to progress with the evolution of block parenting time in 2023 and thereafter, the parents shall divide the Christmas period equally.

[802] In odd numbered years, the mother will have the children on Christmas Eve and in even numbered years the father will have the children on Christmas Eve.

[803] There are many ways to divide Christmas holidays, but given the geographical distance, it may be wise to agree to have the children with one parent from after school stops to Christmas day, and with the other from Christmas day to the beginning of the school reopening.

[804] However, it is accomplished the parents will share equally the Christmas and

alternate Easter holidays.

[805] The children shall be with their mother on Mother's Day and with the father on Father's Day.

[806] The father shall have time to visit with the children on their birthdays, including the older children if they so wish.

Electronic visits

[807] The mother shall ensure the children are available for unsupervised and unrecorded electronic visits or telephone visits at least once each week before 6:00 pm on a day selected by the father.

[808] In the event there is no agreement, the default day shall be Wednesday at 5:30 pm.

[809] The father would profit from education on how to conduct these visits in a child centered manner, respecting the age and stage of development of the children.

[810] This order will ultimately be incorporated into and form part of the Corollary Relief Judgement when the remaining portion of the decision is released.

[811] Counsel for the Petitioner shall draft the order.